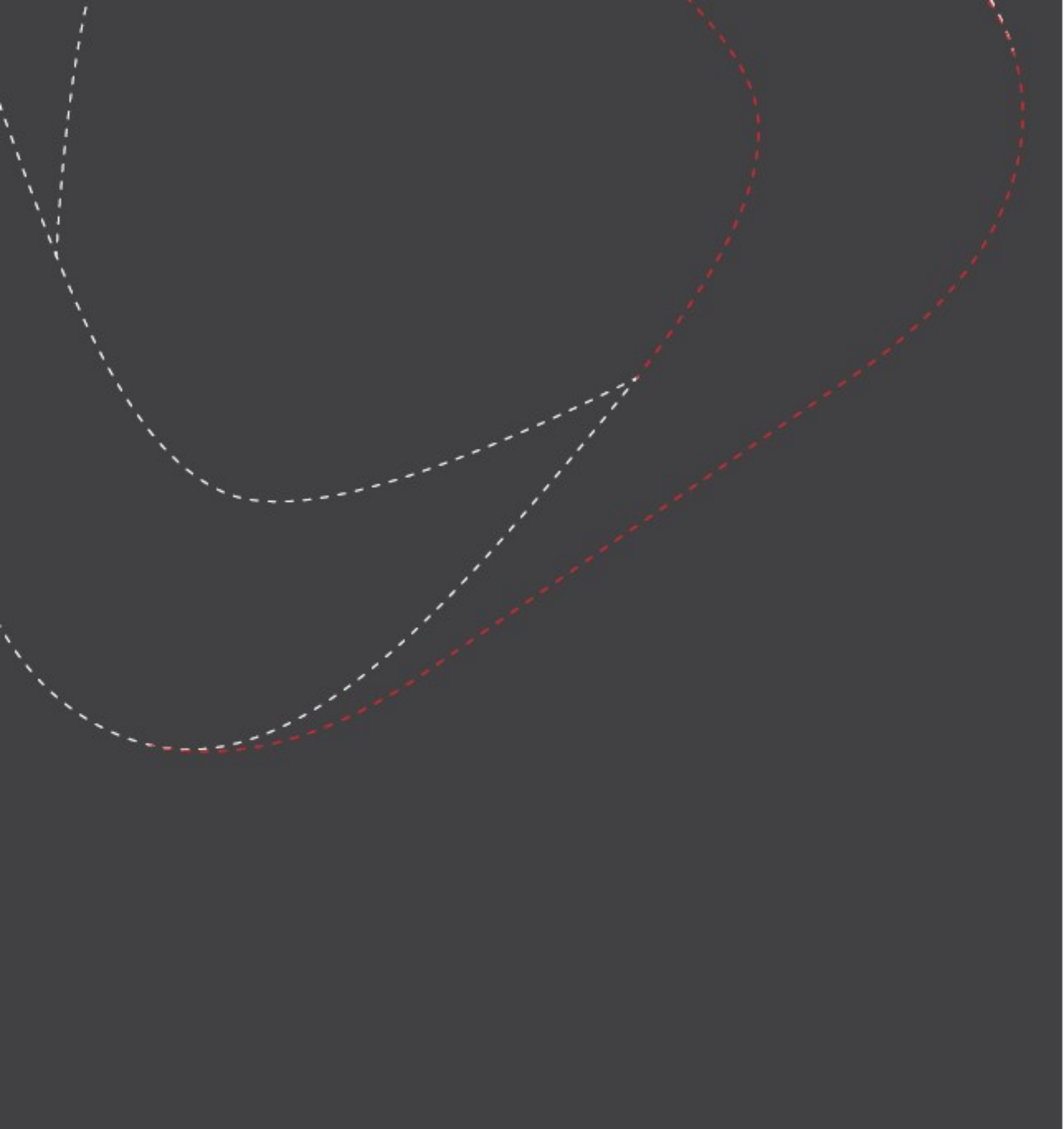




28 February 2017

REGULATORY ADVICE

Red Tape Reduction Advisory Council Recommendations



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PREAMBLE

In November 2016, the Treasurer asked the Queensland Productivity Commission (the Commission) to provide advice in relation to recommendations from the Government's Red Tape Reduction Advisory Council.

On 28 February 2017, the Commission provided this report to the Treasurer and Minister for Trade and Investment, the Hon Curtis Pitt MP.¹

The report has subsequently been used by the Queensland Government to inform its response to the recommendations of the 'Red Tape Reduction Advisory Council Report 2016.'

The Government's first six-monthly report was released 24 July 2017 and noted that Queensland Treasury would further work with the Commission to implement the recommendations contained in this report.

September 2017

¹ Information in this report was current as at 28 February 2017.

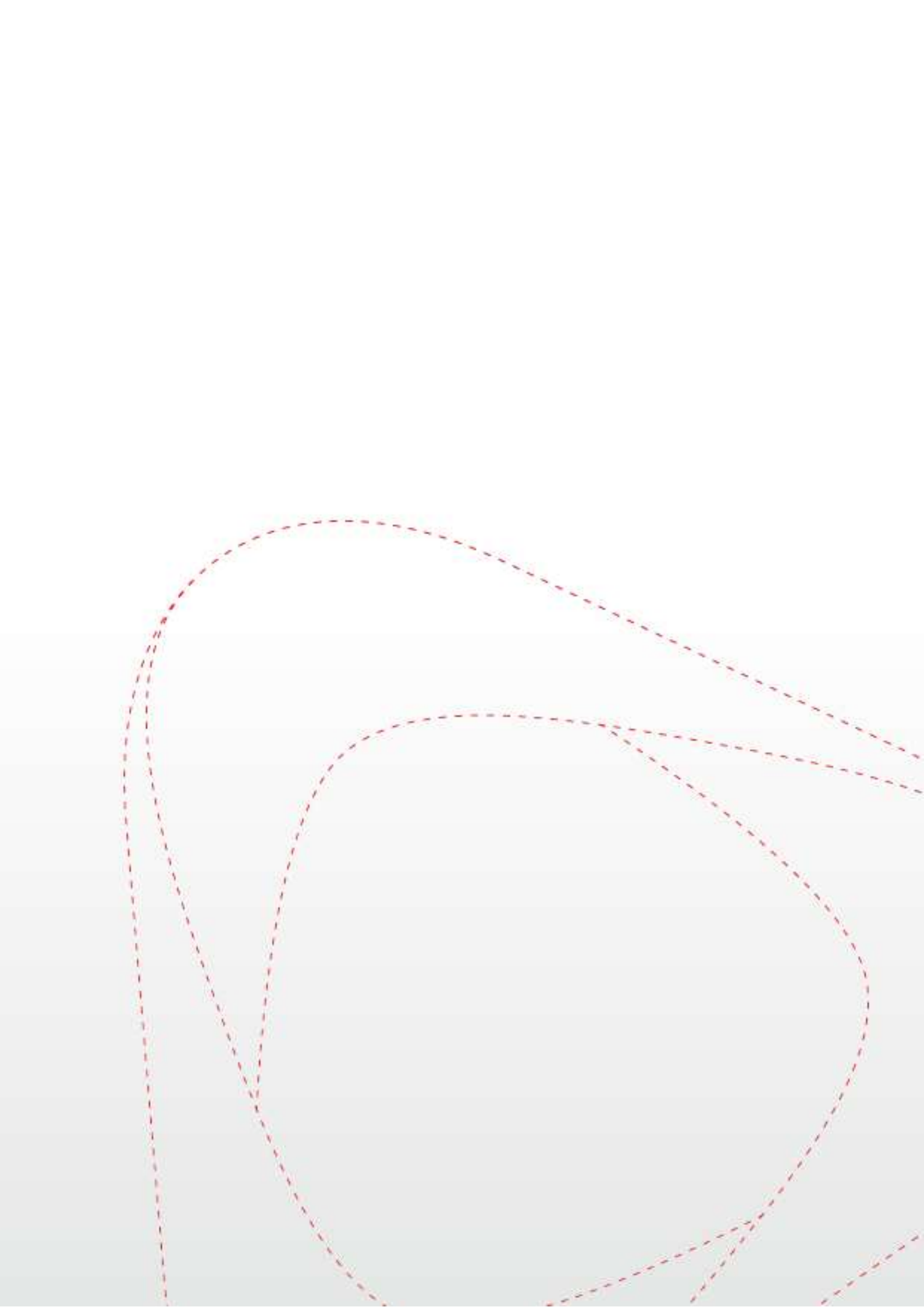


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THE ROLE OF THE COMMISSION

The Queensland Productivity Commission (the Commission) provides independent advice on complex economic and regulatory issues, and proposes policy reforms, with the goal of increasing productivity, driving economic growth and improving living standards in Queensland.

Wide-ranging, open and transparent public consultation underpin the Commission's functions.

The Commission is an independent statutory body established under the *Queensland Productivity Commission Act 2015*.

The Commission's work encompasses four key streams:

- public inquiries into matters relating to productivity, economic development and industry in Queensland, as directed by the Treasurer;
- research and advice on matters beyond the formal inquiry function;
- advice and guidance to government departments on the quality of regulatory proposals; and
- investigation of competitive neutrality complaints about state and local government business activities.

**The Commission
operates on the
principles of
independence,
rigour,
responsiveness,
transparency,
equity, efficiency
and effectiveness**

The Commission operates independently from the Queensland Government—its views, findings and recommendations are based on its own analyses and judgments.

The Commission has an advisory role. This means it provides independent advice to the government that contributes to the policy development process—but any policy action will ultimately be a matter for the government.

EXECUTIVE SUMMARY

The Red Tape Reduction Advisory Council (**the Council**) was established by the Queensland Government in August 2015 to provide advice on regulatory areas of most concern to small business. The Council provided its first report to the Queensland Government in July 2016. The report presented the Council's findings for reducing business red tape for three industry sectors (light metal manufacturing, cafes and restaurants and fruit growing) and included 14 recommendations for the Government's consideration.

In November 2016, the Treasurer asked the Queensland Productivity Commission (**the Commission**) to provide advice in relation to three of the recommendations proposed in the Council's report, namely:

1. investigate and support the development of a model of regulation that promotes self-audits, particularly for low-risk activities, and streamlined record keeping and reporting to achieve regulatory objectives with a lower burden on small to medium enterprises (**SMEs**);
2. investigate and implement a regulatory performance framework to monitor and provide an innovative approach to improving the performance of regulatory agencies; and
3. implement targeted training programs to improve capabilities within regulatory agencies on key issues.

The Terms of Reference is provided at Appendix A.

A recommended model of regulation (Chapters 2 and 3)

A key theme identified by the Council in its report is the regulatory framework in Queensland for small to medium enterprises should be focussed on ensuring the monitoring and compliance efforts of regulators are appropriate for the 'risk' that an industry's activities present.

The Commission recommends a model of regulation focusing on risk and proportionality— starting with regulatory impact analysis through to the evaluation of the performance of regulators.

While some aspects of the recommended model are already being undertaken in Queensland, the Commission has developed an implementation plan to assist the government (Appendix B).

Regulatory performance framework (Chapters 4 and 5)

In its report, the Council notes based on its consultation with industry and government, that communication between regulatory agencies and businesses had been identified as an issue requiring attention. The Council recommended the Government investigate and implement a 'regulatory performance framework' to monitor the performance of regulatory agencies.

Following an investigation of regulatory performance frameworks in use in Australia, the Commission recommends a framework based on the following overarching principles:

- the framework should monitor the performance of regulators in the areas such as consideration of risk in its compliance, enforcement and engagement activities, and other best practice regulator behaviours;
- the framework is seen as a useful and meaningful exercise for regulators, government and stakeholders and is not just as a compliance process;
- the framework does not duplicate other reporting undertaken by a Department. Where agencies have reporting (either in Queensland or nationally) consistent with the framework, further reporting would not be required;

- agencies should be provided flexibility in how they report, provided the information contained is broadly consistent with the intent of the framework; and
- stakeholder input is utilised where practicable and available.

Consistent with these principles, the Commission recommends:

- regulatory agencies should self-assess their regulatory performance against a series of KPIs, similar to those of the Commonwealth Government's regulator performance framework;
- agencies prepare an assessment plan demonstrating how they intend to report performance and what measures they will use to demonstrate performance against the KPIs;
- the framework be flexible with publicly reported results against KPIs, regardless of the reporting method used, by 31 December each year; and
- In the interests of minimising the burden on departments and regulators, the Government should consider, in consultation with agencies, whether it is feasible for agencies to utilise existing reporting obligations, such as the annual report, to undertake their self-assessment. To meet such timeframes, the Government would likely need to forgo any requirement for external validation of results before publication.

Further guidance on how agencies could approach implementing the framework is provided in Appendix D.

Training

The Council proposed the Government implement training programs to broaden the existing training efforts to improve capabilities of staff working with regulatory agencies on key issues such as the design and assessment of regulations, methodologies for measuring regulatory burden and strategies for improving the efficiency of regulatory processes.

The Commission, through the Office of Best Practice Regulation (OBPR), provides advice and training to government agencies on the development of regulation, application of regulatory best practice principles and regulatory impact analysis.

The Commission investigated approaches to develop regulatory capacity and capabilities, the proposed range of skills the regulatory officers may require, and the areas where additional training should be provided.

Following discussion with government following receipt of this report and the Commission's recommendations, the Commission will undertake to develop a targeted training program to improve capabilities within regulatory agencies.

28 February 2017

1 BACKGROUND

*On 2 November 2016, the Treasurer asked the Commission to provide advice in relation to three recommendations proposed in the Red Tape Reduction Advisory Council's (**the Council**) 2016 report.*

The Commission will investigate and provide advice in relation to:

- *the development of a model of regulation that promotes self-audits, particularly for low-risk activities, and streamlined record keeping and reporting to achieve regulatory objectives with a lower burden on small to medium enterprises;*
- *implementation of a regulatory performance framework to monitor and provide an innovative approach to improving the performance of regulatory agencies; and*
- *targeted training programs to improve capabilities within regulatory agencies on key issues.*

The full terms of reference are provided at Appendix A.

1.1 Red Tape Reduction Advisory Council report

The Council was established by the Queensland Government in August 2015 to provide advice on regulatory areas of most concern to small business.²

The Council provided its first report to the Queensland Government in July 2016. The report presents the Council's findings for reducing business red tape for three industry sectors (light metal manufacturing, cafes and restaurants and fruit growing) and included 14 recommendations for the Government's consideration.

The Council noted in its report that for the Queensland Government to achieve its broader commitments to reduce business red tape and create a 'balanced regulatory framework,' it considered that 'regulator engagement must be improved and regulatory processes must be streamlined.'³

Additional key issues identified by the Council include:

- approaches adopted by regulators can have a significant impact on the level of regulatory burden imposed on small to medium enterprises (SMEs);
- poor communication between regulatory agencies and businesses can lead to the duplication of reporting and compliance requirements for businesses; and
- there appears to be a lack of flexibility and consistency regarding audit and inspection processes and that consideration should be given to a model of compliance which supports a 'flexible and risk based approach' to regulation.

1.2 Government response to the Council report

On 2 November 2016, the Queensland Government tabled a response to the Council's report in Parliament. In the Government's response, it noted that the Report and the Government's response form a key element of a broader commitment by the Queensland Government to address business red tape, and create a balanced regulatory environment conducive to strong, profitable, and globally competitive businesses. By

² (RTRAC, 2016).

³ (RTRAC, 2016, p. i).

increasing the productivity and competitiveness of the State's businesses, ongoing regulatory reform is critical to help boost growth and create employment opportunities.

The response noted that while the Council's report focused on three specific industry sectors:

...many of the findings and recommendations outlined in the report may help identify reform opportunities that could deliver benefits more broadly to small and medium businesses across all sectors of the economy.⁴

Government also responded that the effective design, implementation, evaluation and review of regulation is important to enhance the performance of regulators engaging with businesses and is critical to ensure an approach to regulation that minimises any unnecessary costs regulation may impose on business and the community.

Following consideration of the Council's report, the Queensland Government accepted, or supported for further investigation, all 14 of the Council's recommendations. The Government requested other relevant Queensland government agencies report to the Treasurer in response to the Council's recommendations.

The Government also committed to provide a detailed report to the Council, on a six-monthly basis, outlining the actions taken in response to each recommendation and the outcomes achieved. The Government noted the first of these reports would be provided to the Council by April 2017.

1.3 Direction to the Commission

The Commission has been asked by the Treasurer to provide advice to the Government on three of the Council's recommendations. The three recommendations are outlined in the following table (Table 1), as well as the Government's respective response.

Table 1: Recommendations from the Council and Government Response

Reform Area	Recommendation	Government Response
Reducing Regulatory Creep	Priority recommendation 1.0 Investigate and support the development of a model of regulation that promotes self-audits, particularly for low-risk activities, and streamlined record keeping and reporting to achieve regulatory objectives with a lower burden on SMEs.	ACCEPT Queensland Government agencies are currently undertaking significant reforms in a wide variety of areas relevant to small business, underpinned by a strong focus on applying or adopting a risk based approach to regulation for low-risk activities in the context of their regulatory responsibilities. Any model of regulation adopted will need to be consistent with or complement the Government's existing Regulatory Impact Analysis (RIA) process. Reflecting the findings of the Report, investigation of appropriate regulatory models will include consideration of the Benchmark Butchers Community Program (a regulator engagement approach adopted by SafeFood Queensland) and the extent to which a similar approach may be applicable in other areas of regulation. In investigating regulatory models, the Queensland Government is cognisant that, given the risks associated with some activities, it is important application of any overarching model or framework should promote regulation that is proportionate to risk. It is critical any model adopted ensures that any cost saving or red tape reduction measures do not diminish safety standards or reduce the high level of compliance by Queensland businesses that currently exists in essential areas of regulation.
Improving Regulatory Processes	Priority recommendation 3.0 Investigate and implement a regulatory performance	ACCEPT Reflecting the findings of the Report, investigation of appropriate frameworks will include consideration of the Commonwealth Government's Regulator Performance

⁴ (Queensland Government, 2016b).

Reform Area	Recommendation	Government Response
	framework to monitor and provide an innovative approach to improving the performance of regulatory agencies.	<p>Framework, including the extent to which key elements of that framework are applicable or appropriate in the Queensland context.</p> <p>Any regulatory performance framework adopted will need to be consistent with or complement the Government's existing RIA process. In investigating and implementing a regulatory performance framework, consideration will need to be given to any additional administrative burden imposed on regulatory agencies.</p> <p>In investigating relevant aspects of any proposed framework, the Queensland Government is cognisant that, given the risks associated with some activities, the application of any framework should promote regulation that is proportionate to risk.</p> <p>It is critical any framework adopted ensures that any cost saving or red tape reduction measures do not diminish safety standards or reduce the high level of compliance by Queensland businesses that currently exists in essential areas of regulation.</p>
Improving Regulatory Processes	<p>Recommendation 3.3</p> <p>Implement targeted training programs to improve capabilities within regulatory agencies on key issues.</p>	<p>ACCEPT</p> <p>In developing and implementing targeted training programs, the Government is aware training must be complementary to existing RIA requirements, while provision of training needs to be an ongoing responsibility to maintain capability in regulatory agencies.</p> <p>The Government is also committed to ensuring that agencies are cognisant of the need to ensure their engagement with business and the community is culturally appropriate.</p>

Source: (Queensland Government, 2016b).

1.4 Consultation

In preparing this report, the Commission undertook targeted consultation with key Queensland Government departments (with a regulatory function). The Commission also held discussions with interstate and Commonwealth regulators to discuss the operation of similar frameworks in other jurisdictions.

The Commission also consulted with independent government regulators, such as Safe Food Production Queensland, to understand how 'risk based' regulatory compliance and engagement models have been successful in achieving desired regulatory outcomes and objectives at least cost.

Due to the limited time available, the Commission has not been able to specifically consult with regulated agencies in preparing the report. Therefore, the government should consider feedback from industry before the introduction of any model or framework.

