



Australian Government

Australian Financial Security Authority

AFSA REGULATOR PERFORMANCE FRAMEWORK

1 JULY 2016–30 JUNE 2017 REPORT

BACKGROUND

In order to achieve the Government's regulatory reform agenda, the Government seeks to improve the performance of regulators, including by supporting regulators to adopt consistent, risk-based approaches to administering regulation. The Government has developed a framework to measure the performance of regulators, being the regulator performance framework (the framework).

The framework aims to encourage regulators to undertake their functions with the minimum impact necessary to achieve regulatory objectives and to affect positive ongoing and lasting cultural change within regulators. The framework allows AFSA to report objectively on its efforts to administer regulation fairly, effectively and efficiently. It is also a useful tool for AFSA to identify opportunities for improvement and better target our resources for greater impact. The framework assists in highlighting where improvement of our regulatory framework could reduce compliance costs.

The framework consists of six outcomes-based key performance indicators (KPIs); performance measures to assess the achievement of the KPIs; a process for an annual externally validated self-assessment against the framework; reporting on the outcomes of the annual self-assessment; and a selective process for a targeted external review every three years. The self-assessment of AFSA's performance under this framework is externally validated by the Bankruptcy Reform Consultative Forum (BRCF).

AFSA's self-assessment of performance under the framework for 2016–17 reports on both quantitative and qualitative outcomes, and includes an appropriate narrative, where relevant, for each of the six KPIs. The assessment reports upon particular relevant activities and, as appropriate, may include summaries of stakeholder engagement, case studies and examples of activity relevant to each of the six KPIs. The self-assessment against the performance measures for each KPI is detailed below.

This self-assessment report was provided to the BRCF for validation in September 2017. All feedback received was positive.

EXECUTIVE SUMMARY

KPI 1

Regulators do not unnecessarily impede the efficient operation of regulated entities

Commentary:

- AFSA undertakes regular liaison activities with key stakeholders.
- AFSA's insolvency practitioner compliance programme (compliance programme), personal insolvency regulator (PIR), personal insolvency practitioner compliance report (compliance report), annual report and regulator performance framework, are all used to communicate key messages to regulated entities.
- Working with other Commonwealth agencies, including the Australian Taxation Office (ATO) and the Commonwealth Department of Public Prosecutions (CDPP) to provide relevant information to practitioners, including via the PIR.
- Efficiency savings for regulated entities reported to the Attorney-General's Department (AGD).

Status: Achieved

KPI 2

Communication with regulated entities is clear, targeted and effective

Commentary:

- All web based guidance materials have been updated for *Insolvency Law Reform Act 2016* (ILRA) tranche 1 amendments.
- Podcasts, YouTube videos, information sheets and PIR articles released to provide guidance to practitioners.
- AFSA's new website has released improved feedback channels to improve useability.
- Ongoing formal and informal liaison with stakeholders, including the Australian Restructuring Insolvency and Turnaround Association (ARITA), Personal Insolvency Professionals Association (PIPA) and financial counsellors.

Status: Achieved

KPI 3**Actions undertaken by regulators are proportionate to the regulatory risk being managed****Commentary:**

- Risk-based approach adopted and documented in compliance programme.
- Inspector-General practice statement (IGPS) 1 regulatory framework reviewed and updated. Stakeholders consulted during review. New framework enhances risk-based approach and documents AFSA's plan (currently in progress) to transition to an increasingly sophisticated risk profiling system.
- Consultation with professional associations on industry trends and issues that influence regulatory action.
- Debtor, creditor and bankrupt survey, used to inform subsequent regulatory focus.

Status: Achieved**KPI 4****Compliance and monitoring approaches are streamlined and coordinated****Commentary:**

- Stakeholder liaison meetings held with ARITA, PIPA, Australian Securities and Investments Commission (ASIC) and ATO on a regular basis. Compliance and monitoring approaches are discussed at these meetings.
- New memorandums of understanding (MOUs) were entered into with the Australian Electoral Commission (AEC), Australian Federal Police (AFP) and ARITA.
- Joint information releases with ASIC and ARITA.