1.5 Outline of the report

This report provides the Commission's response to the Terms of Reference and addresses three recommendations of the Council:

- **Chapter 2** discusses the principles of best practice regulation and risk based approaches to regulation;
- **Chapter 3** proposes a recommended model of regulation for Queensland, with a plan on how to implement it in Queensland;
- **Chapter 4** outlines how the performance of regulators is managed in other jurisdictions and discusses reporting obligations Queensland agencies already have;
- **Chapter 5** recommends a regulatory performance framework for Queensland regulatory agencies; and

- **Chapter 6** presents a discussion on the Commission's investigation on training opportunities for Queensland regulators.

2 RISK BASED REGULATORY APPROACHES

In its discussion on ‘regulatory creep’⁵, the Council stated that Government— and regulators in general— do not give sufficient consideration of the ‘level of risk’ posed by the activities of a business and that there is a lack of flexibility and consistency regarding audit and inspection processes. The Council noted this lack of consideration results in regulations being overly burdensome for low risk businesses and may result in additional costs to SMEs.⁶

The Council recommended that to avoid regulatory creep, the Government investigate and support the development of a ‘model of regulation’ that promotes self-audits, particularly for low risk activities, and streamlined record keeping and reporting to achieve regulatory objectives with a lower burden on SMEs. The Council also suggested that, in the development of such a model which supports a flexible and risk based approach to regulation, further consideration should be given to the success of programs such as the Benchmark Butcher’s Community initiative.

The Commission has been asked to investigate the development of a less prescriptive, risk based, model of regulation to be applied in relevant areas across the Queensland Government.

This chapter will discuss:

- *best practice regulatory principles;*
- *the legislative options available to government — ranging from light-handed to prescriptive; and*
- *taking a risk based approach to regulation, including the design of risk based regulation and potential challenges faced in its implementation.*

This chapter will also include the Commission’s recommendation of key principles for model of regulation for low risk activities. This chapter will also propose an implementation plan for the model.

2.1 Principles of Best Practice Regulation

Regulations — legislation (Acts, Regulations) and ‘quasi regulations’ (e.g. codes, guidelines) — are used and introduced by governments to implement its policies as well as achieve relevant social, economic and environmental objectives. For example, some electricity prices are regulated to protect consumers from price gouging, safety standards are imposed to prevent accidents and land with environmental values is protected.

The challenge for any government is to ensure regulations are both:

- effective — the regulation achieves its objectives; and
- efficient — the regulation maximises the net benefit (benefits – costs) to the community.

2.1.1 Council of Australian Governments Best Practice Principles

In December 2008, the Queensland Government signed the ‘National Partnership Agreement to Deliver a Seamless National Economy’ agreement, which reaffirmed Queensland’s commitment to improving

⁵ In its report, (RTRAC, 2016), the Council defines regulatory creep as the situation where compliance requirements or regulatory restrictions are extended to exceed the minimum level necessary to achieve a regulatory objective.

⁶ The Australian Bureau of Statistics (ABS) defines a small business as a business employing less than 20 people and a medium-size business as employing between 20 and 199 people. Small to medium-size enterprises (SMEs) are defined as businesses employing less than 200 people.

processes for regulation making and review and that Queensland's regulatory processes would be consistent with COAG Best Practice Principles for Regulation Making (COAG Principles). Box 1 lists the COAG Principles.

Box 1: COAG Best Practice Principles for Regulation Making

- Establishing a case for action before addressing a problem.
- Considering a range of feasible policy options including self-regulatory, co-regulatory and non-regulatory approaches, and an assessment of their benefits and costs.
- Adopting the option that generates the greatest net benefit for the community.
- Ensuring, in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:
 - the benefits of the restrictions to the community as a whole outweigh the costs; and
 - the objectives of the regulation can only be achieved by restricting competition.
- Providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear.
- Ensuring that regulation remains relevant and effective over time.
- Consulting effectively with affected stakeholders at all stages of the regulatory cycle.
- Ensuring that government action is effective and proportional to the issue being addressed.

Source: (COAG, 2007)

In addition, the COAG Principles provide a list of practical features of good regulation, which, when included in regulation, should assist businesses in complying with a regulation at least-cost. These features include:⁷

- **Compliance strategies and enforcement** — regulatory measures should contain compliance strategies which ensure the greatest degree of compliance at the lowest cost to all parties;
- **Inclusion of standards in appendices** — standards should be referenced as current editions in appendices to regulatory instruments rather than embodied in such instruments themselves;
- **Performance-based regulations** — regulatory instruments should be performance-based, that is, they should focus on outcomes rather than inputs;
- **Plain language drafting** — regulatory instruments should be drafted in 'plain language';
- **Date of effect** — dates of commencement of proposed standards and regulatory measures should be carefully planned to avoid or mitigate unintended or unnecessary market consequences;
- **Advertising the introduction of standards and regulations** — once produced, new regulatory measures should be advertised to bring them to the attention of the wider community; and
- **International standards and practices** — wherever possible, regulatory measures or standards should be compatible with relevant international or internationally accepted standards or practices.

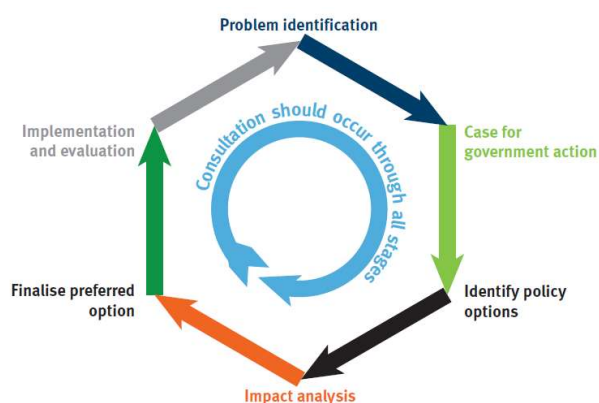
⁷ (COAG, 2007, p. 4).

2.1.2 Application of best practice principles in Queensland

COAG best practice regulatory principles are reflected in Queensland's Regulatory Impact Analysis (RIA) processes, which are implemented in the Queensland Government Guide to Better Regulation (the Guidelines).

In order to fulfil best practice principles, all proposed regulatory instruments (including primary and subordinate legislative instruments, as well as quasi-regulation for which there is an expectation of compliance) in Queensland should be developed in accordance with the Guidelines and be consistent with the policy cycle⁸ (shown below in Figure 1).

Figure 1 Policy cycle and RIA



2.2 Legislative options available

Regulation has a broad definition, and refers to the range of instruments which are implemented to address a problem or risk:

Regulation - includes any law or 'rule' which influences the way people behave and is not limited to government legislation; and it need not be mandatory.⁹

Regulation may impose mandatory requirements upon business and other parts of the community, generally in the form of prescriptive regulation detailing the exact process that must be followed in order to meet compliance. Regulation may also seek a voluntary change of behaviour by encouraging businesses and other parts of the community to improve economic, environmental or social outcomes.¹⁰

Regulation can cover a broad spectrum, from rewarding good behaviour through to the use of incentives and disincentives (most commonly financial), to more prescriptive regulation.

Table 2: Regulatory responses describes a range of regulatory responses available to governments including the advantages and disadvantages for each.

⁸ (Queensland Treasury, 2016).

⁹ (Productivity Commission, 1997).

¹⁰ (Queensland Treasury, 2013).

Table 2: Regulatory responses

Regulatory Alternatives	Advantages	Disadvantages
Prescriptive Regulation Prescribes conduct or processes Detailed regulation	Requirements are very clear Consistency Suitable for high risk/high impact activities	Requires intensive enforcement Prevents innovation High compliance costs
Performance Based Regulation Performance or outcomes based Industry develops its own approaches to achieving outcomes	Greater flexibility Encourage innovation Able to use industry approaches to achieve outcomes	Can add additional costs to small business (limited resources to address flexible approaches) Must be maintained and updated regularly
Co-regulation Cooperation between industry and government Administered and enforcement by industry	Industry ownership Effective solution where the impacts are limited to a single industry	Potential for anticompetitive provisions Concerns about accountability
Codes of Conduct Set of agreed principles or guidelines outlining responsibilities and expectations May be voluntary or mandatory	Effective in encouraging wanted behaviours Industry participation in development More informed, less costly Addresses consumer requirements – quality, price, choice, environment, health, safety	Potential for poor design to cause additional cost and frustration, cause negative publicity and may not achieve outcomes Codes can be anticompetitive
Standards Use existing or new measures to document outcomes Controls on processes or performance	Ability to quantify performance outcomes Industry understands standards and process controls Convenient measures which can be monitored	Australian Standards are optimal versus minimum standards required Constant monitoring required Requires strong industry involvement and understanding
Regulatory Tiering Different industry segments treated differently Aims to provide equity across different sectors	Able to recognise different sector experiences/ imbalances Cater for small business issues Preserve flexibility and outcomes without disadvantaging some sectors	Unforeseen impacts Risk of being misunderstood if complex Can create a threshold effect (deter business activity, employment, etc.)
Tradeable Permits Tradeable rights and permits manage access to a resource or a market (to conserve or preserve the resource; attach values and performance standards to permits or rights)	Tradeable licences and permits allow effective use of resources Able to embed performance expectations in permits	Can restrict market entry Market failures can prevent the system from operating successfully and may lead to constant monitoring by government
Negative Licensing Excludes unsuitable individuals or organisations from participating in a market or industry function	Excludes unsuitable individuals or companies Fewer costs to industry Avoids the need for positive licensing	May not be proactive in encouraging high standards of performance Difficult to detect breaches without ongoing screening
Third Party Certification A third party body (industry or industry/government) to monitor performance and compliance	Independence of certification process Can link education, information and support to certification Efficient and cost effective enforcement More market responsive, industry involved	Can add additional costs The organisation selected can be inappropriate
Risk Based Insurance Government-based insurance cover against risks associated with particular activities to lower costs involved	Provides adequate compensation for affected individuals and businesses Reduces need for other forms of regulation May reduce monitoring and enforcement	May encourage more insurance cover than necessary May restrict market freedom
Rewarding Good Behaviour Financial incentives and disincentives to influence behaviour	Efficient and respond to industry values Financial incentives encourage appropriate behaviour Market acceptance of rewards for outcomes	Requires monitoring and enforcement Financial incentives/ disincentives may be inappropriate Poor outcomes if industry is not involved

Source: (Queensland Treasury, 1999).

Many governments which are members of the Organisation for Economic Cooperation and Development (OECD), have come to recognise the importance of a risk based regulation, where the ‘heavy-handedness’ of a regulatory instrument should be proportionate to the nature and magnitude of the risk that it poses.¹¹ For example, in instances where there is a higher degree of likelihood of serious injury or fatality, regulation will likely be more restrictive than instances where there is a low risk of injury.

2.3 Taking a risk based approach to regulation

A key theme identified by the Council in its report, is that the regulatory framework in Queensland, particularly for SMEs, should be focused on ensuring the monitoring and compliance efforts of regulators are appropriate for the ‘risk’ that an industry’s activities present.

The COAG Principles define risk as the probability of an ‘undesirable event’ occurring. Regulation most often seeks to reduce or manage such risks, including the risk of harm — fatality, injury or illness — to health, safety or welfare of individuals or society or to broader society, including the environment and financial well-being.¹²

A challenge for both government and the community, and therefore regulators, is acknowledgement that not all risks can be eliminated through regulation and that sometimes trade-offs must be made between risk reduction and costs.¹³

A risk based regulatory approach is based on the premise that the level of regulation, and the compliance activity undertaken by the regulator in monitoring and enforcing that regulation, is targeted and proportionate to the risk of non-compliance or regulatory failure, and has a high probability of being successful.¹⁴

For example, a low-risk activity or action performed by a business, may attract less compliance activity on behalf of the regulator — such as allowing businesses to undertake self-assessments, self-monitoring and/or reduced reporting — thus reducing the level of interaction required between the regulator and regulated businesses. This approach creates efficiencies by allowing both the regulator and industry to devote more time and resources to activities of higher risk.¹⁵

Risk based approaches are relevant at all stages of the regulatory cycle — from determining whether there is a problem requiring a regulatory solution, through to evaluating the impact and effectiveness of the regulator’s response after implementation.¹⁶

The OECD promotes the adoption of risk based approaches to the design of regulation and compliance strategies for governments wishing to provide more efficient services, reducing costs for business and the opportunity costs of government action¹⁷:

Risk based regulation improves the ‘productivity’ of regulating — delivering the best possible regulatory outcomes from the resources available to regulators.¹⁸

The Commission notes there are two key elements for a successful risk based regulatory framework:

- ensuring that regulations are designed and drafted with consideration of risk; and

¹¹ (OECD, 2010, p. 16).

¹² (COAG, 2007), (OECD, 2010).

¹³ (OECD, 2010).

¹⁴ (Black, 2010b).

¹⁵ (ANAO, 2014) (Commonwealth Department of the Environment, 2015).

¹⁶ (DFSI (NSW), 2016b), (VCEC, 2015, p. 3).

¹⁷ (OECD, 2010, p. 33).

¹⁸ (VCEC, 2015, p. 1).

- that regulators compliance and enforcement activities are appropriate based on the risk that particular businesses pose.

2.3.1 Risk based regulatory design

Many regulations are designed and drafted with consideration of risk. This can take the form of either designing:

- regulations that differentiate businesses or industries based on their perceived or assessed risk; and
- regulations based on principles and a focus on outcomes.

Both methods are discussed below.

Explicit consideration of risk

One method of considering risk in the design of regulation is to differentiate regulatory requirements based on certain business characteristics such as size, industry or business activity and whether they present different types or levels of risk.¹⁹

After a suitable risk assessment is undertaken by a regulatory agency or department, legislation can be drafted to take into account such characteristics as:

- size of the operation;
- volume of inputs or outputs;
- the particular industry or processes (as some industries may be inherently riskier than others);
- location (or proximity to certain locations or facilities); and
- whether the business has incentives (such as commercial reputation) to self-manage risks.²⁰

¹⁹ (Productivity Commission, 2013, p. 271).

²⁰ (VCEC, 2015, p. 14).

Box 2 below outlines how recent legislative changes to some liquor licensing applicants in Queensland provided for businesses deemed to have a lower risk or impact to the community to be exempt from certain requirements.

Box 2: Risk based liquor licensing application requirements

Applicants for restaurant and café licences are required to complete both a risk assessed management plan (**RAMP**), and a community impact statement (**CIS**).

A RAMP details the licensee's proposed management practices and operating procedures at the premises include provisions concerning the employment of security, suitability of lighting and noise mitigation on the premises, as well as the availability of public transport.

A CIS is a detailed submission lodged with an application, which comprehensively outlines whether the proposed operation of the premises would adversely impact on the surrounding community. It requires a detailed analysis of population demographics, socio-economic and health indicators for the locality, and the magnitude, duration and probability of any adverse health and social impacts.

Restaurants and café operations, within ordinary trading hours and without amplified music, are generally considered to be 'low risk' operations. Given this, the Government decided that the requirements for public advertising and submission of a RAMP and CIS were not relevant to their operation, and that the benefits obtained from these processes was disproportionate to the burden imposed on these premises. Amendments were made via the *Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Act 2013*, to remove the requirement for such operations to submit a RAMP and CIS to the Government as part of their licence application. The Act was assented to on 3 June 2013.

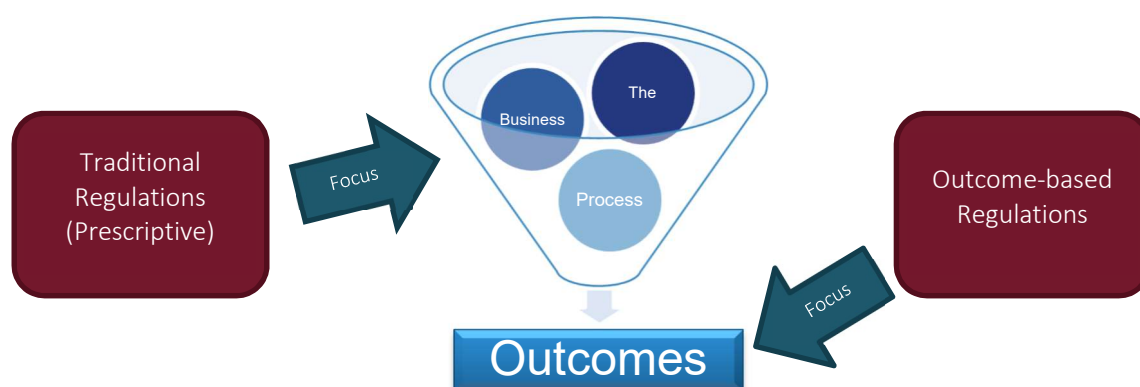
The Commissioner for Liquor and Gaming retains the ability to require a RAMP be submitted by a restaurant or café, if it is considered there is potential for harm or adverse impact on the local community associated with a particular application (such as instances where there has been, in recent history, a high amount of violence in and around licensed premises in the locality).

Source: Explanatory notes to the Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013 (Qld).

Principles based regulation

Another method of designing regulation based on risk is the use of principles (or outcomes or performance) based regulation.

Figure 2: Relationship between traditional and outcome-focused regulations



The focus of principles based regulation is to design regulation with principles and outcomes as a means of achieving the government's regulatory objectives rather than using prescriptive rules.

The focus on outcomes is achieved by setting the objectives for respective businesses to achieve rather than rely upon detailed, prescriptive rules relating to process. This places more reliance on high-level, broadly stated rules or principles.²¹ Under this approach, as long as a business' processes result in the required objective, the business is considered compliant with the regulation. The focus is on the result rather than how it has been achieved.

In some instances, trying to specify 'rules' can limit possibilities or inhibit the adoption of new technologies or business models.²² As noted previously by the Commission, there is a risk that if policy frameworks are too prescriptive, and are unable to adapt to new technologies that may deliver better outcomes, it can stifle innovation and competition and 'lock in' existing technologies.²³

In designing principles based regulation, policy makers may want to consider:

*...moving away from reliance on detailed, prescriptive rules and relying more on high-level, broadly stated rules or principles.*²⁴

Specifically, principles based regulatory objectives should be²⁵:

- high level overarching requirements that can be applied flexibly;
- purposeful — by expressing the reason behind the principle;²⁶
- very broad in application — allowing for the regulation to be used for a diverse range of circumstances; and
- outcome specific — with regulated entities given the discretion to determine how the outcome should be achieved.

A principle-based approach can provide more flexibility to both the business and the regulator. As businesses are, in most cases, better placed than regulators to determine the processes and actions required to achieve a given regulatory objective, if regulation is drafted from a principles based perspective, businesses may also be able to innovate and find new ways to achieve objectives.²⁷

²¹ (Yin, 2012).

²² (Edwards, 2017).

²³ (Queensland Productivity Commission, 2016).

²⁴ (Black, Hopper, & Band, 2007, p. 191).

²⁵ (Briton, 2010, p. 9).

²⁶ The interpretation is always structured by the goal the principle is trying to achieve or the value that it is expressing: to act fairly, or with integrity, or with due care and diligence, for example. (Black, 2010a, p. 6).

²⁷ (Black, Hopper, & Band, 2007), (Yin, 2012).

Outcomes and risk based regulation provides regulators with a consistent and transparent framework to be able to increase their effectiveness in achieving regulatory outcomes.²⁸ When legislation is less prescriptive, regulators are also provided with more discretion to interpret regulatory outcomes and resulting objectives. A prime example a principle-based approach to regulation is the *Food Production (Safety) Act 2000* which provides Safe Food Production Queensland with discretion to ‘manage the regulation of primary produce,’ without prescriptive provisions on how to regulate.

Box 3: Safe Food Production Queensland

Safe Food Production Queensland (**Safe Food Qld**) is a statutory body that regulates the primary production and processing of meat, eggs, dairy and seafood in Queensland.

Safe Food Qld strives to achieve a balance between responsible regulation (consumer expectations) and individual responsibility of businesses to protect and manage food safety, through improved collaboration between regulatory partners, introduce practical reforms and reduce any potential overlap of agency efforts to improve the delivery of minimal, yet effective regulation.

One of Safe Food Qld’s key roles in maintaining this regulatory balance, is through its interactions with business. Safe Food Qld encourages businesses to:

- minimise food safety risks by developing and maintaining food safety programs;
- develop and adopt quality assurance measures for the primary produce; and
- approve or audit quality assurance measures.

Source: http://www.safefood.qld.gov.au/index.php?option=com_content&view=article&catid=55&id=67&Itemid=38 accessed 5 February 2017.

Principles based regulation does not, however, leave business to decide what acceptable or unacceptable behaviour is. An effective regulator should provide guidance material where appropriate, giving examples of processes that could be followed to achieve the required outcome.

An example of this is the listing of a number of ‘acceptable methods’ to achieve compliance, which provides industry with discretion on a method that is suitable to them, while maintaining regulatory outcomes.²⁹ Such approaches can ensure that:

- businesses still have the ability to innovate to achieve outcomes; and
- those businesses that seek information on how to comply (either via prescriptive regulation or appropriate guidance material) can do so without having to engage expert advice (such as lawyers, engineers etc.).

Australian examples of principles based regulation

An early example of Australian principle-based regulation was in 1988 when the Australian federal government took over responsibility for nursing home regulation from state governments. The move migrated the quality of care regulation from a rules based application, that mandated inputs and processes,

²⁸ (Black, 2010a), (Productivity Commission, 2013), (DFSI (NSW), 2016b).

²⁹ For example section 386R of the *Mineral Resources Act 1989* outlines that an applicant for a resource authority must, in defining the boundary of the proposed tenement, the boundary must be clear and unambiguous and accurately show where the boundary is located on the ground. This section also provides examples of ways the boundary may be defined (for example using GPS coordinates) and also provides further the Department to issue guidance on other acceptable methods. The intent of this provision is to allow the applicant to find the most cost effective option, or combination of options, of satisfying the regulatory requirement while at the same time, where appropriate, allowing for the use of new technologies in the future.

towards outcome standards. The redesign included 31 outcomes that were low in specificity, with the purpose of the outcomes being to provide a homelike environment in nursing homes.

According to Braithwaite (2002), this resulted in wiser and more substantively effective regulation compared to counterparts in the United States.³⁰

The Queensland Government also has principle-based regulation, with an emphasis from regulators on risk based oversight (see Box 4).

Box 4: Risk based reforms for Queensland agriculture

In 2016, new regulatory frameworks for both biosecurity and exhibited animals came into effect in Queensland, which aimed to ensure that regulation was consistent, modern, risk based and less prescriptive.

For example, the *Biosecurity Act 2014* and *Biosecurity Regulation 2016*, take a risk based approach to biosecurity threats which is less prescriptive than previous legislation, allowing greater flexibility and more responsive approaches to manage each specific circumstance. Guidance material was also produced which prescribes ways in which a person's general biosecurity obligation can be met to prevent or minimise a biosecurity risk.

Source: <https://www.daf.qld.gov.au/biosecurity/about-biosecurity/biosecurity-act-2014> accessed 5 February 2017.

2.3.2 Implementation and administration of risk based regulatory approaches

The way in which regulations are implemented and enforced is, in many situations, just as important as how regulations are drafted and designed. For example, if well-designed regulation is poorly implemented, it can result in a culture that discourages compliance, wastes government resources and adds business costs and delays. Alternatively, a regulator, by choosing judiciously what, when and how to enforce, may deliver the desired regulatory outcomes in an efficient manner despite the presence of cumbersome, overly prescriptive, regulation.³¹

The Productivity Commission's (PC) report — *Regulator Engagement with Small Business* — notes that regulators should consider how regulation impacts on small business, including recognition that there is scope for improvement in engaging with businesses, especially those that pose lower risk. This view is supported by the Council, which notes in its report that adopting regulatory strategies based on risk management and responsive regulation, such as the Benchmark Butcher's Community program (Box 5 below), can reduce the impact of regulation on small businesses.

Regulators also benefit from this approach as administration costs are proportionate to the risks posed, allowing the regulator to more efficiently allocate available resources (lower/ higher risk = less/more resources) to achieve their regulatory objectives.³²

³⁰ (Braithwaite, 2002).

³¹ (Productivity Commission, 2013).

³² (Productivity Commission, 2013), (RTRAC, 2016).

Box 5: Benchmark Butcher's Community

In 2005-06 a small group of meat retailers and processors approached Safe Food Production Queensland (**Safe Food Qld**) seeking an alternative approach to demonstrating that they met their food safety responsibilities. The retailers and processors asked to shift from the one size fits all approach, to a more flexible and open way of recognising the capability and commitment of small business operators. A joint project was set up between Safe Food Qld and a steering group of experienced small business operators to explore how this could be realised.

The program started in 2007 with Safe Food Qld working with top performing butchers to produce a program called 'clean, cold and moving'. The program called for monitoring compliance through evidence-based methods as an alternative to auditing, by drawing on the customs and practices of each business and assessing the alignment between these practices and food safety requirements, particularly skills and knowledge, ownership and ongoing commitment to food safety by each business.

Assistance and incentives are provided to butchers to achieve and maintain the highest standards in food safety. Proactive butchers are also provided access to business tools designed to develop best practice in the industry. Members are encouraged to strive to raise the bar in terms of innovation, quality and best practice to enhance their professionalism, productivity and profitability.

As part of this alternative model, Safe Food Qld has replaced the need for some routine audits by providing web-based systems for Safe Food Qld's meat and dairy schemes, whereby accreditation holders can self-monitor their processes by entering their process monitoring data on a regular basis. Safe Food Qld then assesses this data against pre-approved management statements or food safety programs to determine whether or not the processes are achieving desired food safety outcomes.

The Council highlighted this program as a successful model of regulation which supports a flexible and risk based regulatory approach. The program has reported positive outcomes including:

- a reduction in compliance paperwork;
- a reduction in the number of inspections undertaken by food safety officers;
- an increase in voluntary compliance;
- an increase in awareness of food safety practices by participating butchers; and
- savings of up to \$6,000 per participating business per annum in costs and time spent on food safety compliance.

Source: (Safe Food Qld, 2010), (RTRAC, 2016).

Regulators need to be balanced when taking a risk based approach to regulatory engagement with businesses. Regulators have a range of regulatory tools they can choose from and making the right selection, in the right mix, will deliver just the right 'touch' to deliver desired outcomes effectively with the least amount of regulatory burden imposed. Nicholls³³ describes the activities, or instruments, available to the regulator as hard (traditional) and soft (modern). Examples of these are shown in Figure 3 below.

³³ (Nicholls, 2015).

Figure 3: Different instrumental choices for regulators

'Hard' (traditional) regulation	'Soft' (modern) regulation
<ul style="list-style-type: none"> • investigations and enforcement (penalties) • auditing • licencing • monitoring/reporting/name & shame • approvals/authorisation 	<ul style="list-style-type: none"> • education programs • consumer information • industry advisory and guidance • standards • funding and contracting • industry research and development • collaborative problem solving • conversations

Source: (Nicholls, 2015).

Key characteristics of successful implementation

The PC found that leading practices in regulator engagement with small business were more commonly adopted by regulators that have implemented a risk based approach and proposed a number of changes to be implemented across all levels of government, including:

- regulators should adopt a multi-channel approach to communicating with small businesses with a focus on the brevity, clarity and accessibility of information;
- compliance and enforcement strategies should be proportionate to risks posed to communities and facilitate voluntary compliance; and
- regulators should have access to a sufficient range of enforcement tools and be resourced to do their job effectively, to avoid the shifting of direct and indirect costs onto businesses.³⁴

The PC also found that where there was a stronger focus on risk, unnecessary regulatory burden imposed upon lower-risk small businesses is limited. This allows for resources to be freed up to improve:

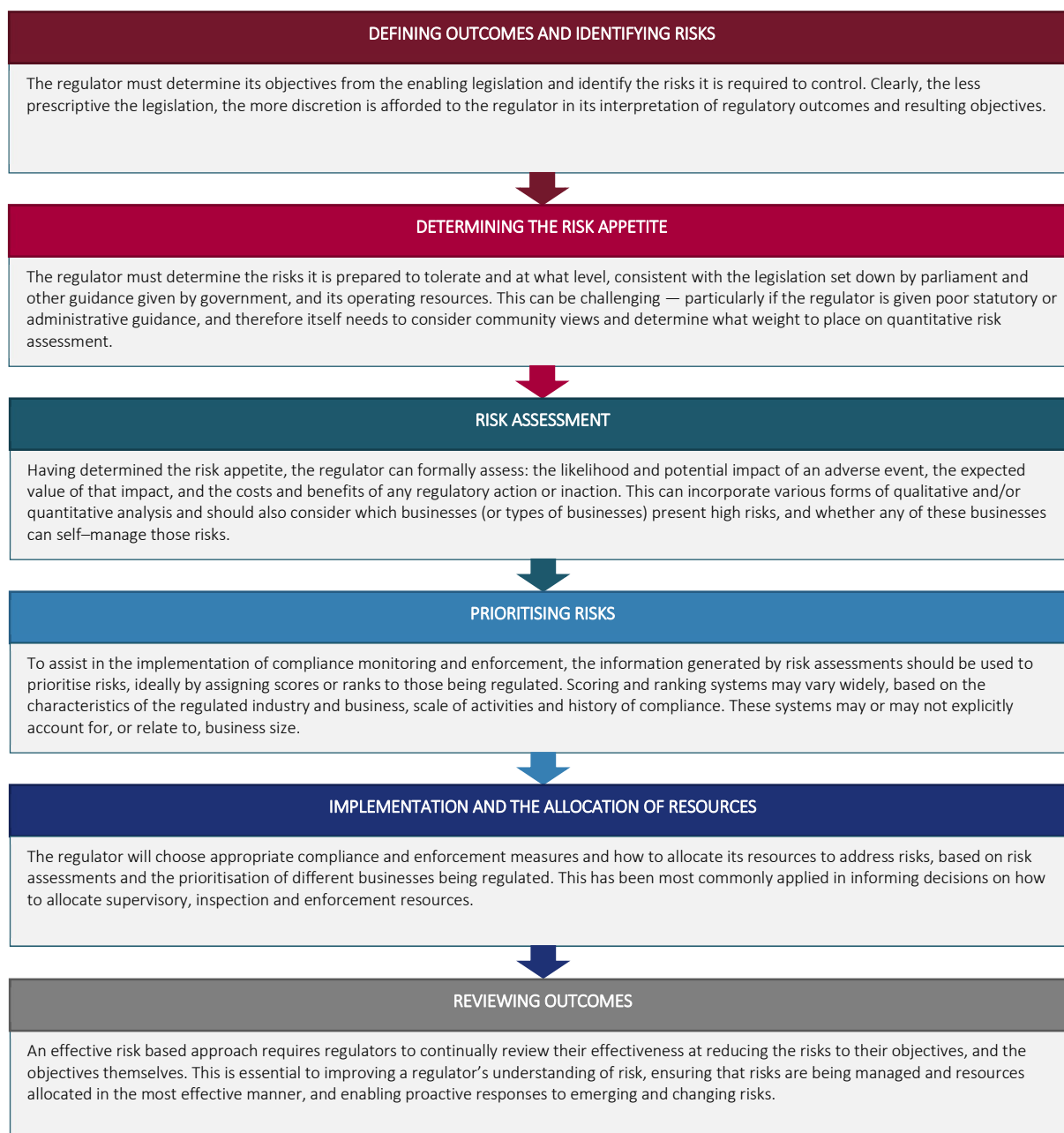
- a regulators' frontline guidance and advice services available for the regulated businesses; and
- the ability to direct additional resources to more effectively address higher-risk activities.³⁵

The PC's report recommended regulators should adopt a risk based approach, with a well-designed risk based approach to regulation, consisting of six core elements. These elements are shown in varying degrees in most risk based regulatory approaches across Australia.³⁶ Figure 4 includes the six core elements in more detail.

³⁴ (Productivity Commission, 2013).

³⁵ (Productivity Commission, 2013).

³⁶ (Productivity Commission, 2013).

Figure 4: Risk based regulatory approach - Six core elements

Source: (Productivity Commission, 2013)

Targeting regulatory effort, on the basis of risk, allows regulators to prioritise their engagement and enforcement activities to achieve desired regulatory objectives. A risk based approach to enforcement requires that regulators, governments and the community accept the existence of some risk and understand the costs of further reducing these may outweigh the benefits to the community.

Effective risk based regulation therefore requires a regulator to tailor its responses in a consistent and transparent way based upon the severity and behavioural drivers of non-compliance, helping to mitigate reputational risks, improve the regulators credibility and foster trust. Regulators would continue to have an

obligation to administer the regulation effectively, being accountable for, and transparent in, decision-making in achieving their regulatory objectives.³⁷

Following a risk assessment of businesses and activities, a regulator may determine that lower risk activities, or businesses with a history of demonstrated compliance, do not require as much regulatory attention including:

- less frequent audits/inspections;
- reduced reporting requirements; and
- self-assessments.

Such measures may also provide businesses with economic incentives (through reduced regulatory burden) to be compliant as they may be ‘rewarded’ with reduced regulatory burden in the future.

Providing less onerous options for small businesses reflects that the benefit achieved from the relevant compliance activities are likely to outweigh the compliance costs to relevant businesses.³⁸ Low-risk activities, as discussed earlier, while not entirely ignored, can often be assessed through a self-assessment system within less rigorous parameters.

The Victorian Competition and Efficiency Commission (VCEC) noted that for low risk activities, there are ways for regulators to improve processes, as noted in Box 6 below.

Box 6: Improved regulatory processes

VCEC considers the most direct and effective ways to improve regulatory processes include:

- discontinuing processes or activities that do not have a material effect on reducing risk and achieving regulatory objectives – for example, avoiding process checking that does not focus on substantive issues;
- streamlining processes for low risk activities to be more standardised and require less detailed analysis of individual cases;
- avoiding re-examining issues that are considered by other bodies, or are other stages in the process; and
- for low risk areas, relying more on monitoring or compliance activities to monitor outcomes, rather than preapproval (licensing or registration) in every case.

Source: (VCEC, 2015, p. 39).

2.3.3 Challenges implementing risk based approaches

The following sections discuss difficulties that regulators may face when implementing a risk based regulatory approach, including:

- prescription within the legislation prevents a regulator from undertaking a flexible approach;
- lack of government support to, or confidence in the regulator;
- changes in regulator’s culture;
- attitudes of regulated businesses; and

³⁷ (ANAO, 2014), (Productivity Commission, 2013).

³⁸ (Productivity Commission, 2013).

- duplication and overlapping of regulations.

Prescriptive legislation

In many cases, a regulator may wish to implement risk based regulatory approaches to their monitoring and compliance activities, but are constrained from doing so by prescriptive regulation that does not differentiate businesses or industries on the level of risk they pose. A regulator may also be ‘locked’ into a particular compliance and enforcement response which limits their ability to be risk based.³⁹

The Queensland Government Guide to Better Regulation⁴⁰ outlines the approach agencies should take in developing regulation and this process should continue to be conducted in close collaboration with the OBPR. This will help ensure policy makers adhere to best practice regulation design principles — including adequate consideration of implementation and enforcement issues prior to the creation of the regulation.

Clear well-constructed regulation avoids confusing, overlapping or conflicting regulatory objectives, or inappropriate regulatory coverage, each of which can add to costs for small businesses.⁴¹

Government support

The second core element of a well-designed risk based approach to regulation (see Figure 4: Risk based regulatory approach - Six core elements) requires a regulator to determine the risks it is prepared to ‘tolerate’ and at what level. As this determination needs to be consistent with the legislation, it is vital that good statutory and administrative guidance is supplied by the government.

The PC recommends that governments should provide explicit acknowledgment to regulators (for example, via ministerial statements of expectations), that it is neither feasible nor socially optimal to attempt to eliminate all risk. Explicit government support of regulators and their decisions is vital, as any intervention into regulator decisions can erode confidence in the regulator’s risk management approaches.

It is also important that regulators are adequately resourced to be able to carry out their responsibilities. The PC found small regulators (including local governments) encountered resourcing issues when adopting a proactive engagement approach.

Many of Queensland’s regulatory responsibilities are devolved to local governments. Past PC studies have found approximately half of Queensland local governments indicated they were insufficiently resourced.⁴²

³⁹ (VCEC, 2015, p. 17).

⁴⁰ (Queensland Treasury, 2016).

⁴¹ (Queensland Treasury, 2016), (Department of Treasury and Finance (VIC), 2014), (Productivity Commission, 2013).

⁴² (Productivity Commission, 2013).

Box 7: Statement of expectations

In May 2012, the Victorian Government committed to require that all Ministers issue a statement of expectations (SOE) to each of their portfolio regulators. Such a statement would communicate a Minister's expectations for the regulator's performance and improvement in addition to the regulator's expected contribution to the Victorian Government's Regulation Reform Program.

Initially, five of Victoria's 'key regulators' were issued SOEs designed to identify and set performance measures around the key compliance and administrative activities of the regulator that impose significant administrative, compliance and delay costs on business and the broader community.

The Government noted that establishing clear expectations on regulator performance through SOEs can improve the compliance and administrative activities of Victoria's regulators.

After an SOE has been issued by the Minister, the regulator is expected to respond, outlining how it intends to achieve what has been requested to do, and how it will report on its progress in future annual reports.

Source: (Department of Treasury and Finance (VIC), 2013)

Governments should also encourage agencies to report back on their regulatory performance, including not just whether regulators are implementing risk based approaches and providing effective engagement with business, but also how they are contributing to improved regulatory outcomes.

Regulator culture

There is a significant volume of literature discussing the importance of culture (of both the regulator and regulated businesses), and the need for cultural change for risk based regulation to be effective.

In a media release announcing the PC's *Regulator Engagement with Small Business* report, the Commissioner of the PC, Dr. Warren Mundy commented:

A regulator's culture and attitude towards business can be as important as the content of the regulation itself. There is still significant scope for improvement in the way regulators engage with small businesses.

One of the most significant challenges for regulators is changing the culture and skill sets of regulatory officers and inspectors.⁴³ This issue was highlighted by a number of regulators during the Commission's consultation.

⁴³ (Black, 2010b)

Safe Food Qld and Workplace Health and Safety Queensland (**WHSQ**) agreed that aligning attitudes and practices with this ‘new paradigm’ was difficult when transitioning to a risk based approach. The shift to the risk based approach requires the inspector to take on a new role in the way in which they interact with businesses and often requires new analytical approach.⁴⁴

Box 8: Cultural change in WHSQ and Electrical Safety Office

Since 2014, Queensland’s workplace safety regulators, WHSQ and the Electrical Safety Office (**ESO**) have been transforming from a ‘traditional regulator’, focused on hazard spotting and enforcement through audits, notices and inspections — to a regulator focused on collaborating with businesses and workers to improve safety outcomes. This represents a significant shift in the way that both WHSQ and ESO regulate, with focus shifting towards cooperation with industry, including facilitation of ‘joint problem solving and capacity building.’

These changes have required a renewal of the culture within the organisation. The Office of Industrial Relations (**OIR**), which manages these regulatory functions, notes changes to the operational structure were required to ensure designated teams of inspectors had the relevant skills to effectively engage with business.

OIR notes that while coercive powers and sanctions are still part of the ‘regulatory toolkit,’ these approaches are more likely to result as part of an ‘escalated response’ when other regulatory measures have failed.

Source: (Department of Justice and Attorney-General, 2014), Consultation with Office of Industrial Relations 2017.

The VCEC notes in a guidance note to policy officers and regulators (about regulation design and administration) that a risk based regulation culture needs to be accepted and embraced at all levels of the regulatory body, from strategic planning to frontline decision making. Such a culture can be supported by:

- clear organisational structures, roles, authorities and accountabilities that support risk based decision making;
- work that is done at the right level by the people with the necessary skills;
- data and information that are gathered and used; and
- regulatory documents (statements, policies, guidance and processes) that:
 - are developed with consultation;
 - accommodate risk based approaches; and
 - are communicated to the regulator’s staff and stakeholders.⁴⁵

Training about the philosophy of risk based regulation, can also be an essential element when transitioning to a risk based regulatory approach.

In its discussion on regulatory culture, the PC noted that regulators with effective risk based engagement policies and procedures were more likely to have senior leadership that invests in, and fosters a business-focused culture among their staff.⁴⁶

For example, in Queensland, WHSQ officers were supported in their shift to a new service delivery culture with professional development and training. WHSQ noted the training ‘has resulted in inspectors actively

⁴⁴ Consultation with Safe Food Production Queensland December 2016.