Status: Achieved**KPI 5****AFSA is open and transparent in our dealings with regulated entities****Commentary:**

- Regular engagement with ARITA, PIPA, Insolvency Law Reform Committee (ILRC), CDPP, ASIC and International Association of Insolvency Regulators (IAIR) occurred between July 2016 and June 2017.
- AFSA published its compliance report for 2015–2016 in December 2016.
- Published key outcomes and discussion points from stakeholder liaison meetings.
- Inspector-General in Bankruptcy (I-G) visits to Tasmania and Far North Queensland included staff information sessions for regulated entities.

Status: Achieved**KPI 6****AFSA actively contributes to the continuous improvement of regulatory frameworks****Commentary:**

- IGPS 1 regulatory framework was reviewed and updated in July 2016 after stakeholder consultation. Next due for review in July 2017.
- AFSA is continuing to work closely with ASIC and professional associations to assist with the alignment of regulatory processes as a result of the *Insolvency Law Reform Act 2016*. This will contribute to a consistent and cohesive regulatory framework for insolvencies, both corporate and personal.
- Liaison with AGD regarding proposed law reform, providing insight on issues from industry trends.

Status: Achieved

KPI 1

Regulators do not unnecessarily impede the efficient operation of regulated entities

PERFORMANCE MEASURES

- (i) AFSA's risk-based compliance programme is developed by applying appropriate regulatory principles and using available data and intelligence, including taking into account consultation with the profession prior to the annual release of the programme.
- (ii) AFSA raises awareness of regulatory activity and known compliance risks through targeted delivery of information, including through publishing the results of the compliance programme and material outcomes.
- (iii) Complaints about regulatory activity are investigated and responded to in accordance with AFSA's complaints and compliments framework.

SELF ASSESSMENT AND SUPPORTING EVIDENCE

AFSA considers that it has met this KPI for the 2016–17 financial year. This assessment is based on the following factors:

- (i) AFSA's 2016–17 compliance programme was released publicly on 29 July 2016. Articles in the July and September PIR highlighted its release. In developing the programme, AFSA adopted a risk-based approach and used available data and intelligence, including that obtained during regular meetings with the profession. AFSA consulted with professional associations prior to release of the programme.
- (ii) AFSA raised awareness of regulatory activity and compliance risks via the updated regulatory framework—IGPS 1 (July 2016), the PIR (July, September and December 2016, March 2017), media releases on enforcement outcomes, four website notices for compliance outcomes and a targeted communication to practitioners (refer to case study in KPI 6).
- (iii) AFSA's complaints handling procedure is available on the AFSA website. Our service standard is to aim to resolve complaints within 14 days. Complex complaints are resolved as soon as possible and AFSA communicates with complainants to provide regular updates. The average time taken to deal with complaints across AFSA was 18 days for the period—although slightly outside AFSA's service standard aim of 14 days, we believe this is symptomatic of the complexity of some complaints received.

Other:

AFSA's deregulatory reports to the AGD from 1 July 2016–30 June 2017 outlined \$302,000 in regulatory savings. Refer to case study.



Case study:

A mandatory obligation under the *Bankruptcy Act 1966* requires registered trustees to refer all potential offences under the Act by a bankrupt to AFSA. AFSA implemented a concise offence referral form to reduce the time required by regulated entities to complete offence referrals. A full referral for these matters is only required once AFSA reviews the matter and requests a full referral. The time taken to complete these is now captured and has shown a reduction in time required to do a short form referral versus a full referral. Additionally, AFSA's risk-based inspection programme was further refined, reducing the number of physical inspections. The total efficiency saving for regulated entities was estimated at \$302,000.

In addition, AFSA has continued to develop its risk assessment process for regulated entities and has materially reduced its planned physical inspection numbers for the 2017–18 financial year. This will result in further efficiency savings for regulated entities over the coming year.

PERFORMANCE MEASURES

- (i) All guidance materials¹ for regulated practitioners will be monitored to ensure the provision of relevant and current information in the most accessible format for stakeholders.
- (ii) Consultation periods actively promoted, feedback considered and communicated by AFSA with relevant professional bodies prior to any regulatory changes.
- (iii) KPIs for completion of complaints and Inspector-General reviews support timely, clear and consistent decisions and advice.