⁴⁵ (VCEC, 2015).

⁴⁶ (Productivity Commission, 2013).

working with industry to seek sustainable solutions to health, safety and electrical safety problems rather than simply identifying non-compliance issues.⁴⁷

Further information on training opportunities for regulators is provided in Chapter 5.

Business culture

Throughout the Commission's consultation with Queensland regulatory agencies, regulators noted that some small businesses often prefer more prescriptive regulation or requirements, with examples of businesses wanting regulators to '*just tell us what we have to do*' to be compliant. Regulators commented that, in many cases, smaller businesses (as well as some larger ones) are not looking to be innovative in how they meet regulatory requirements as they have little capacity to develop alternative, lower cost, approaches to compliance.

Regulators must therefore be conscious of the needs of such businesses and ensure that any move to principles based regulation also includes sufficient regulatory engagement and guidance material. Alternatively, regulators could allow businesses the ability to follow prescriptive requirements if they desire.

Duplication within and outside jurisdictions

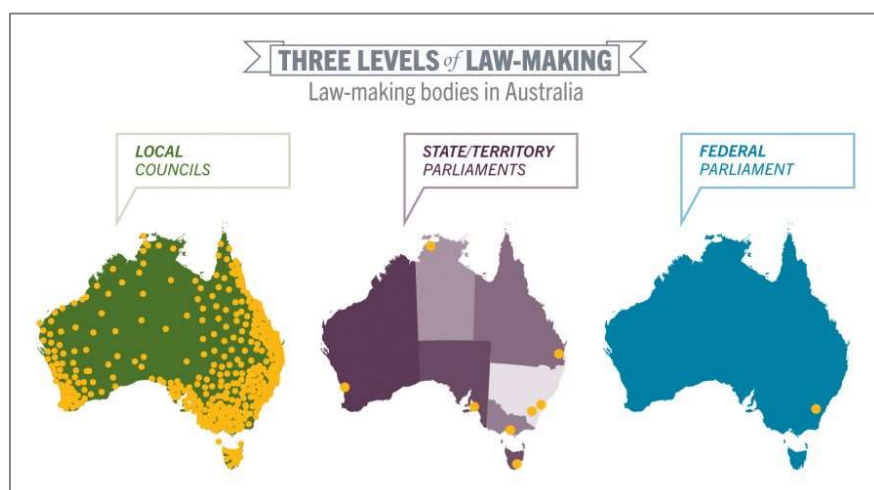
There are many layers of regulation, as well as multiple regulatory bodies, that a SME may have to deal with in the normal course of business.

For example, the PC noted that small businesses spend up to five hours per week on compliance with regulatory requirements and deal with an average of six regulators per year.⁴⁸

Regulatory responsibilities can sometimes be shared between regulators in the same jurisdiction (for example Workplace Health and Safety and Mining Safety inspectorates) resulting in unnecessary regulatory burden due to overlap and duplication in reporting requirements, being reduced.

Several submissions made to the PC's *Regulator Engagement with Small Business Report*, also highlighted small business' concern with the lack of regulator coordination and information sharing amongst different levels of government.⁴⁹

Figure 5: Australian law-making bodies



Source: Parliamentary Education Office (PEO)⁵⁰

⁴⁷ (Department of Justice and Attorney-General, 2014).

⁴⁸ (RTRAC, 2016), (Productivity Commission, 2013).

⁴⁹ (Productivity Commission, 2013).

⁵⁰ <http://www.peo.gov.au/learning/closer-look/governing-australia.html> accessed 14 December 2016.

As regulation dealing with particular industries can operate at all three levels of government in Australia, if regulators do not coordinate with each other effectively, compliance costs and regulatory burden can increase for small businesses due to inconsistencies and duplication. Additionally, the cumulative burden resulting from the aggregation of regulatory requirements over time may have a significant impact on small businesses.^{51,52}

Maintaining the consistency of regulation across all levels of government can assist businesses and individuals to minimise compliance costs, lower administrative costs to government, and benefit the broader community through increased efficiency and effectiveness of regulation.⁵³

In addition to cooperating and coordinating efforts to reduce the cumulative burden of regulation, there may be opportunities for jurisdictions to introduce mutual recognition of approvals and permits by regulators and joint or delegated inspections of regulated entities.⁵⁴

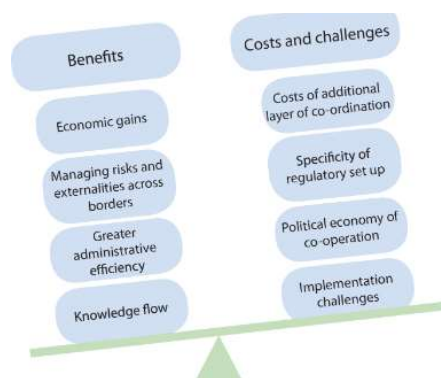
International regulations

As international trade continues to increase, the legislation and regulation of other countries will also become increasingly important for businesses in Australia, potentially adding further complexity and burden to all Queensland businesses. The Australian National Audit Office (ANAO) notes smaller businesses are most likely to feel the impact the most, due to less capacity and availability of professional advice.⁵⁵

The OECD has recognised that divergences in regulations among countries can create hurdles and increase costs to trade. In its report on the *Principles for the Governance of Regulators*, the OECD recommended regulators cooperate with other bodies (non-government and other levels of government) where this will assist in meeting their common objectives and reduce regulatory burden.⁵⁶

OECD countries have previously adopted recommendations of the Council on Regulatory Policy and Governance⁵⁷, making international regulatory co-operation (IRC) a key ingredient of regulatory quality. The OECD works with countries providing information and tools to provide a better understanding of the costs and benefits (Figure 6) and, when and how support international regulatory co-operation.

Figure 6: Costs and benefits of international regulatory co-operation



Source: (OECD, n.d. (a))

⁵¹ (Ireland & Milligan, 2013), (DFSI (NSW), 2016b).

⁵² (Productivity Commission, 2013), (ANAO, 2014).

⁵³ (Queensland Treasury, 2013).

⁵⁴ (Productivity Commission, 2013).

⁵⁵ (ANAO, 2014).

⁵⁶ (OECD, 2013), (OECD, n.d. (b)).

⁵⁷ (OECD, 2012): Recommendation 12 - In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.

2.4 Other government regulatory initiatives

Other jurisdictions, both interstate and internationally, have in operation ‘whole of government’ initiatives for the management of regulation.

For example, the United Kingdom has introduced the ‘regulators code’ (see Box 9 below), and both Victoria and New South Wales have provided comprehensive guidelines to agencies on how to implement outcomes and risk based regulation.

Box 9: Regulators code (UK)

The Government of the United Kingdom’s Regulators’ Code (which replaced the Regulators’ Compliance Code) requires regulators to have regard to certain regulatory principles when developing policies, standards and operational procedures that guide their regulatory activities.

The principles of the code are:

1. regulators should carry out their activities in a way that supports those they regulate to comply and grow;
2. regulators should provide simple and straightforward ways to engage with those they regulate and hear their views;
3. regulators should base their regulatory activities on risk;
4. regulators should share information about compliance and risk;
5. regulators should ensure clear information, guidance and advice is available to help those they regulate to meet their responsibilities to comply; and
6. regulators should ensure that their approach to their regulatory activities is transparent.

If a regulator concludes, on the basis of material evidence, that a specific provision of the code is either not applicable or is outweighed by another relevant consideration, the regulator is not bound to follow that provision, but should record that decision and the reasons for it.

The UK Government notes it will monitor published policies and standards of regulators subject to the regulators code and ‘will challenge regulators where there is evidence that policies and standards are not in line with the Code or are not followed.’

Source: (Better Regulation Delivery Office, 2014)

3 A RECOMMENDED MODEL OF REGULATION

The Commission recommends a model of regulation which focuses on risk and proportionality starting with regulatory impact assessment through to the evaluation of the performance of regulators. This section will discuss the recommended model and what it would deliver.

The Commission has developed a plan to support implementation of the framework with an acknowledgement that some aspects of the framework are already being undertaken in Queensland.

A key component of the implementation plan will be an assessment of the existing stock of primary and subordinate legislation to determine whether it has been drafted in a way that facilitates outcomes based compliance and flexibility of regulatory agencies on how the regulation is enforced. This should reduce issues of non-compliance by business as well as inconsistent interpretation of regulation by enforcement officials.

Regulators should also review their engagement and compliance activities with businesses, looking at ways it can improve its relationships and work collaboratively with industry, on addressing potential risks and non-compliance. A regulatory performance framework (further discussed in Chapter 4), which will make the regulators actions and performance more transparent, may also improve both regulators accountability and regulatory outcomes. For some regulators, an improvement in ‘culture’ may be required, which may be assisted by further professional development and training. Such training requirements are further discussed in Chapter 5.

Finally, the model may also require agencies to review and refresh its own guidance material to business to ensure that those affected by regulation have access to supporting documentation and programs that provide clear guidance on interpreting and complying with regulatory requirements.

3.1 Recommended model

The Commission recommends the following ‘model of regulation’ be incorporated into Queensland legislative development and regulatory compliance activities.

3.1.1 Regulatory development and impact analysis

As discussed in chapter 2, best practice regulatory principles emphasise that regulations should deliver a net benefit (that is, benefits outweigh costs). Such instances can be maximised by proposed regulations being subject to regulatory impact analysis which ensures problems are addressed at the least cost and are proportionate to risk. The recommendations below are consistent with this principle.

Recommended model

The Commission proposes the framework detailed in Table 3.

Table 3: The Commission’s proposed model of regulation — regulatory development and impact assessment

Proposed model	Discussion
Regulatory impact analysis All Regulation (primary, subordinate and quasi-regulation) is developed or amended in accordance with regulatory best practice principles and is subject to regulatory impact analysis as per the Queensland Government Guide to Better Regulation.	This assessment begins early in the policy development cycle to ensure genuine consideration of options, impacts and stakeholder information before any decision is made to regulate.
Use of regulatory impact statements All proposals with the potential for significant adverse impact or community concern are subject to further analysis and	Any exemptions to the RIS process should only be granted in exceptional circumstances, and the impacts of exempted regulatory proposals should be evaluated after an appropriate time of implementation.

Proposed model	Discussion
consultation through the release of a Regulatory Impact Statement.	
Drafting risk based regulation Legislation is drafted, where feasible, in a way that provides for flexibility for regulators to monitor and enforce compliance, while continuing to achieve regulatory outcomes. Clear guidance to other businesses on what it is that must be achieved should also be provided	This can be achieved through either less prescriptive drafting, or a combination of outcomes based regulatory provisions with sufficient guidance of acceptable methods. The approach does not mean the elimination of all rules, or a lack of clarity about the circumstances with regard to compliance but rather provide flexibility by avoiding unnecessary prescriptive rules on process, and enable business the opportunity to 'tailor' its demonstration of compliance and innovate, while still giving clear guidance to other businesses on what it is that must be achieved and ways they can achieve it.
Providing guidance on how to comply with regulation Sufficient guidance material is produced by the relevant government department and regulatory agency on ways to comply with risk based regulation.	Where regulation is drafted with consideration of outcomes, rather than prescribed rules, guidance should be provided on ways to achieve compliance.
Assessing the impacts of regulators actions Sufficient information is provided, as part of the regulatory impact assessment of proposed or amended regulation, on the impact of a regulators actions on industry, particularly small to medium enterprises.	This assessment begins early in the policy development cycle and should include, particularly in RISs, consideration of compliance cost of complying with regulation, and proposed regulator compliance strategy.

Existing model

The Commission notes that the following aspects of this proposal are currently implemented in Queensland:

- All regulation in Queensland is subject to regulatory impact analysis, as implemented in the Guidelines. The Guidelines provides for proportionate assessment so that regulatory proposals with the greater potential for adverse impacts are required to undergo further assessment.
- Many regulations in Queensland are already based on risk, and are outcomes focused. For example, as discussed throughout the report, many legislative instruments (for example the *Food Safety (Production) Act 2009* and the recently amended biosecurity legislation) are written in an outcomes based way to allow flexibility of the regulator and industry.
- The *Food Act 2006* (**Food Act**), which all Queensland food businesses are required to comply with, regardless of whether they have a food business licence, does not specify that inspections must be undertaken to determine compliance.⁵⁸ While the Food Act does specify that a licensed business' food safety program must be accredited by an authorised auditor, the relevant local government is given discretion on how often subsequent compliance audits should be undertaken.

Implementation

Regulatory impact analysis is already implemented in Queensland under the Guidelines.

The Commission recommends the following changes to the Guidelines and processes:

⁵⁸ Although Queensland Health does consider it appropriate that at least one inspection is undertaken at each licensed food business annually (Queensland Health, 2015a).

- Consistent with best practice consultation, where agencies intend to release a RIS, or other consultation material, stakeholders should be given advance notice that this will be released or occur. This may provide for broader consultation and responses from interested parties and more comprehensive assessment of an agency's analysis to support their preferred option.
- Agencies, when proposing new or amended regulation, should demonstrate how legislation is principles based, differentiates between businesses based on risk, and provides sufficient flexibility for regulators to target higher risk activities.

3.1.2 Regulatory review and evaluation

As discussed in chapter 2, COAG best practice principles⁵⁹ state that regulations should remain relevant and effective over time. To ensure that legislation is keeping pace with changes in industry and technology, and regulatory burdens are minimised, an evaluation of the 'stock' of regulation, with a particular focus on whether legislation adequately considers the risk of activities, is recommended by the Commission.

Recommended model

The Commission proposes the framework detailed in Table 4.

Table 4: The Commission's proposed model of regulation — regulatory review and evaluation

Proposed model	Discussion
<p><u>Regulatory Review and Evaluation</u></p> <p>All regulatory instruments, including primary legislation, are regularly reviewed for continuing relevance, effectiveness and efficiency.</p>	<p>This ensures that consideration is given as whether the regulation is still the most appropriate way to address the 'problem.'</p>
<p><u>Review of whether regulations risk based</u></p> <p>All regulatory instruments are regularly reviewed to assess whether the level of regulatory obligation imposed is appropriate for the risk of the activity and, where possible, are outcomes based.</p>	<p>This will ensure that:</p> <ul style="list-style-type: none"> • low risk activities have, where possible, lower regulatory obligations (for example, less forms and paperwork) than higher risk activities; • regulators have greater flexibility on how to monitor and enforce compliance to achieve regulatory outcomes; and • technological advancement or business innovation or 'tailoring,' are not impeded by prescriptive rules.

Existing model

The Commission notes that aspects of regulatory review are currently implemented in Queensland including:

- Section 54 of the *Statutory Instrument Act 1992* requires that all regulation expire after ten years, unless extended. This requires agencies, if they are wanting to 'remake' the regulation to demonstrate its continuing relevance, effectiveness and efficiency.
- Many Acts also require the government to undertake a review of legislation, to evaluate its effectiveness and whether improvements are required. Many agencies also, at the instruction of government, determine that particular regulatory frameworks should be reviewed to ensure the

⁵⁹ (COAG, 2007).

frameworks remain current and fit for purpose. There is not, however, consistent expiry of primary legislation (like there is with subordinate legislation).⁶⁰

- Post Implementation Reviews (**PIRs**) may be required where a regulatory proposal has been exempted from completing a RIS. Under the Guidelines, PIRs should be similar in scale and scope to a RIS, yet focus on actual, rather than expected, impacts of the regulation.

Implementation

Review of regulation already occurs in Queensland, through sunset reviews of expiring subordinate legislation and post-implementation reviews of proposals that did not undertake a RIS. The Commission recommends that these reviews should also specifically focus, where relevant, on the compliance costs of any regulatory actions— such as administration, forms and inspections, and whether they are sufficiently ‘risk based.’

Responsible agencies should also undertake a periodic, rolling review of its legislation (particularly primary legislation / Acts) to determine whether it is unnecessarily prescriptive, and could inhibit regulators in being flexible and discretionary.

Where legislation is deemed to be overly prescriptive, agencies should demonstrate why such regulatory provisions are required, and whether the costs of the regulation outweigh the benefits. Amendments should be progressed (to regulations) to facilitate regulatory and business flexibility, which does not diminish safety or compliance, where appropriate.

In undertaking this work, the Commission has not undertaken a ‘stocktake’ of regulations as the relevance of each regulation should be determined by each agency undertaking an assessment (including a risk assessment) of whether a problem (requiring government intervention) still exists, and whether the regulatory response to address the problem is effective and efficient and proportionate to risk.⁶¹

3.1.3 Government expectations of regulator

As discussed in chapter 2, explicit government support for regulators and their decisions, as well as government commitment to risk based regulatory approaches, is recommended. One way for governments to demonstrate its expectations of the regulator is the release of statements of expectations.

Recommended model

The Commission proposes the framework detailed in Table 5:

Table 5: The Commission’s proposed model of regulation — government expectations

Proposed model	Discussion
Statement of expectations Ministers provide agencies (that have a regulatory function, either government departments or statutory bodies under their oversight) with a statement of expectations.	Statements of expectations should detail the Ministers’ expectations of how the regulator will undertake its regulatory roles — including how it will manage risk and work with industry. Regulatory agencies will provide a response to the relevant Minister detailing its strategy to meet these expectations.

⁶⁰ In addition, as noted by Queensland Competition Authority (QCA, 2015), many legislative instruments, including those with restrictions on competition, have not been independently reviewed for a decade

⁶¹ Previous work by the Queensland Competition Authority on ‘Reducing the burden of regulation’ and ‘Industry assistance’ may provide the Government with potential priority areas for regulatory reform.

Existing model

The Commission notes that some statutory agencies in Queensland are currently provided a statement of expectations (SOEs) by the relevant minister, sometimes as a requirement under relevant legislation.⁶² However, there does not appear to consistent, whole of government use of SOEs in a regulatory context.

Implementation

The Commission recommends statements of expectations are provided by each Minister to relevant Departments and regulatory agencies before the first reporting year of the proposed regulatory performance framework (2018-19). These statements should detail the government's expectations on how risks should be managed and acknowledge that risks cannot be completely eliminated.

Agency responses to statements of expectations should not necessarily increase workloads for agencies and should utilise existing reporting (such as through strategic plans) where feasible.

3.1.4 Actions of regulators

As discussed in chapter 2, the actions of regulators can, in many instances, have the same or greater impact on business and the achievement of regulatory outcomes than the regulation itself. It is therefore important that regulators are given the ability, as part of their compliance and enforcement role, to apply regulatory approaches that ensure their limited resources are directed to higher risk activities where possible. In addition, regulators should be given the opportunity to engage and collaborate with the industries they regulate. Such measures should reduce burden on smaller and lower risk businesses and potentially result in increased compliance and improved regulatory outcomes.

Recommended model

The Commission proposes the framework detailed in Table 6 below.

Table 6: The Commission's proposed model of regulation —actions of regulators

Proposed model	Discussion
Regulators are provided with discretion to determine the level of regulatory oversight needed from business to business, based on the businesses' respective compliance history and the level of risk its activities pose. A risk assessment should be undertaken to assist in their approach. Where risks are lower, regulators should consider whether the regulatory requirements on such businesses are reduced.	This may require regulators to consider, dependent on the industry, whether reporting and administrative requirements are proportionate to risk (that is, they are not one size fits all), do not duplicate other reporting obligations, and allow self-auditing or assessment where feasible.
Regulators should publish policies on their compliance and enforcement approaches and strategies.	Regulators should develop and publish their compliance and enforcement policies, which detail how they approach the role and their engagement with business. Such policies set community and industry expectations and demonstrate risk based approaches and transparency and accountability.
Regulators assist businesses in facilitating compliance with regulation rather than relying solely on inspections, auditing and prosecution. Regulators should also seek partnerships and networks with industry.	Regulators effectively engaging and collaborating with stakeholders can lead to, over the longer term, improved regulatory compliance and outcomes, and make businesses more inclined to seek assistance from the regulator where required.

⁶² For example, Tourism and Events Queensland is provided a statement of expectations by the Minister for Tourism and Major Events pursuant to section 39 of the *Tourism and Events Queensland Act 2012*.