SELF ASSESSMENT AND SUPPORTING EVIDENCE

AFSA considers that it has met this KPI for the 2016–17 financial year. This assessment is based on the following factors:

- (i) The commencement of the first tranche of the ILRA on 1 March 2017 resulted in the update and release of IGPS1, IGPG1, IGPS15, IGPS16, IGPS11, IGPS12, IGPD13, IGPS2, IGPS13, IGPD11, IGPD6, IGPD9, IGPD14 and IGPD22. The new AFSA website was released in November 2016. Ongoing consultation with stakeholders, and regulated entities in particular, has been undertaken to improve navigation and accessibility of information for users. An enhanced search function has been made available on the website to enable easier searching of articles in the PIR (see case study).
- (ii) AFSA uses a documented consultative approach to regulatory changes. Feedback from relevant stakeholders is sought and considered prior to finalisation of any material changes and AFSA provides a response to feedback provided. Regular liaison meetings with professional associations are also utilised for this purpose.
- (iii) The KPIs for complaints and I-G reviews are time-based and monitor completion of activities. The KPI for Ombudsman comments supports quality decisions. These KPIs are published in our corporate plan and reported in our annual report. Exceptions are investigated to support the identification of improvement opportunities. A KPI for decisions overturned by the Administrative Appeals Tribunal (AAT) is also monitored internally. No exceptions occurred during July 2016–June 2017.

Other:

Decision letters for I-G reviews and determinations have been reviewed and a plain English approach has been adopted to ensure clarity. New national templates have been developed and are now in use to achieve consistency in communication.



Case study:

Google analytics indicates that there have been 22,915 views of the I-G practice documents for the 1 July 2016–30 June 2017 period, compared to 22,694 during 2015–16. In the same period there have been 313 views of the 2016–17 compliance programme, 297 views of the compliance report and 431 views of the guidance videos.

AFSA has indexed the last four years of PIR newsletter articles in a searchable format on our new website so stakeholders and others are able to easily access archived materials. The new index allows searching on article keywords, sorting by month, volume, issue of A–Z articles and by ascending or descending order.

¹ These include Inspector-General practice statements, practice directions and practice guidelines.

KPI 3

Actions undertaken by regulators are proportionate to the regulatory risk being managed

PERFORMANCE MEASURES

- (i) AFSA's risk-based compliance programme is developed applying appropriate regulatory principles and using available data and intelligence, including taking into account consultation with the profession prior to the annual release of the programme.
- (ii) AFSA raises awareness of regulatory activity and known compliance risks through targeted delivery of information, including through publishing the results of the compliance programme and of material outcomes.
- (iii) AFSA maintains a risk-based process prior to initiating investigation about regulated practitioners.

SELF ASSESSMENT AND SUPPORTING EVIDENCE

AFSA considers it has met this KPI for the 2016–17 financial year. This assessment is based on the following factors:

- (i) Refer to KPI 1 (i).
- (ii) Refer to KPI 1 (ii). The three outcomes from the targeted projects in the 2015–16 compliance programme were reported via AFSA website notices in August 2016. The three strategic focus areas for 2016–17 were included in the compliance programme, which was published on 29 July 2016.
- (iii) The risk-based process and regulatory framework are outlined in IGPS1, which was updated in July 2016 after feedback from practitioner associations was sought. Internal processes and guidance reflect and adopt that risk-based approach enabling AFSA's resources to focus on areas of most potential harm.



Case study:

AFSA is sourcing a greater range of data to assist in developing an increasingly sophisticated risk profiling system for regulated entities.

Targeted communication methods were used to reinforce to a selected group of registered trustees the need to engage law firms at competitive rates to comply with their fiduciary duties. This targeted action resulted in one trustee refunding funds to a bankrupt estate.

AFSA undertook a debtor/creditor survey of interactions with regulated entities during 2016–17 as a targeted compliance project. The results are being used to develop a proportionate response to focus on the key issues identified in the survey.