Proposed model	Discussion
	Networks within industry can share knowledge and identify industry-driven improvements which may lead to higher regulatory compliance and risk reduction
Regulators, when undertaking enforcement action, are transparent, accountable, proportionate, consistent and targeted in their investigations and decisions.	Decisions of a regulator are likely to be better understood and accepted when such principles are used, as it is clear how an enforcement decision has been made, including the evidence and reasons, and that it has followed appropriate processes.
Regulators consider the use of 'graduated' compliance and enforcement responses that provide businesses, depending on history of compliance or the severity of the offence, with the opportunity to remediate any risks and discuss better ways to achieve compliance first before the threat of further sanction or prosecution.	Regulators effectively engaging and collaborating with stakeholders can lead to, over the longer term, improved regulatory compliance and outcomes, and make businesses more inclined to seek assistance from the regulator where required or take responsibility,
Regulatory officers are provided with opportunities for personal development and on-going training in the areas of stakeholder engagement and communication, problem solving, legislative interpretation, risk management, audit and inspection and training and assessment.	Training can improve regulatory culture, relationships with business and industry, lead to better regulatory enforcement decisions, and better regulatory outcomes.

Existing model

The Commission notes that the following aspects of this proposal are currently implemented in Queensland:

- many agencies are undergoing cultural change, and moving towards more risk based compliance and enforcement activities. As noted throughout chapter 2 of this report, agencies such as WHSQ are in the process of transforming from audit and inspection compliance and enforcement methods to more collaborative efforts with industry.
- under the Food Act, local governments, in deciding the frequency of compliance audits of licensed business' food safety programs must have regard to:
 - the nature of the food handled in the food business to which the food program relates; and
 - the nature and extent of food handling carried on in the food business.

In addition, the frequency of a local government's 'routine inspections' on food businesses' may be determined by the risk category of the business, or the number of previous 'non-compliances' identified.⁶³

- the Government has been transitioning to the use of online forms and service delivery in many different industries, including transport, fisheries and workplace health and safety, through 'one-stop shops' and electronic forms and certificates in an effort to streamline compliance reporting for industry. Examples include:
 - commercial fishers in certain fisheries can use electronic logbooks (eLogs) to submit catch and effort information, including information on quotas and species of conservation interest. In addition, the Department of Agriculture and Fisheries notes the eLogs software can also help fishers better understand their businesses through the collection

⁶³ (Queensland Health, 2015b).

information such as operating costs (such as fuel and wages), prices of products sold and finer scale catch and effort information.⁶⁴

- the use of 'SmartForms' by state and local government agencies and statutory authorities, making it easier and faster for businesses to comply with government regulations and requirements. SmartForms save business customers' time and effort by pre-filling forms with data from an ABN and other data sources. SmartForms also provide automatic validation of entered data, presentation of fields that are only relevant to the current application and online secure payment.
- the roll out of the 'Connect' system by the Department of Environment and Heritage Protection which will assist its regulated customers in submitting online information, and allow the Department to build accurate reports for compliance and assessment which will 'further assist to inform and drive regulatory performance.'⁶⁵
- many regulators in Queensland have transparent processes and procedures in place on how they undertake their compliance and enforcement activities. For example, the Queensland Office of Fair Trading (OFT) has the 'compliance and enforcement policy standards' which provide the general policy on which OFT bases its compliance business. It details OFT's approach to compliance and how it responds to complaints and suspected breaches of legislation, and is based upon the principles detailed in relevant national standards for risk management, compliance programs and complaints handling.⁶⁶

Implementation

The Commission acknowledges that the transition to risk based implementation and administration of regulation may be challenging for many departments and regulatory agencies. This can include an in-depth consideration of the risks present in the industries that are regulated and an assessment of whether certain businesses or activities present a higher or lower risk than others, which may warrant different regulatory approaches and obligations. As noted in previous section, in areas such as food safety, regulators are already undertaking such assessments in an effort to tailor compliance monitoring and enforcement responses based on risk.

To assist in this process, the Commission recommends agencies consult the guidance materials published in other jurisdictions which methodically set out how regulatory policy makers and regulators can consider risk and implement new methods of monitoring, compliance and enforcement, including the use of self-diagnostic tools. Such guides will assist agencies in ensuring that the regulatory burden on low risk activities is reduced and opportunities for streamlined record keeping and information requirements and self-audits are genuinely explored by regulators.

Further information on appropriate guides is provided in Appendix C.

In addition, in response to the implementation of other aspects of the model, the Commission recommends that:

- agencies should undertake a review of its guidance materials to small business to ensure that the materials clearly state their obligations. Such guidance materials should provide examples to assist in compliance;

⁶⁴ <https://www.business.qld.gov.au/industries/farms-fishing-forestry/fisheries/monitoring-reporting/requirements/electronic-logbooks> accessed 10 February 2017.

⁶⁵ Submission from Environment and Heritage Protection to Queensland Productivity Commission February 2017.

⁶⁶ (Department of Justice and Attorney-General, 2016).

- agencies should undertake a review of inspection and paperwork coordination opportunities with other agencies, and ensuring no duplication with interstate or international accreditation processes;
- agencies should look for opportunities for online lodgement, where appropriate, but not penalise businesses who have not made the transition; and
- training and professional development should be provided to regulatory officers in the areas of interpretation of legislation, stakeholder engagement and communication, problem solving, audit and inspection and training and assessment (please see chapter 6 for more details).

3.1.5 Regulator Performance

As discussed in chapter 2, government should also encourage agencies to report back on their regulatory performance, including whether regulators are implementing risk based approaches and providing effective engagement with business. Such reporting could also extend to regulators demonstrating the problems they have addressed and how they are contributing to improved regulatory outcomes.

Recommended model

The Commission proposes the framework detailed in Table 7 below.

Table 7: The Commission’s proposed model of regulation – regulator performance

Proposed model	Discussion
Regulator performance The performance of regulatory agencies in implementing and facilitating risk and outcomes based regulatory environments, and their engagement with stakeholders, is monitored and reported periodically.	Monitoring of performance ensures the actions of the regulator are transparent and accountable, and may provide incentives for improved regulatory outcomes and regulatory performance.

Existing model

The Commission notes that many Queensland agencies are already reporting on their performance, in various media, to evaluate what is working well and what can be improved. In addition, it is a requirement under the Queensland Governments ‘Performance Management Framework’ for agencies to report their progress against objectives and indicators and their strategic and operation plans. This is further discussed in chapter 4.

Implementation

The Commission recommends an evaluation of performance of regulators is conducted at regular intervals. Where this is not already undertaken by agencies, such performance could be demonstrated through a ‘regulatory performance framework (see Chapters 4 and 5).’

3.2 Safety and Compliance

The Government, in its response to the Council’s recommendation, stated that it is ‘critical’ that any model of regulation adopted does not diminish safety standards or reduce the high level of compliance by Queensland businesses that currently exists in essential areas of regulation.

As noted throughout the report, the model of regulation should ensure regulators actions are better targeted at higher risk activities, and should ultimately improve outcomes for the community. While a move to more ‘outcomes based’ form of regulation and engagement may reduce some prescriptive requirements, the use

of guidelines, acceptable methods and improved communication between regulators and SMEs should ensure that businesses remain compliant with their regulatory obligations.

4 REGULATORY PERFORMANCE FRAMEWORK

In its report, the Council provided recommendations for improving regulator engagement with industry. It noted that based on its consultation with industry and government, poor communication between regulatory agencies and businesses had been identified as an issue requiring attention. The Council concluded that:

Effective communication is necessary to ensure that SMEs' regulatory burden is minimised.⁶⁷

The Council also made recommendations on improving regulatory processes, noting that the efficiency of a regulatory process is a key determinant of the level of regulatory burden imposed on businesses. A priority recommendation, was for the Government to investigate and implement a 'regulatory performance framework' to monitor the performance of regulatory agencies with the goal of improved regulatory engagement with SMEs.⁶⁸

In support of its recommendation, the Council noted that accountability and transparency of a regulators' activities may improve regulator culture, thereby improving regulator engagement and continuous improvement.

The Commission has been asked by the Treasurer to provide advice to Government on the implementation of a regulatory performance framework in Queensland, including investigation of the Commonwealth Government's Regulator Performance Framework and a determination of what elements of that framework may be applicable and beneficial in a Queensland context.

This chapter will discuss:

- *the importance of performance monitoring;*
- *key indicators of good performance;*
- *frameworks for the monitoring of the performance regulators in other jurisdictions (including the Commonwealth);*
- *undertaking a performance assessment;*
- *using results of a performance assessment; and*
- *initial results from the Commonwealth Framework.*

The chapter concludes with the Commission's recommended regulator performance framework for operation in Queensland.

4.1 Assessing regulator performance – the importance of performance monitoring

Measurement of performance is an important step in evaluating the effectiveness of any program, agency, individual or process. For example, performance monitoring can:

- through critical evaluation, allow entities to assess what is working and what requires modification, improvement or remediation;
- through increased transparency and accountability, provide an incentive for organisations to lift performance; and

⁶⁷ (RTRAC, 2016, p. 13).

⁶⁸ (RTRAC, 2016, p. 14).

- communicate and demonstrate to stakeholders whether a particular agency or program ‘adds value’.^{69,70}

As discussed in Chapter 3, in many instances the actions of a regulator can have just as much, and in some cases, more of an impact on a business and the achievement of the objectives of regulation, than the regulation itself. It is therefore important to monitor, at regular intervals, the performance of regulators to ensure their actions are not adding unnecessary burden on those they regulate while still ensuring regulatory objectives can be achieved.

Box 10: What is a regulator?

A regulator, as defined in the Victorian Regulatory System report, is a government entity (either an independent / statutory agency or within a department) that has powers under legislation in relation inspection, monitoring and compliance enforcement, licensing and accreditation and enforcement, and regulatory advice to third parties.

Source: (VCEC, 2013).

Performance monitoring also ensures a regular evaluation of ‘good regulatory performance’ takes place, by assessing whether the regulator is allowing the adoption of innovative regulatory approaches and making proactive efforts to reduce regulatory burden. It also acts to ensure the regulator is effectively implementing risk based regulation.⁷¹

The performance of regulators can be formally measured and evaluated using a regulatory performance or audit framework, and implementation of such frameworks can provide incentives for regulators to improve performance.⁷² Having a system or framework in place ensures both consistency in reporting across agencies, as well as holding regulators to account to its stakeholders —business, government and consumers. Such a framework, can also be used to compare or ‘benchmark’ against other regulators, providing an added incentive for regulators to improve their performance.

If following good regulatory practice, regulators will already be conducting an evaluation of their performance. However, while regulatory agencies in Queensland may already undertake their own performance evaluations internally (with some also reporting externally), based on the Commission’s discussions with regulatory agencies, there does not appear to be a ‘systematic process’ used by regulators to assess costs that are imposed on business.

4.2 Indicators of good performance

The use of ‘performance indicators’ can be an effective way to assess the performance of a regulator, and can help to manage expectations of key stakeholders.

Ideally, any performance objective or indicator established should be focused on measuring a regulator’s performance in achieving outcomes rather than outputs (such as number of number of applications received).⁷³

The Commonwealth Regulatory Performance Framework requires relevant agencies to undertake a self-assessment of their performance against six, consistent Key Performance Indicators (KPIs) which appear to

⁶⁹ Scales, 1997 as cited in (Bridgman & Davis, 2000, p. 130)

⁷⁰ (OECD, 2014, p. 107).

⁷¹ (OECD, 2014, p. 107).

⁷² Meloni, 2010, as cited in (OECD, 2014, p. 107).

⁷³ (OECD, 2014, p. 108).

be derived from the ‘best practice principles’ noted by the PC.⁷⁴ The PC approach however, provides regulators a degree of flexibility by allowing them to establish, in conjunction with stakeholders, specific performance indicators suited to their activities.

The PC also considered that this would allow any external auditors to not be constrained by a standard list of KPIs and provide them the option of collecting evidence beyond the agreed indicators, and changing ‘the emphasis on which principles are most relevant for performance assessment.’⁷⁵

Box 11: Six key performance indicators of Commonwealth Regulatory Performance Framework

1. Regulators do not unnecessarily impede the efficient operation of regulated entities.
2. Communication with regulated entities is clear, targeted and effective.
3. Actions undertaken by regulators are proportionate to the risk being managed.
4. Compliance and monitoring approaches are streamlined and coordinated.
5. Regulators are open and transparent in their dealings with regulated entities.
6. Regulators actively contribute to the continuous improvement of regulatory frameworks.

Source: (Commonwealth of Australia, 2014).

To demonstrate achievement of performance indicators, the PC noted that ‘metrics’ or measures should be identified for each.⁷⁶ For example, to demonstrate performance against a performance indicator of ‘timely decisions to business’ a regulator may establish a reasonable ‘waiting time for approval of licences’ standard, which can then be reported against.

Under the Commonwealth framework, each agency is required to devise metrics under the six KPIs. By developing these metrics in advance of the relevant reporting period (as part of each agency’s ‘audit plan’), agencies can ensure they are collecting the appropriate information and data throughout the year to be able to undertake a genuine self-assessment of performance. Some agencies may also use the audit plan to establish a ‘baseline’ of their performance, which they can use as a comparison at subsequent self-assessments.

While regulatory agencies have flexibility to adopt tailored metrics under each KPI, the Commonwealth guidance material also provides a list of suggested measures ‘considered sufficient to enable assessment against the KPIs.’⁷⁷ An example of the metrics used by the Department of Veteran’s Affairs is shown in Box 12.

⁷⁴ (Productivity Commission, 2014, p. 12).

⁷⁵ (Productivity Commission, 2014, p. 18)

⁷⁶ (Productivity Commission, 2014).

⁷⁷ (Commonwealth of Australia, 2014, p. 15).

Box 12: Metrics used in the Department of Veteran's Affairs 2015-16 self-assessment

The Department of Veterans' Affairs (DVA) protection of the word 'Anzac' sees it fall within the regulatory activities covered by the Commonwealth Regulatory Performance Framework.

DVA undertook stakeholder consultation with the ex-service organisation community to develop proposed metrics under each of the six KPIs of the under the framework.

For example, under KPI 5 'Regulators are open and transparent in their dealings with regulated entities', DVA specified three measures for which it would assess its performance against:

1. DVA's risk based framework is publicly available in a format which is clear, understandable and accessible;
2. DVA is open and responsive to requests from regulated entities regarding the operation of the regulatory framework, and approaches implemented by regulators; and
3. DVA's performance measurement results are published in a timely manner to ensure accountability to the public.

Source: (Department of Veterans' Affairs, 2016).

In many cases, metrics based on quantitative data will provide the most valuable information for assessing regulator performance against the relevant indicator. In some cases, however, evidence of performance may only be qualitative in nature, relying a degree of subjective judgement or information received from stakeholders.

4.3 Regulator performance frameworks in Australia

The performance of regulators is monitored, measured and reported in many different Australian jurisdictions. This section will discuss the PC's research into a 'regulator audit framework'. This section will also examine how the Commonwealth and other states monitor regulator performance.

4.3.1 Productivity Commission Report on a Regulatory Audit Framework for the Commonwealth

In March 2014, the PC released its Regulator Audit Framework report. The inquiry was initiated to address concerns of the Australian Government that:

- 'the way some regulators interact with businesses and regulated entities' can contribute to costs imposed by regulation; and
- the way in which regulators interact with businesses should be audited through an assessment of regulatory performance.⁷⁸

In its report, the PC recommended the introduction of a regulatory audit framework to provide a platform for the comprehensive assessment of an individual Commonwealth regulator's performance with regard to their interaction with business.

⁷⁸ (Productivity Commission, 2014).

Specifically, the PC's recommended systematic performance monitoring framework identifies five 'best practice principles' of good regulatory practice that the PC considers should be found in any high-performing institution.

Box 13: Best practice principles of good regulator behaviour

1. Clear and effective communication.
2. Risk based requirements and proportionate actions.
3. Consistency in decision making, the application of rules and engagement with clients or stakeholders.
4. Accountability and transparency in actions.
5. A commitment to continuous improvement, including acting on findings in regard to the need for and effectiveness of the regulation.

Source: (Productivity Commission, 2014).

The PC noted that if using these principles as a baseline, each regulator should then implement, in an upfront 'audit plan,' an agreed set of 'indicators of good performance' to assess their performance against, under each of these best practice principles.

Recognising the potential costs on regulators, auditors and businesses, of any new auditing process, the PC recommended that any framework introduced should use information already collected by agencies and new information should only be considered and be collected where essential.

The Commonwealth Government introduced a 'Regulator Performance Framework' in October 2014, largely based on recommendations from the PC's March 2014 report.

As regulators play an important role in managing risk and protecting the interests of the community, the Commonwealth argued that well administered regulatory framework could improve the operation of businesses, markets and the economy, as well as bring major benefits to individuals.

The Commonwealth framework consists of a number of objectives that are measured by specific KPIs such as the assessment of a regulators administrative efficiency and effectiveness in achieving the objectives of the relevant regulation.

Under the framework, a number of Commonwealth regulators, such as the Australian Competition and Consumer Commission, are required to undertake an externally validated self-assessment of their performance against the framework.⁷⁹

⁷⁹ (Commonwealth of Australia, 2014).

4.3.2 Other Australian jurisdictions

Victoria and New South Wales, have specific frameworks in place for regulators to assess their performance and progress outcomes against risk based approaches to regulation. The frameworks are discussed in Box 14 below.

Box 14: Regulator performance frameworks in Australia

Victoria

Victoria's Office of the Commissioner for Better Regulation (OCBR) surveys Victoria's business regulators every two years as part of the 'Victorian Regulatory System' report. This report provides a snapshot of the activities of Victoria's regulators and notes whether the regulator has publicly reported against key performance indicators such as client satisfaction with regulator activities and whether any quantitative evaluation had been reported for regulatory initiatives and projects.

OCBR also plays a role in the ongoing monitoring of regulator performance against the 'statement of expectations' provided to each regulator by its relevant Minister, and which established clear expectations from the Victorian Government on the regulators priorities and performance. Development of further reporting, including a self-assessment against the elements of good regulatory practice, is currently underway.

The Victorian Government has also appointed a designated 'Red Tape Commissioner' to work with Victoria's business community and improve regulation, identifying opportunities to improve regulators' dealings with business, and improve how regulators administer the regulations for which they are responsible.

New South Wales

In 2012, the New South Wales (NSW) Government implemented a 'quality regulatory services' initiative where NSW regulators are required to implement an outcomes and risk based approach to regulation. Under this initiative, regulators are able, by using a specially designed self-assessment diagnostic tool, to assess their current regulatory approaches against a series of indicators and identify areas on which they can focus to ensure they are regulating using a risk based approach.

Source: <http://www.dtf.vic.gov.au/Publications/Victoria-Economy-publications/Statement-of-Expectations-for-regulators> accessed 5 February 2017; <https://www.finance.nsw.gov.au/better-regulation/quality-regulatory-services-initiative>, accessed 27 January 2017.

4.4 Undertaking a performance assessment

There are many options available to Government to assess regulator performance.

In recommending a regulator audit framework, the PC identified three options for the assessment of a regulator's performance:

- departmental audits;
- regulator self-assessments; and
- specialist audit agency assessments.

Each option is discussed below, as well as the option selected by the Australian Government.

4.4.1 Departmental audits

Under this option, the relevant department takes responsibility, in consultation with the regulator and affected businesses, for the development of an audit plan. The department also takes responsibility for assessing performance.

The PC noted that while this method has the potential to minimise costs, it also had the ‘potential for reduced impartiality and objectiveness.’⁸⁰

A shortcoming of this option is that it assumes the department itself is not the regulator.

4.4.2 Regulator self-assessments

This option provides for the regulator (either the Department or statutory bodies) to undertake a self-assessment of its performance and its stakeholder engagement.

While self-assessment is considered feasible in many cases, the PC noted that smaller regulators might require assistance, through either resources or other expertise to undertake the assessment.

The PC also reported that self-assessment by the regulator might increase the risk of, or the perception of, reduced impartiality and effectiveness. Therefore, to reduce the ‘incentives for bias’, the PC recommended that any self-assessment should include both:

- an external audit or oversight process (to check its veracity of the self-assessment); and
- publication of the self-assessment.

4.4.3 Specialist audit agency assessments

The final option identified by the PC includes tasking a single body or agency with the development of an audit plan (in cooperation with each regulator). The same agency would also be responsible for the subsequent assessment of the regulator’s performance in accordance with their respective audit plan.

The PC considered that such an approach may enable a more rigorous and objective approach to the audit process. However, a disadvantage of this option is the likely requirement for significant additional resources (and therefore costs), for both the regulators and the government agency in charge of the assessments.

4.4.4 Commonwealth option

The Australian Government opted for regulators to be required to undertake a self-assessment every 12 months under the Commonwealth Regulatory Performance Framework. This option was selected due to it providing ‘flexibility for assessments to be tailored to the size and responsibilities of the regulator.’⁸¹

⁸⁰ (Productivity Commission, 2014, p. 38).

⁸¹ (Commonwealth of Australia, 2014, p. 8).

Under the Commonwealth framework, all self-assessments by regulators must be comprehensive, timely, externally validated and publicly available. These assessments are discussed in greater detail below in Box 15.

Box 15: Performance Assessment option used for the Commonwealth Regulator Performance Framework

Self-Assessment

Each regulator can decide on how to conduct their self-assessment, including utilising external assessors, peer reviewers or industry bodies to assist.

External Validation

An agency's self-assessment report is externally validated by a stakeholder consultation mechanism. The report is then certified by the regulator's relevant department before being provided to the Minister and made publicly available.

External Reviews

The Government has the option to commission an annual external review of a small number of major regulators across all portfolios. If the option to commission an annual review is taken up, these regulators will still undertake an annual self-assessment of performance providing a useful comparison between how the regulator assesses their own performance against the external assessment.

External reviews will be conducted by review panels of government and industry representatives. They will include a comparable regulator, a representative of the relevant regulated community and a representative from the portfolio.

Source: (Commonwealth of Australia, 2014).

4.5 Using the performance assessment

Once a regulator's performance has been measured and assessed, such information can be used by the regulator, and potentially other agencies and stakeholders, to identify areas of poor performance and opportunities for improvement.

While some regulators may prefer such assessments be prepared for internal audiences only, by making an assessment public, stakeholders are able to scrutinise the results — keeping the agency accountable. It may also provide an incentive to regulatory agencies to:

- initiate steps to improve performance before the assessment takes place, to ensure favourable results; and
- demonstrate to stakeholders how it will use the results of the assessment to improve its performance in the future.

4.5.1 Challenges in reporting against risk based frameworks

The PC has recently, in their draft report on *Consumer Law Enforcement and Administration*, noted that there are challenges in reporting on regulators that have risk based approaches to compliance and enforcement. This is due to risk based and graduated compliance and enforcement responses and 'good news stories' of regulators' actions contributing to consumer welfare (such as accounts of risks mitigated) are 'not as easily measured as some other compliance and enforcement activities' such as number of fines issued.⁸²

⁸² (Productivity Commission, 2016, p. 125).

Given this, the PC recommended that a reporting framework for such regulators should provide meaningful metrics and information on:

- resources expended on regulator activities;
- the range and nature of regulator activities;
- behavioural changes attributable to regulator activities; and
- outcomes attributable to regulator activities.⁸³

4.6 Initial results of regulators under the Commonwealth framework

The first assessment period of the framework commenced in July 2015.

Regulators have completed the annual self-assessments, which are to be externally validated and published by 31 December of each year.

The Commission has discussed with a number of Commonwealth agencies their experiences of the first year under the regulator performance framework.⁸⁴

Box 16: ACCC self-assessment 2015-16

The ACCC was one of a number Commonwealth agencies to undertake a self-assessment for the 2015-16 reporting year under the Commonwealth Regulator Performance Framework.

In completing its self-assessment, the ACCC applied a five point rating scale against the framework's six KPIs and assessed each of its four functional work streams.

The ACCC considered that to improve the rigour of the self-assessment exercise, it was essential to obtain the direct views of business. The ACCC therefore engaged a market research firm to survey businesses through the inaugural ACCC business stakeholder survey.

Qualitative interviews were also undertaken with 16 leaders of large businesses, across a range of sectors, to complement the data obtained through the survey. Key themes identified in the interviews included:

- the ACCC could work more collaboratively with regulated businesses;
- ACCC staff could improve their understanding of the commercial realities faced by regulated businesses; and
- the ACCC's communication could be more targeted and effective, particularly in relation to information requests.

Against the 24 individual ratings, the ACCC allocated itself four 'Very good', eight 'good', eleven 'Satisfactory' and one 'Poor' ratings.

The ACCC externally validated its results through a reference panel (the ACCC Performance Consultative Committee) created specifically for this process, comprising of business, government and the community. The ACCC notes in its report that many of the reference panel's comments and suggestions were incorporated in their final self-assessment report.

Source: (Australian Competition and Consumer Commission, 2016).

⁸³ Whilst the PC's report specifically looked at 'Australian consumer law regulators' considers similar reporting of risk based regulators in Queensland may be equally appropriate.

Many of the Commonwealth regulators the Commission consulted with, considered the self-assessment process a useful exercise and were committed to making changes in some areas where the self-assessment identified areas for improvement (for example, more targeted communication with stakeholders).

4.7 Considerations for a Queensland framework

As discussed in section 4.1. of this report, the Queensland Government accepted the Council's recommendation to investigate and implement a regulatory performance framework. How the performance of regulators is monitored and reported in other jurisdictions, particularly under the Commonwealth regulatory performance framework, provide a good insight into how such a framework could apply in Queensland.

In determining the applicability of such a framework in Queensland, the Commission has considered:

- the views of Queensland departments and regulators;
- the relative burden and cost on agencies, including increased resourcing and consultation requirements; and
- whether agencies have other performance monitoring and reporting activities, and whether other reporting obligations could be utilised in place of a stand-alone regulatory performance framework.

4.7.1 Consultation

Consistent with the principles the Commission applies when undertaking its role in providing advice and guidance to agencies on regulatory impact analysis, an assessment should also be made on whether the benefits of the selected framework (such increased compliance and better regulatory outcomes) outweigh the costs (for example, impacts on departmental resourcing).

Another consideration is whether the introduction of such a framework may further exacerbate resource impacts on agencies, if the agencies are already undertaking other reporting obligations.

Many of the regulatory agencies the Commission consulted with, were supportive of measures to monitor regulatory performance to improve outcomes for stakeholders. However, many were also concerned about how effective such a framework would be, the additional burden the performance assessment process may have on resources, and how it may affect their existing or planned reporting.

A common comment from agencies was that any framework considered for implementation should be proportionate, tailored and embedded with other data collection and reporting obligations. Additionally, the task should provide meaningful information.

Other concerns raised include:

- Will there be sufficient time for agencies to set up systems for collecting information?
- Will there be sufficient passage of time for the impact of recent reforms to be reflected in the assessment?
- What if the agency has already developed, or are in the process of developing, a reporting and assessment framework of outcomes and performance— how will this fit? If it is not entirely compatible, will we have to duplicate effort?
- How will we actually measure performance and apply subjective judgements?

4.7.2 Performance reporting in Queensland

Under the *Financial Performance Management Standard (the Standard)*, which is subordinate legislation under the *Financial Accountabilities Act 2009*, each accountable officer of a department and statutory body

must ensure a governance framework appropriate for the department or body is established, including the establishment of a ‘performance management system.’

The Standard also provides that each department and statutory body must, in managing performance, comply with the document ‘A guide to the Queensland Government performance management framework (the Guide)’, which aims to assist agencies developing a greater level of understanding of the government’s ‘performance management framework (PMF)’.⁸⁵

The PMF requires agencies to:

- **undertake planning**, including the development of Strategic plans, Operational plans, Service Delivery Statements and budgets;
- **measure and monitor performance**, including providing progress reports on strategic plans, and evaluating performance against performance indicators or service standards; and
- **publicly report**, including mid-year fiscal updates and the preparation of annual reports.

⁸⁵ However, under section 59(1) of the *Financial Accountability Act 2009* the Treasurer may, wholly or partly, exempt a department or statutory body from complying with a financial and performance management standard.

Box 17 summarises the reporting requirements under the Standard.

Box 17: Queensland legislated reporting

Service Delivery Statements (planning)

Service delivery statements (SDSs) list the key deliverables for a department for the forthcoming financial year, and set an agency's service standards and targets.

As SDSs are required to be finalised by agencies (internally) between March and May each year, they are unlikely to be suitable for inclusion in the regulatory performance framework. However, any regulatory performance planning for the relevant reporting year could be leveraged off the information or indicators included in the SDS.

Strategic and Operational Plans

The standard requires agencies to prepare both a four year strategic plan and a one year operational plan. Strategic plans are used by agencies to describe their vision, purpose, objectives, performance indicators and key strategic risks and opportunities. An operational plan is a subset of an agency's strategic plan and covers the short term activities or milestones that contribute to the implementation of an agency's objectives in its strategic plan.

As both strategic and operational plans appear to be 'high level,' concise documents, they are unlikely to be suitable for use as an agency's 'audit plan.' However, any overarching principles of the regulatory performance framework could conceivably be mentioned in such plans.

Measurement and monitoring of performance

The standard requires that performance information about the agency's achievement or progress toward the delivery of its strategic plan, be provided at least every three months to the accountable officer or board, and at least, annually to Ministers. The PMF also notes that performance information (of the agency and service areas) should be regularly reviewed. A series of guidance and reference information is provided for agencies to review and evaluate performance.

Annual Reports

Under the *Financial Accountability Act 2009*, accountable officers of departments and statutory bodies must, prepare an 'annual report' by the end of September each year.

Annual reports are a key accountability document and the principal method of agencies to present the 'achievements, performance, outlook and financial position of government agencies for each reporting period.'

Many regulatory agencies appear to be using annual reports to present their performance against KPIs or other standards. For example, Safe Food Production Queensland's 2015-16 Annual Report details the number of audits and assessments conducted over a ten year period, its progress against strategic priorities, and its approach to 'best practice regulation.'

Annual reports may be a suitable vehicle for regulators to report on their performance. The merits of using annual reports for performance reporting is discussed further in section 5.1.1.

Source: (Department of the Premier and Cabinet, 2016b).

Other reporting

Some agencies may also have other reporting obligations (either voluntarily or required by legislation), either in Queensland or internationally. In such cases, agencies may be able to rely on such information to inform any regulatory reporting.

For example, Workplace Health and Safety Queensland currently provides performance data to Safe Work Australia as part of the Comparative Performance monitoring (CPM) report (Box 18 below).

Box 18: Workplace Health and Safety Performance monitoring

Since 1998 an annual CPM report has been produced, providing trend analysis on work, health and safety and workers' compensation schemes operating in Australia and New Zealand. The purpose of the CPM is to provide measurable information to support policy making and program development by governments on work health and safety. Some of the information of the CPM provides:

- measurement of progress against national strategies;
- identification of factors contributing to improved work health and safety and workers compensation performance (which includes consideration of resources); and
- measurement of changes in work health and safety and workers compensation over time, including benchmarking where appropriate.

Chapter 3 of the CPM report also details the compliance and enforcement activities of the Workplace Health and Safety regulator in each jurisdiction. This includes providing information on the number of regulatory interventions, fines and legal proceedings as well as data on enforceable undertakings.

The OIR notes that enforceable undertakings provide a 'graduated approach' to compliance and enforcement, and allows those who breach a duty, to enter into an agreement to take certain steps to rectify the breach or improve Workplace Health and Safety performance. Enforceable undertakings also allow a customised and arguably more efficient response than court proceedings, while incurring less costs on all parties.

Source: (Safe Work Australia, 2015).

In addition, some Queensland agencies are also independently developing their own review mechanisms to assess performance.

5 QUEENSLAND REGULATORY PERFORMANCE FRAMEWORK

This chapter discusses the Commission's proposed regulatory performance framework for Queensland.

*The design of the framework is partly based on the recorded experiences under the Commonwealth Government's Regulatory Performance Framework (**Commonwealth framework**), and also based on a consideration of the resourcing requirements and existing reporting obligations of Queensland regulatory agencies and Departments.*

*The discussion of the proposed framework (**Queensland framework**) will include:*

- *Overarching principles;*
- *Who is to be included in the framework;*
- *How the assessment should be undertaken, including who does the assessment, and how assessments can be validated;*
- *What should be measured;*
- *What should be reported; and*
- *Recommended implementation timeframes.*

The Commission considers the recommended framework will improve transparency and accountability, and provide an incentive for better regulatory outcomes, while minimising additional burden on regulators by being flexible and proportionate.

Such a framework will also complement the use of RIA in Queensland by ensuring that best practice regulatory principles are considered in the design, implementation and administration of regulation

5.1 Overarching Principles

The Commission has developed this framework with recognition of the following 'overarching principles,' which it believes is appropriate for a Queensland context, taking into account resourcing and resource capabilities and skills:

- the framework should monitor the performance of regulators in the areas such as consideration of risk in its compliance, enforcement and engagement activities, and other best practice regulator behaviours;
- the framework is seen as a useful and meaningful exercise by regulators, government and stakeholders and is not just considered to be a compliance process;
- the framework does not duplicate other reporting undertaken by a department. Where agencies have reporting (either in Queensland or nationally) consistent with the framework, those departments should not be required to report specifically against the framework;
- agencies should be provided flexibility in how they report, provided the information contained is broadly consistent with the intent of the framework; and
- stakeholder input should be utilised where practicable and available.

5.2 Who is included in the framework

The Commonwealth's regulatory performance framework has wide application and it appears that all regulatory agencies who administer, monitor or enforce regulation are required to implement the framework

regardless of their size or the amount of regulatory activity they have responsibility for. The Commonwealth framework also applies to regulators internal to departments but does not apply to regulators jointly owned with other governments.

The regulatory landscape in Queensland is not consistent. Those departments that have a regulatory function either have two distinct areas of regulatory responsibility (policy makers and the operational arm of agencies which carry out the enforcement task) or, have standalone statutory agencies that report to the department (for example Safe Food Queensland reporting to Queensland Health and Department of Agriculture and Fisheries).

There also does not appear to be a consolidated list of Queensland government agencies or departments that have a regulatory function.

The Commission recommends that, to ensure consistent reporting across government, all regulatory agencies in Queensland should report against the framework. Further discussion on how regulators can report, including those that already undertake reporting, is provided in later sections of this chapter.

In addition, the Commission recommends the Government consider whether the performance of local governments undertaking devolved regulatory activities on behalf of the state (such as food safety) should also be captured, either initially or in the future, by the regulatory performance framework. The Commission considers this could improve Queensland wide regulatory practice.

5.3 How to undertake the assessment?

As discussed in Chapter 4, assessment of regulatory performance can be undertaken by the responsible department of a regulator, by the regulator itself, or by an external agency. In addition, completed assessments can also be validated by stakeholder reference groups or subject to other external validation or audit.

5.3.1 Who undertakes the assessment?

The Commission recommends that relevant regulators or departments covered by a Queensland regulatory framework undertake, initially, a self-assessment of their performance, similar to the Commonwealth framework, rather than an external body conducting the assessment.

This is considered a less-intrusive introduction to the framework, and, if the self-assessments create perverse results (such as perception of bias), different assessment methods can be considered for subsequent years if required. By having agencies complete a self-assessment, it also increases the opportunity for embedding regulatory reporting with their other reporting obligations (such as annual reports) over time.

This method should not preclude agencies engaging external consultants to undertake, or complement, the assessment on their behalf. In addition, where agencies may not have 'in-house' capabilities to undertake the assessment, the Government may consider options for cross-agency collaboration, or regulatory networks where agencies can assist each other in the process.

If the Government opted however for external assessment of performance, it could utilise various independent bodies to conduct this work. This would however, as discussed in section 4.4.3, likely require substantial additional resources in both the external agency and the regulatory agency.

5.3.2 Validation of results

External validation of the agency self-assessments may provide a degree of comfort to stakeholders that the results of the assessment are genuine. Validation will, however, increase the time required before publication and may also result in increased resources to both the agencies and the relevant validation panel (whether it is made up of stakeholders or an external agency such as the Commission).

Validation may also increase the burden on those regulators who currently undertake significant reporting (but without stakeholder or external validation) that could be viewed as ‘equivalent’ to the framework.

5.3.3 Audits and review of self-assessment

As noted in section 4.4.4, under the Commonwealth framework, the Government has the option to commission an annual external review of regulator assessments.

The Commission recommends that Queensland Treasury, or another suitable agency conduct an informal evaluation of the framework, including the self-assessments undertaken, after the first reporting year.

If some agency self-assessments appear to not have been conducted appropriately, the Government could consider whether changes need to be made in the future including whether further ‘prescriptive’ guidance, on how reports should be undertaken, could be provided to assist agencies. Alternatively, the Government could assess whether the results should be subject to further external assessment or review.

Consistent with best practice public policy principles, any regulatory performance framework implemented, should be subject to periodic evaluation. Such an evaluation could determine whether:

- the framework is viewed as an effective and useful exercise by the department, government and stakeholders, in assessing performance and is not viewed simply as a compliance process;
- progress is being made against specific outcomes (for example, improved customer satisfaction) as a result of the framework;
- the framework is imposing any undue burden on regulators in undertaking assessments, either due to resourcing or duplication reporting; and
- the report is being used by stakeholders to hold regulatory agencies accountable.

5.4 How should the assessment be reported?

The Commonwealth framework is flexible in that regulators have the discretion on how their performance is reported — either through existing reporting such as annual reports, or as a standalone report against the framework.

Self-assessment results must be externally validated under the Commonwealth framework before they are published. This may make it difficult for agencies to achieve deadlines for inclusion in annual reports. Therefore, it appears that most Commonwealth regulators have opted to release a standalone self-assessment report, which can be externally validated and published annually by 31 December.

The Commission recommends that the Queensland framework be as equally flexible— in that results should be publicly reported against KPIs, regardless of the reporting method used, by 31 December each year.

In the interests of minimising the burden on departments and regulators, the Government should consider, in consultation with agencies, whether it is feasible for agencies to utilise existing reporting obligations, such as the annual report, to undertake their self-assessment. This could also include where agencies are already reporting consistent with the framework.⁸⁶

This would likely require agencies to complete their self-assessments by the end of August each year, with results signed off by their Minister, or statutory officer, and published by 30 September. To meet such timeframes the Government would need to forgo any requirement for external validation of results before publication.

⁸⁶ That is, they are assessing the performance of their regulatory functions.

An alternative to this requirement could be a periodic, independent agency review (at intervals of between every two to five years).

The advantages and disadvantages of reporting in an annual report are provided below in Table 8.

Table 8: Advantages and disadvantages of regulatory reporting method

Reporting method	Advantages	Disadvantages
Annual Report	<ul style="list-style-type: none"> – May reduce burden on agencies by utilising existing reporting processes. 	<ul style="list-style-type: none"> – May require government to forego external validation of self-assessment results (either by stakeholders, peer reviewers or other external agency). – Timeframes to complete (internal completion by end of August).
Standalone report	<ul style="list-style-type: none"> – Provides more time for agencies to conduct self-assessment activities (deadline of 31 December). – Provides sufficient time for results to be externally validated or peer reviewed. 	<ul style="list-style-type: none"> – May require additional resources for agencies, as it may duplicate reporting efforts.

5.5 What should the indicators be?

The Commission supports the use of KPIs as per the Commonwealth framework as the use of KPIs will articulate the areas regulators should report against, and can be consistently applied across relevant agencies.

Specifically, the Commission recommends a series of KPIs below, along with further information on appropriate performance measures.

KPIs

The Commission considers the KPIs used in the Commonwealth framework should be used as a starting point in the Queensland framework as they can be considered as broadly consistent with best practice regulator behaviours and principles. The Commission recommends some amendments to increase flexibility and usefulness, without compromising the intent of the framework. Some notable changes include:

- A new KPI (KPI 6 listed in Box 19) be introduced which measures the agency's progress against the 'model of regulation' implementation plan as described in chapter 4.
- Consistent with recent recommendations from the PC on reporting on risk based compliance and enforcement, the Commission KPI 7 recognising the efforts of regulators in risk avoidance and improved regulatory outcomes is appropriate. This KPI should be optional for the agency, and used to account instances ranging from hazard elimination through to collaborative and industry relationships which have increased compliance and outcomes.⁸⁷
- Agencies be given the flexibility to amend or consolidate the KPIs⁸⁸ or introduce additional KPIs where appropriate- details of any changes to KPIs should be made in each agency's approved 'assessment plan' and approved by the relevant chief executive / Minister.

⁸⁷ Agencies should however be conscious that the benefits of such activities have not been outweighed by the regulatory cost.

⁸⁸ For example, agencies may wish to combine their reporting of KPI 6 with reporting of KPIs 3, 4 and 5, where relevant as progress against these KPIs will contribute to progress of any government adopted 'model of regulation.'

- the list of KPIs used should be reviewed annually for their appropriateness.

Box 19: Recommended KPIs under Queensland Framework

1. Regulators do not unnecessarily impede the efficient operation of regulated entities.
2. Regulators are open and transparent in their dealings with regulated entities and communication with regulated entities is clear, targeted and effective.
3. Actions undertaken by regulators are proportionate to the risk being managed.
4. Compliance and monitoring approaches are streamlined and coordinated.
5. Regulators actively contribute to the continuous improvement of regulatory frameworks.
6. Progress is being made to implement a risk based model of regulation.
7. Regulators are achieving positive outcomes for the community (optional KPI).

Source: Adapted from (Commonwealth of Australia, 2014) and (Productivity Commission, 2016).

5.5.1 Performance Measures

While the use of KPIs is important, the Commission notes that it is the performance measures selected under the KPIs, that will be the ‘tangible’ indicators of demonstrated regulator performance.

As previously noted, under the Commonwealth framework, each agency is able to tailor measures of ‘good regulatory performance’ under each KPI. The Commission considers a similar flexible approach is appropriate for Queensland as it takes into account that both individual regulators’ specific tasks and roles, and that some regulators may already be reporting against particular measures than can be incorporated into the framework.⁸⁹

Each agency, before the commencement of the first reporting period, should prepare an assessment plan which demonstrates how it intends to report, and that it is putting in place relevant internal processes to undertake the self-assessment. Specifically, each assessment plan should detail:

- what performance measures they will use to demonstrate achievement of the KPIs;
- how they will conduct their self-assessment, including how they will collect relevant information or examples throughout the year; and
- how they will utilise any stakeholder information in reporting and validating any results (if applicable).

An example of how agencies could approach implementing the framework is provided in Appendix D.

However, further guidance material should be provided to agencies once final details of the framework have been agreed.

5.5.2 When should it start?

Some agencies may be able to report on the 2017-18 financial year. However, a more feasible timeframe for implementation would be the 2018-19 financial year (as the first reporting year).

This timeframe may provide time both for the preparation of appropriate guidance materials for agencies, and for agencies to develop any performance measures and assessment plans of how the self-assessment

⁸⁹ In addition, some regulators that are already undertaking reporting could conceivably include performance measures from the recommended framework into their own reporting.

would be undertaken. Further time will also increase the changes of agencies having systems and processes in place to collect any relevant information and data they will need to complete their assessment and validate their results.

Box 20: Recommended implementation timeframe

March 2017 – October 2017	Government consideration of framework design and further consultation with agencies
October 2017	Release final details of framework and provide guidance materials to agencies
April 2018	Agencies complete their ‘audit plans’ detailing their proposed metrics under each KPI and how they will undertake their self-assessment. These plans should be approved by the relevant Minister or statutory office holder (for example chairperson) before commencement of the reporting period.
July 2018 – June 2019	First self-assessment reporting period
December 2019	First agency self-assessment reports publicly released

Note: This is based on agencies completing a ‘standalone’ assessment of performance that is externally validated by relevant reference panel. If reporting is undertaken in other mediums, such as annual reports, then this deadline is 30 September 2019.

Such a timeline may also allow any future performance or evaluation initiatives of the Government to be incorporated before commencement. The Commission also recommends that information sessions be provided to relevant agencies, before the commencement of the framework.

The Commission notes that in its response to the Council’s report, the Government advised that, subject to the Government’s consideration of the Commission’s advice, Queensland Treasury will lead coordination and implementation across all Queensland Government regulatory agencies of any framework adopted as soon as possible.

5.6 Conclusion

The Commission recommends that all Queensland regulators’ performance against best practice regulatory principles is monitored and reported as part of a systematic, consistent framework. While the Commonwealth framework is, in many ways, an example of best practice performance monitoring for regulators, the Commission considers that Queensland may, at least initially, benefit from a more flexible framework acknowledging the different resourcing capabilities available to Queensland regulators.

To retain a sense of ownership in the process regulators should be given the flexibility to report in a way that minimises any burden on them,⁹⁰ while still achieving the intent of the framework.

The Commission recommends that further consultation and coordination is undertaken by Queensland Treasury with agencies before the implementation of any framework, and that further consideration is given as to the how such a framework may interact with other government reporting obligations.

⁹⁰ Either through standalone reporting or through other reporting

6 TRAINING

The Council provided several recommendations focused on improving the regulatory process, including:

- *investigate and implement a regulatory performance framework to monitor and provide an innovative approach to improving the performance of regulatory agencies;*
- *increase the use of online platforms to enable SMEs to complete online applications for licences, permits, notifications, approvals, etc.;*
- *review time limits on regulatory approval processes with the aim of reducing timeframes of regulatory decisions; and*
- *implement targeted training programs to improve capabilities within regulatory agencies.⁹¹*

In respect of the last recommendation, the Council proposed the Government implement training programs to broaden the existing training efforts to improve capabilities of staff working with regulatory agencies on key issues such as the design and assessment of regulations, methodologies for measuring regulatory burden and strategies for improving the efficiency of regulatory processes.

The Commission has been asked by the Treasurer to provide advice to Government on the development and implementation of such training to regulatory agencies. While the Council considered the impact on three specific industries, it is envisaged any training program recommended would apply to regulatory agencies across all industries.

This chapter will discuss:

- *approaches to broadening regulatory capabilities of staff;*
- *existing training being undertaken across government on similar issues; and*
- *additional training opportunities for regulatory agencies.*

6.1 Developing capabilities

As discussed in previous chapters, the culture of an agency can be a predictor of how successful the transition to more risk based ways of regulating will be. In this respect, training can assist in guiding agencies towards this outcome and develop and maintain ‘competencies that are essential for effective regulatory administration.’⁹²

The Australian National Audit Office (ANAO) notes that regulators may require a broad range of skills and experience. The box below (Box 21), outlines a number of different approaches for agencies to utilise when developing regulatory capacity and capabilities.

⁹¹ The Council’s report recommends broadening existing training efforts to staff within regulatory agencies on both the design and assessment of regulations and improving regulatory processes.

⁹² (ANAO, 2014, p. 24).

Box 21: ANAOs recommended approaches to developing regulatory capability**Develop operating procedures or guidance**

Comprehensively documenting procedures can represent a significant overhead for a regulator, but the procedures can provide a point of reference; promote a consistent approach to regulatory administration by providing a clear decision-making framework and improve transparency of the decision-making process.

Create an information sharing environment

Sharing knowledge and experience through a community of practice or similar mechanism can be a valuable approach to developing capability. Regulators may wish to explore opportunities to establish networks internally to discuss common issues, share lessons learnt and promulgate better practice regulatory administration.

Participate in networks

Contributing to national, regional and international networks, creates opportunities for shared learning and capability building.

Focus on professional development

Better practice regulators encourage officers to maintain and develop their skills through participation in professional development programs and training, the attainment of professional qualifications and participation in continuing professional education.

Actively managing retention

Fundamental to successful regulatory administration is people with the required skills, experience and approach. These officers support the work of regulators by being professional, accountable, resilient and demonstrating a commitment to the agency's values. Succession planning is important in retaining highly performing officers and building workforce capability.

Source: (ANAO, 2014, p. 25).

6.1.1 Regulatory 'networks' and cross-agency collaboration

Networks of practitioners can assist in sharing experiences and collaborate on issues of shared interest. Some examples of networks at both a Queensland and national level are provided below (Box 22).

Box 22: Regulatory Networks

Queensland

A number of officers from Queensland Government regulators, ranging from areas such as environmental regulation through to early childhood, have organised an informal ‘regulators network’ which meets five to six times a year with a focus on discussing the operational aspects of regulation. The network is an opportunity to share ideas and successes stories, as well as discuss challenges and opportunities and build relationships with other regulators.

The network has also identified some common issues across all regulators, such as identifying the competencies required of regulatory officers and developing training materials to build those competencies.

National

The Australasian Environmental Law Enforcement and Regulators Network (AELERT) is a professional network for environmental regulators across Australia and New Zealand.

AELERT offers members a professional forum in which they can:

- share and solve common issues;
- identify best practice and consistent approaches to environmental regulation;
- access a range of industry networking opportunities; and
- collaborate to exchange resources, information, knowledge and experience.

The AELERT Secretariat also provides a range of professional development opportunities including webinars on topics of cross-jurisdictional significance, a biennial forum for senior level practitioners, jurisdiction-based networking events and a national conference.

Source: <https://www.aelert.net/about-aelert/overview> accessed 14 February 2017.

Some regulatory networks are in the process of developing a framework detailing what they consider to be ‘core regulatory capabilities’ for regulatory officers. This can include both technical and operational capabilities relevant to the industry as well as more general capabilities (such as legislative interpretation, communication and engagement) that are consistent across most regulatory areas.⁹³

6.2 Existing training

The Commission, through the Office of Best Practice Regulation (OBPR) provides advice and training to government agencies on the development of regulation, application of regulatory best practice principles and RIA. OBPR’s responsibilities include:

- advising agencies on assessing business compliance costs;
- providing training and guidance on RIA;
- promoting the government’s consultation principles and providing guidance on best practice consultation as part of policy development; and
- providing technical assistance on cost benefit analysis or alternative evaluation techniques.

⁹³ Discussions with members of the informal Queensland regulators network.

Agencies in other jurisdictions offer training to their regulators on similar topics. For example, Western Australia's 'Regulatory Gatekeeping Unit' offers targeted training to state government agencies on a range of regulatory topics, but includes training on enforcement design and practice.⁹⁴

The Department of Agriculture and Fisheries (DAF) is an example of a Queensland agency that is transitioning some of its compliance functions to a more risk based framework. As part of the transition, DAF promoted continued professional development of their regulatory officers (see Box 23).

Box 23: Department of Agriculture and Fisheries staff development

As discussed in Chapter 3, DAF has recently managed the introduction of new biosecurity legislation, with a greater emphasis on stakeholders managing their own risks under a 'general biosecurity obligation.'

Around the same time the Government commissioned an independent report on the capability of the Queensland biosecurity system, with one of the recommendations of this report that officers be trained in engagement and 'partnership leveraging.'

In response to the report, and in discussions with the Commission, DAF notes its biosecurity officers have undertaken training to ensure they are skilled in operating under a new risk based framework that engages cooperatively with stakeholders.

This includes appropriate training for authorised officers through training (based on modules in areas such as risk based decision making and interpreting legislation) and in interpreting legislation.

Source: (Department of Agriculture and Fisheries, 2016).

6.3 Recommended training opportunities

As discussed in its report, the Council recommended the Government implement training programs to improve capabilities with regulatory agencies on the design and assessment of regulations,⁹⁵ methodologies for measuring regulatory burden and strategies for improving the efficiency of regulatory processes. The results of the Commission's investigation are discussed below.

6.3.1 Design and assessment of regulations

The Commission offers training to Queensland Government departments on regulatory best practice principles and regulatory impact assessment. The Commission considers this training effectively conveys to both policy makers and regulatory officers the tools required to design regulation and assess its potential impacts. However, the training is not mandatory, generally only delivered upon request from agencies and when resourcing permits.

6.3.2 Methodologies for measuring regulatory burden

There is currently no formal Queensland Government red tape reduction 'target.'

The Government tasked the Council to work through 'real-life examples' where the Government can reduce red-tape to relieve the burden on Queensland small businesses. The Government also noted that it would continue to work with Queensland industry peak bodies (such as CCIQ) to ensure that new regulatory requirements do not impose unnecessary and unintended burdens on Queensland businesses.⁹⁶

⁹⁴ https://www.finance.wa.gov.au/cms/Economic_Reform/RIA_Program/Regulatory_Gatekeeping.aspx accessed 27 January 2017.

⁹⁵ Such as opportunities for self-regulation or deregulation

⁹⁶ <http://statements.qld.gov.au/Statement/2015/8/26/joint-statement-from-kate-jones-and-cciq> accessed 5 February 2017.

Queensland Treasury has also recently released guidance on estimating the net benefits of regulatory reforms. These guidelines outline a simple approach which agencies can adopt to quickly assess reform benefits, based on cost-benefit analysis principles.⁹⁷

The tools contained in both the guidelines, and the Commission's regulatory impact assessment training to Departments, provide assistance to agencies on how to measure regulatory burden on business.

In addition, as part of its role in providing advice and guidance to agencies on regulatory matters, the Commission is able to assist agencies with specific, tailored training depending on the regulatory matter. This includes assisting agencies with 'programmed reviews' (such as sunset reviews or PIRs), and principles based reviews into the regulation and reform of specific industries.

6.3.3 Strategies for improving the efficiency of regulatory processes

The Commission considers there is an opportunity to introduce expanded training efforts that focus more on the way regulators:

- conduct their engagement with business and the community; and
- implement risk based compliance and enforcement.

Initially, further supplementary material could be provided as part of OBPR's existing training to agencies (where they have a regulatory function) on regulatory impact analysis.

For more specific regulatory officer training, it is considered that, due to the amount of regulatory officers in Queensland (for example, WHSQ has approximately 250 inspectors⁹⁸) an online module, that regulatory agencies can complete, in contrast to a face-to-face mode of delivery may be preferred. An online approach would also be consistent with the Council's recommendation of increasing the use of online service delivery.⁹⁹

The Commission also considers the Queensland regulatory network (as noted above in Box 23) could provide a useful foundation for the development of a whole-of-government approach to identifying and building relevant core operational regulatory capabilities across Queensland regulators.

Guidance material would also be available as part of the Commission's recommend implementation plan for a model of regulation (see Appendix C). This would reduce the potential burden on both agencies and the Commission, without diminishing the quality of the training, or the messages the Commission wishes to convey.

Consistent with capabilities identified by ANAO, and further consultation with regulators and departments, the proposed additional training should cover areas including:

- risk based approaches to applying regulation;
- good decision making;
- legislative interpretation;
- stakeholder engagement and communication;
- problem solving;
- audit and inspection; and

⁹⁷ (Queensland Treasury, 2016).

⁹⁸ (Department of Justice and Attorney-General, 2014).

⁹⁹ See Recommendation 2.2 and 3.1 from the (RTRAC, 2016).

- training and assessment.

6.3.4 Training for devolved regulatory functions

In areas where regulator activities and functions have been devolved to local government (for example, Local Government's role in food safety), the Commission recommends the relevant department should ensure appropriate guidance and training is provided to the local government.¹⁰⁰

6.3.5 External training providers

The Commission recommends the Government consider whether externally provided programs to agencies may provide a more consistent overarching approach and knowledge base for all inspectors.

For instance, a number of professional qualifications are already available that may be a viable option, as demonstrated by OIR in their part in the development of the Diploma of Government (Workplace Inspection) (see Box 24).

Box 24: Queensland Office of Industrial Relations

Up until August 2014, all WHSQ inspectors required a base qualification of Certificate IV in Government (Investigation).

To bring Queensland in line with the benchmarked standards of all other jurisdictions, the OIR directed resources into developing the Diploma of Government (Workplace Inspection). OIR has now partnered with Queensland TAFE for the issue of this diploma.

At present, OIR have 60 staff enrolled in the Diploma program, with the remaining field based inspectors forecast to have completed the program by June 2017. Core units include:

- using complex workplace communication strategies to facilitate improved work health; and
- safety outcomes in business.

Source: Consultation with Office of Industrial Relations

In addition, the Queensland Ombudsman provides 'Good decisions training' to Queensland public sector staff which covers the principles of decision making and the factors that allow staff to make good decisions.¹⁰¹ The Queensland Ombudsman has also previously produced a report on the 'Tips and Traps for Regulators' which may assist agencies.¹⁰²

These existing training and educational offerings could be utilised in addressing some of the capabilities identified in sections 6.1 and 6.3.3.

6.4 Implementation

The Commission considers additional training material, focussing on the way regulators conduct their engagement with business and the community and implement risk based compliance and enforcement, could be delivered as part of its regulatory impact assessment training by July 2017.

¹⁰⁰ The Commission notes that in many areas such guidance and training is already occurring. For example, Queensland Health has provided guidelines for local government and the food industry on the legislative requirements, roles and competencies for food safety supervisors (Queensland Health, 2015c).

¹⁰¹ <https://www.ombudsman.qld.gov.au/training-and-education/training-courses/good-decisions-training> accessed 16 February 2017.

¹⁰² (Queensland Ombudsman, 2009).

The Commission look to develop online training materials (such as webinars and online regulatory diagnostic tools) during the 2017-18 financial year. Further guidance material (as noted in section 3.1.4) on risk based regulation and engagement may also assist agencies in the interim.

The Commission also recommends agencies look to undertake a periodic review of training, retention and recruitment programs, focusing on developing and maintaining these competencies, as identified by ANAO.

The Government notes, in its response to the Council report, that subject to the consideration of the Commission's advice, Queensland Treasury will work closely with the Commission to help facilitate the Commission's delivery of appropriate regulatory training programs as soon as possible.

GLOSSARY

C	
CPM	Comparative Performance monitoring
Council	Red Tape Reduction Advisory Council
COAG	Council of Australian Governments
D	
DVA	Department of Veterans' Affairs
E	
ESO	Electrical Safety Office
F	
FPMS	Financial Performance Management Standard
K	
KPI	Key Performance Indicator
NSW	New South Wales
O	
OBPR	Office of Best Practice Regulation
OCBR	Commissioner for Better Regulation
OECD	Organisation for Economic Cooperation and Development
OFT	Queensland Office of Fair Trading
OIR	Office of Industrial Relations
P	
PC	Productivity Commission
PMF	Performance management framework
R	
RIA	Regulatory Impact Analysis
RTRAC	Red Tape Reduction Advisory Council Report
S	
SME	Small to medium enterprises
SOE	Statement of expectations
W	
WHSQ	Workplace Health and Safety Queensland

APPENDIX A: TERMS OF REFERENCE

TERMS OF REFERENCE

Regulatory Review Advice – Red Tape Reduction Advisory Council Recommendations

In accordance with section 43 of the Queensland Productivity Act 2015, I hereby direct the Queensland Productivity Commission (the Commission) to provide advice in relation to specific issues identified in the Red Tape Reduction Advisory Council (RTRAC) Report, in accordance with the Terms of Reference outlined below.

Objective

The objective of the review is to investigate and report to Government in relation to three recommendations made by RTRAC in its Report provided to Government in August 2016.

Context

The Queensland Government established RTRAC to provide advice on red, green and blue tape areas of most concern to small business, and to assist the Government in providing a business environment conducive to strong, profitable and globally competitive businesses. RTRAC was tasked with reporting to the Government with recommendations to address regulatory burden issues across at least three sectors each year.

In August 2016, RTRAC provided its first Report to Government, making 14 recommendations for reducing the regulatory burden for small businesses operating in three sectors: hospitality (cafes and restaurants); manufacturing (light metals); and agriculture (fruit growing).

The Queensland Government's response to the RTRAC Report indicated the Government would seek the Commission's advice in relation to three of the recommendations, as detailed below.

Scope

The Commission should provide advice to Government in relation to the following matters:

1. Investigate and support the development of a model of regulation that promotes self-audits, particularly for low-risk activities, and streamlined record keeping and reporting to achieve regulatory objectives with a lower burden on SMEs;
2. Investigate and implement a regulatory performance framework to monitor and provide an innovative approach to improving the performance of regulatory agencies; and
3. Implement targeted training programs to improve capabilities within regulatory agencies on key issues.

In undertaking this work, the Commission should give consideration to relevant issues discussed in the RTRAC Report related to each of the three recommendations, including but not limited to the matters outlined below.

Investigate and support the development of a model of regulation that promotes self-audits, particularly for low-risk activities, and streamlined record keeping and reporting to achieve regulatory objectives with a lower burden on SMEs.

- A key focus of this review would be to consider the extent to which any such models promoting a less prescriptive risk based approach could be applied to regulators' engagement with small businesses. In particular, the work should include investigation of the Benchmark Butcher's Program and consideration of the extent to which the key elements of this approach may be applicable in

other areas of regulation more broadly, particularly in relation to Food Safety and Work Health and Safety.

- Findings and recommendations in relation to this recommendation should be developed in conjunction with, and giving consideration to, the development of the targeted training programs to be developed and implemented by the Commission as outlined below.

Investigate and implement a regulatory performance framework to monitor and provide an innovative approach to improving the performance of regulatory agencies.

- This work should include investigation of the Commonwealth Government's Regulator Performance Framework and the extent to which key elements of that framework may be applicable and beneficial in the Queensland context.
- Findings and recommendations in relation to this recommendation should be developed in conjunction with, and giving consideration to, the development of the targeted training programs to be developed and implemented by the Commission as outlined below.

Implement targeted training programs to improve capabilities within regulatory agencies on key issues.

- The development of targeted training programs and a work program to deliver them across relevant regulatory agencies should be conducted in conjunction with the Commission's responses to the other elements of this work program, as outlined above.
- Subject to the Government's consideration of the Commission's advice on this matter, it is expected the Commission will implement delivery of the training programs as a matter of priority.

Reporting

The Commission must provide a Final Report to the Treasurer by 28 February 2017.

Stakeholder engagement

In undertaking this program of work, the Commission should undertake targeted consultation with key stakeholders, including Government agencies and regulators, as required.

APPENDIX B: MODEL OF REGULATION

Proposed model	Discussion	Implementation
Regulatory impact assessment All Regulation (primary, subordinate and quasi-regulation) is developed or amended in accordance with regulatory best practice principles and is subject to regulatory impact assessment as per the Queensland Government Guide to Better Regulation.	This assessment begins early in the policy development cycle to ensure genuine consideration of options, impacts and stakeholder information before any decision is made to regulate.	Regulatory impact analysis and assessment is already implemented in Queensland through the use of the Guidelines. The Commission recommends the following changes to the Guidelines and processes would improve the use of RIA in Queensland: <ul style="list-style-type: none"> Consistent with best practice consultation, where agencies intend to release a RIS or other consultation material, stakeholders should be given advance notice that this will be released or occur. This may allow for broader consultation and responses from interested parties.
Use of regulatory impact statements All proposals with the potential for significant adverse impact or community concern are subject to further analysis and consultation through the release of a Regulatory Impact Statement.	Any exemptions to the RIS process should only be granted in exceptional circumstances, and the impacts of exempted regulatory proposals should be evaluated after an appropriate time of implementation.	These principles are already incorporated in the Guidelines.
Assessing impact of regulators actions Sufficient information is provided, as part of the regulatory impact assessment of proposed or amended regulation, on the impact of a regulators actions on industry, particularly small to medium enterprises.	This assessment begins early in the policy development cycle to ensure genuine consideration of options, impacts and stakeholder information before any decision is made to regulate.	Agencies should provide sufficient information in Preliminary Impact Assessments and RISs that clearly show (if known) the proposed regulatory actions, and their impacts, to enforce any new or amended regulation.
Drafting risk based regulation Legislation is drafted, where feasible, in a way that provides for flexibility for regulators to monitor and enforce compliance, while continuing to achieve regulatory outcomes. Clear	This can be achieved through either less prescriptive drafting, or a combination of outcomes based regulatory provisions with sufficient guidance of acceptable methods.	Agencies, when proposing new or amended regulation, should demonstrate how: <ul style="list-style-type: none"> legislation is principles based;

Proposed model	Discussion	Implementation
guidance is provided to other businesses on what it is that must be achieved.	The approach does not promote the elimination of all rules, or a lack of clarity about the circumstances with regard to compliance, but rather provide flexibility by avoiding unnecessary prescriptive rules on process, and enable business the opportunity to 'tailor' its demonstration of compliance and innovate, while still giving clear guidance to other businesses on what it is that must be achieved and ways they can achieve it.	<ul style="list-style-type: none"> differentiates between businesses based on risk; and provides sufficient flexibility for regulators to target higher risk activities.
Providing guidance on how to comply with regulation Sufficient guidance material is produced by the relevant government department and regulatory agency on ways to comply with risk based regulation.	Where regulation is drafted with consideration of outcomes, rather than prescribed rules, guidance should be provided on ways to achieve compliance.	Agencies should undertake a review of its guidance materials for small businesses to ensure the businesses are aware of their obligations. Such guidance materials should provide examples to assist in compliance.
Regulatory Review and Evaluation All regulatory instruments, including primary legislation, are regularly reviewed for continuing relevance, effectiveness and efficiency.	Regulatory review ensures that consideration is given as to whether the regulation is still the most appropriate way to address the 'problem.'	Review of regulation already occurs in Queensland, through sunset reviews of expiring regulation and post-implementation reviews of proposals (where a RIS was not undertaken). The Commission recommends that sunset reviews and PIRs should also specifically focus, where relevant, on the compliance costs of any regulatory actions— such as administration, forms and inspections, and whether they are sufficiently 'risk based.'
Review of whether regulations risk based All regulatory instruments are regularly reviewed to assess whether the level of regulatory obligation imposed is appropriate for the risk of the activity and, where possible, are outcomes based.	This will ensure that: <ul style="list-style-type: none"> low risk activities have, where possible, lower regulatory obligations (for example, less forms and paperwork) than higher risk activities; a regulator has greater flexibility on how it monitors and enforces compliance to achieve regulatory outcomes; and technological advancement or business innovation or 'tailoring' are not impeded by prescriptive rules. 	Responsible agencies should also undertake a 'stocktake' of its legislation (particularly primary legislation / Acts) to determine whether it is unnecessarily prescriptive, and inhibiting regulators in being flexible and discretionary. Where legislation is deemed to be overly prescriptive, agencies should demonstrate why such regulatory provisions are required, and whether the costs of the regulation outweigh the benefits. Amendments should be progressed to regulations to facilitate regulatory and business flexibility, which does not diminish safety or compliance, where appropriate.

Proposed model	Discussion	Implementation
Statement of expectations Ministers provide agencies that have a regulatory function (either government departments or statutory bodies under their oversight) with a statement of expectations.	Statements of expectations should detail the Ministers' expectations of how the regulator will undertake its regulatory roles - including how it will manage risk and work with industry. Regulatory agencies will provide a response to the relevant Minister detailing its strategy to meet these expectations.	The Commission recommends statements of expectations are provided by each Minister to their relevant departments and regulatory agencies before the first reporting year of the proposed regulatory performance framework (2018-19). These statements should detail the government's expectations on how risks should be managed and acknowledge that risks cannot be completely eliminated.
Risk assessment Regulators are provided with discretion to determine the level of regulatory oversight needed from business to business, based on its respective compliance history and the level of risk its activities pose. A risk assessment should be undertaken to assist in their approach. Where risks are lower, regulators should consider whether the regulatory requirements on such businesses are reduced.	This may require regulators to consider, dependent on the industry, whether reporting and administrative requirements are proportionate to risk (that is, they are not one size fits all), do not duplicate other reporting obligations, and allow self-auditing or assessment where feasible.	Agencies should undertake a risk assessment of their businesses to determine whether the level of regulation is appropriate. Guidance material is provided in Appendix C to assist regulators on implementing this recommendation. Agencies should undertake a review of inspection and paperwork coordination opportunities with other agencies, and ensure no duplication with interstate or international accreditation processes. Agencies should look for opportunities for online lodgement, where appropriate, but not penalise businesses who have not made the transition.
Compliance and enforcement strategies Regulators should publish policies on their compliance and enforcement approaches and strategies.	Such policies set community and industry expectations and demonstrate risk based approaches and transparency and accountability.	Regulators should develop and publish their compliance and enforcement policies, which detail how they approach the role and their engagement with business.
Regulatory collaboration Regulators assist businesses in facilitating compliance with regulation rather than relying solely on inspections, auditing and prosecution. Regulators should also seek partnerships and networks with industry.	Regulators effectively engaging and collaborating with stakeholders can lead to, over the longer term, improved regulatory compliance and outcomes, and make businesses more inclined to seek assistance from the regulator where required.	Guidance material is provided in Appendix C to assist regulators implement this recommendation.

Proposed model	Discussion	Implementation
	Networks within industry can share knowledge and identify industry-driven improvements which may lead to higher regulatory compliance and risk reduction.	
Enforcement decisions Regulators, when undertaking enforcement action, are transparent, accountable, proportionate, consistent and targeted in their investigations and decisions.	Decisions of a regulator are likely to be better understood and accepted when such principles are used, as it is clear how an enforcement decision has been made, including the evidence and reasons, and that it has followed appropriate processes.	Guidance material is provided in Appendix C to assist regulators implement this recommendation.
Compliance and enforcement responses Regulators consider the use of 'graduated' compliance and enforcement responses that provide businesses, depending on history of compliance or the severity of the offence, with the opportunity to remediate any risks and discuss better ways to achieve compliance first before the threat of further sanction or prosecution.	Regulators effectively engaging and collaborating with stakeholders can lead to, over the longer term, improved regulatory compliance and outcomes, and make businesses more inclined to seek assistance from the regulator where required or take responsibility.	Guidance material is provided in Appendix C to assist regulators implement this recommendation.
Training and development Regulatory officers are provided with opportunities for personal development and on-going training in the areas of stakeholder engagement and communication, problem solving, legislative interpretation, risk management, audit and inspection and training and assessment.	Training can improve regulatory culture, relationships with business and industry, lead to better regulatory enforcement decisions, and better regulatory outcomes.	Training and professional development should be provided to regulatory officers in the areas of stakeholder engagement and communication, problem solving, audit and inspection and training and assessment (please see chapter 6 for more details).
Regulator performance The performance of regulatory agencies in implementing and facilitating risk and outcomes based regulatory environments, and their engagement with stakeholders, is monitored and reported periodically.	Monitoring of performance ensures the actions of the regulator are transparent and accountable, and provide incentives for improved regulatory outcomes and regulatory performance.	The Commission recommends an evaluation of performance of regulators is conducted at regular intervals. This could be demonstrated through a 'regulatory performance framework' (see Chapters 4 and 5).

APPENDIX C: GUIDANCE ON IMPLEMENTING RISK BASED PRACTICES

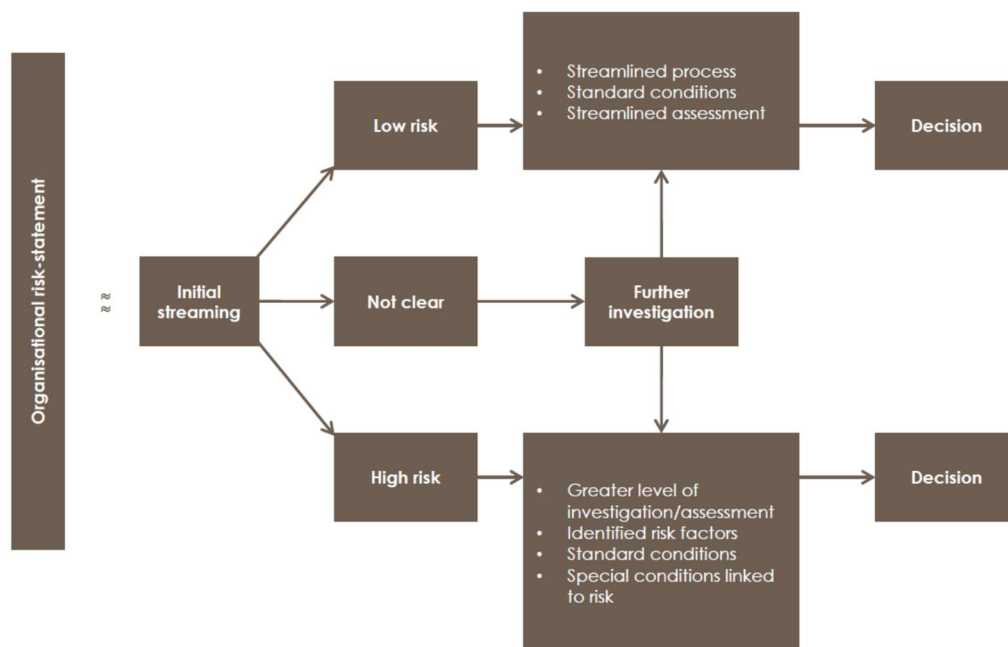
The Commission notes the transition to improved risk based implementation and administration of regulation may be challenging for departments and regulatory agencies. This may include an in depth consideration of the risks present in the respective industry they regulate, and an assessment of whether certain businesses or activities present a higher or lower risk than others, which may warrant different regulatory approaches and obligations.

To assist in this process, the Commission recommends agencies consult, in the first instance, the guidance materials published in other jurisdictions which methodically set out how regulatory policy makers and regulators can consider risk and implement new methods of monitoring, compliance and enforcement, including through the use of self-diagnostic tools. Such guides are likely to assist agencies to ensure that the regulatory burden on low risk activities is reduced and opportunities for streamlined record keeping and information requirements and self-audits are genuinely explored by regulators.

Victorian Competition and Efficiency Commission– Smart regulation: grappling with risk

In April 2015, VCEC released a guidance note and supporting paper providing information for policy makers and regulators on viewing risk from regulatory design, through to the implementation and administration of regulation.¹⁰³

This material may assist agencies in addressing some of the Commission’s recommendations as part of a model of regulation, including risk assessment and ways to streamline reporting and assessments for low risk businesses. For example, the process improvement diagram below may assist regulators to consider the level of compliance monitoring that would be required.



Source: (VCEC, 2015).

¹⁰³ (VCEC, 2015).

NSW Government- Guidance for regulators to implement outcomes and risk based regulation

In October 2016, the NSW Department of Finance, Services and Innovation released a guidance for regulators on how to implement outcomes and risk based regulation.¹⁰⁴

The guidance material provides a clear and practical framework for regulators to implement outcomes and risk based regulation through:

- a clear focus contributing to regulatory outcomes (i.e. the impact) and the resources and activities used to achieve these outcomes (i.e. the impacts efficiency);
- greater flexibility to adapt to changing circumstances;
- increased transparency through clear outcomes and accountability;
- a more informed basis for effective organisational improvement;
- more informed and meaningful discussions with regulated entities; and
- more effective customer engagement, thereby reducing unnecessary regulatory burden.¹⁰⁵

The guidance provides a framework outlining a process for regulators to implement, and provides worksheets and a diagnostic tool to assess the processes and practices associated with implementing outcomes-based reporting and a risk based approach to compliance and enforcement.

¹⁰⁴ The guidance can be accessed here: <https://www.finance.nsw.gov.au/better-regulation/quality-regulatory-services-initiative>.

¹⁰⁵ (DFSI (NSW), 2016b).

APPENDIX D: GUIDANCE ON HOW TO APPROACH THE FRAMEWORK

The Commission has provided some suggested measures that agencies may wish to report against in demonstrating compliance with the various KPIs (as presented in Chapter 5). This list, adapted from the Commonwealth Government's Regulatory Performance Framework, should not be considered exhaustive, but should provide a starting point for agencies to develop their own measures based on their relevant functions.

Where agencies are already undertaking a form of regulatory performance reporting, those agencies should be given the flexibility to incorporate such measures into their reporting where feasible, to avoid duplication.

Departments may already have information available to demonstrate their performance against these indicators. For example, evidence and data could be sourced from industry feedback (for example, existing business surveys) or from internal administrative data. Some of this evidence will be qualitative (such as whether a regulator has compliance and enforcement guidelines in place) while other information will be quantitative in nature (for example, the amount of time taken for making regulatory decisions to demonstrate whether they are 'timely').

The Government may also consider providing a template for agencies to assist their reporting.

Key Performance Indicators	Examples of performance measures	Examples of responses
Regulators do not unnecessarily impede the efficient operation of regulated entities.	<ul style="list-style-type: none"> Regulators demonstrate an understanding of the operating environment of the industry or organisation, or the circumstances of individuals and the current and emerging issues that affect the sector. Regulators take actions to minimise the potential for unintended negative impacts of regulatory activities on regulated entities or affected supplier industries and supply chains. Regulators implement continuous improvement strategies to reduce the costs of compliance for those they regulate. 	<ul style="list-style-type: none"> Regulatory agencies could note how they engage with industry collaboratively to achieve regulatory outcomes.
Regulators are open and transparent in their dealings with regulated entities and communication with regulated entities is clear, targeted and effective.	<ul style="list-style-type: none"> Regulators provide guidance and information that is up to date, clear, accessible and concise through media appropriate to the target audience. Regulators' risk based frameworks are publicly available in a format which is clear, understandable and accessible. Regulators consider the impact on regulated entities and engage with industry groups and representatives of the affected stakeholders before 	<ul style="list-style-type: none"> Regulatory agencies could note how guidance material is up to date, whether they have published compliance and enforcement strategies, and whether they have published decision-making timeframes against service standards.

Key Performance Indicators	Examples of performance measures	Examples of responses
	<p>changing policies, practices or service standards.</p> <ul style="list-style-type: none"> Regulators' decisions and advice are provided in a timely manner, clearly articulating expectations and the underlying reasons for decisions. Regulators' advice is consistent, and over time, predictable. 	
Actions undertaken by regulators are proportionate to the risk being managed.	<ul style="list-style-type: none"> Regulators apply a risk based, proportionate approach to compliance obligations, engagement and regulatory enforcement actions. Regulators' preferred approach to regulatory risk is regularly reassessed. Strategies, activities and enforcement actions are amended to reflect changing priorities that result from new and evolving regulatory threats, without diminishing regulatory certainty or impact. Regulators recognise the compliance record of regulated entities, including using earned autonomy where this is appropriate. All available and relevant data on compliance, including evidence of relevant external verification is considered. 	<ul style="list-style-type: none"> Regulatory agencies demonstrate how they have undertaken risk assessments to ensure the level of compliance monitoring is appropriate.
Compliance and monitoring approaches are streamlined and coordinated.	<ul style="list-style-type: none"> Regulators' information requests are tailored to the business or the industry and only made when necessary. Regulators' frequency of information collection is minimised and coordinated with similar processes, including those of other regulators so that, as far as possible, information is only requested once. Regulators utilise existing information to limit the reliance on requests from regulated entities and share the information amongst other regulators, where possible. Regulators base monitoring and inspection approaches on risk and, where possible, take into account the circumstances and operational needs of the regulated entity. 	<ul style="list-style-type: none"> Regulatory agencies could note how they have shared information (to reduce duplicative reporting) demonstrate how information requested from businesses has been required / useful compliance, enforcement and risk assessment.

Key Performance Indicators	Examples of performance measures	Examples of responses
Regulators actively contribute to the continuous improvement of regulatory frameworks.	<ul style="list-style-type: none"> Regulators establish cooperative and collaborative relationships with stakeholders to promote trust and improve the efficiency and effectiveness of the regulatory framework. Regulators engage stakeholders in the development of options to reduce compliance costs. This could include industry self-regulation, changes to the overarching regulatory framework, or other strategies to streamline monitoring and compliance approaches. Regulators regularly share feedback from stakeholders and performance information (including from inspections) with policy departments to improve the operation of the regulatory framework and administrative processes. 	<ul style="list-style-type: none"> Regulatory agencies could note their willingness to receive feedback from industry, and note example of how such feedback resulted in reduced compliance burden on industry, or improved regulatory outcomes.
Progress is being made to implement a risk based model of regulation.	<ul style="list-style-type: none"> Departments and regulatory agencies are implementing recommendations of the risk based model of regulation. 	<ul style="list-style-type: none"> Regulatory agencies could note how they are implementing any of the features of the recommended model of regulation, (for example, the undertaking of risk assessments to determine the appropriate level of regulation for business activities or industries).
Regulators are achieving positive outcomes for the community (optional KPI)	<ul style="list-style-type: none"> Regulators activities are driving behavioural changes. Regulators activities are leading to better regulatory and compliance outcomes. 	<ul style="list-style-type: none"> Regulatory agencies could note how their actions have had a positive impact on regulatory outcomes or on identifying and mitigating hazards.

Source: Adapted from (Commonwealth of Australia, 2014).

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