PERFORMANCE MEASURES

- (i) AFSA's risk-based compliance programme is developed applying appropriate regulatory principles and using available data and intelligence, including taking into account consultation with the profession prior to the annual release of the programme.
- (ii) Stakeholder meetings, including with relevant professional associations, ASIC as key co-regulator and international regulators (including through the IAIR), occur regularly throughout the year to inform updates to the risk-based compliance programme.
- (iii) Professional associations are provided with various channels to provide feedback about AFSA's regulatory processes.
- (iv) AFSA maintains and participates in appropriate information sharing arrangements and relationships with relevant entities to enhance regulatory intelligence and coordinate regulatory activity where possible.

SELF ASSESSMENT AND SUPPORTING EVIDENCE

AFSA considers it has met this KPI for the 2016–17 financial year. This assessment is based on the following factors:

- (i) Refer to KPI 3 (i).
- (ii) Regular meetings with ARITA, PIPA, ASIC and ATO occurred between July 2016 and June 2017. Meetings were also held with AGD to discuss potential law reform. AFSA's Chief Executive (and Inspector-General in Bankruptcy) attended and presented at the annual IAIR conference and AGM in Singapore on 5–8 September 2016. The annual forum for debt agreement administrators was jointly held with PIPA in October 2016. Regular meetings were held with the CDPP in October 2016 and April 2017. Information sessions with the I-G, and Far North Queensland practitioners and financial counsellors were held in April 2017. Information sessions with the I-G and Tasmanian practitioners were held in September 2016.
- (iii) Communication channels available to professional associations and practitioners included: industry liaison meetings; I-G and practitioner participation in working groups for the ILRA; contribution of articles to the PIR; and provision of direct feedback on the compliance programme. The annual forum for debt agreement administrators was an additional channel to receive feedback and provide regulatory information from and to PIPA and its members in October 2016.
- (iv) MOUs are in place with regulatory and relevant stakeholders including ASIC, the ATO, and the Department of Human Services (DHS). New MOUs were entered into with the AEC on 1 July 2016, and ARITA on 20 February 2017. These all include information sharing arrangements. AFSA has also participated in the Interagency Regulators Forum and the APSC Community of Practice Forum. AFSA is a regular participant in meetings of the ILRC where implementation of legislative amendments to the Bankruptcy Act 1966 via the ILRA have been a regular topic.



Case study:

AFSA released a jointly prepared information guide with ASIC and ARITA relating to corporate and personal insolvency in April 2017.

AFSA, ASIC and ARITA have collaborated on AFSA's development of a video on untrustworthy advisors for public release in May 2017. This focuses on a commonly viewed risk area of advisors providing inappropriate advice to vulnerable individuals in promoting debt agreements and providing other pre-insolvency advice.

AFSA released the latest in its podcast series focused on advertising by debt agreement administrators in April 2017.

KPI 5

AFSA is open and transparent in our dealings with regulated entities

PERFORMANCE MEASURES

- (i) IGPS1 regulatory framework is reviewed and updated at least annually. It is published on the AFSA website in accessible format.
- (ii) Practitioners provided with various channels to provide feedback about AFSA's regulatory practice. Feedback obtained is reported in the annual compliance report.
- (iii) AFSA's annual compliance report is publicly available and includes results for all regulatory performance measures.

SELF ASSESSMENT AND SUPPORTING EVIDENCE

AFSA considers it has met this KPI for the 2016–17 financial year. That assessment is based on the following factors:

- (i) IGPS 1 regulatory framework was last updated in July 2016 after consulting with the professional associations. It is available on the AFSA website in HTML and PDF format. It will be reviewed again in the second half of 2017.
- (ii) Refer to KPI 4 (iii). AFSA's compliance report for 2015–16, including a summary of feedback received, was published in December 2016. Feedback about AFSA's regulatory practice is sought from PIPA and ARITA as a standing agenda item at liaison meetings. There is also an online portal on the AFSA website for practitioners to provide feedback about AFSA's services. The Inspector-General in Bankruptcy visits to Tasmania and Far North Queensland took place in September 2016 and April 2017 respectively; these included delivery of information sessions for staff of regulated entities.
- (iii) AFSA's 2015–16 compliance report was published on AFSA's website in December 2016. All regulatory performance measures were included, in addition to the key outcomes and feedback from stakeholder liaison activities.



Case study:

In July 2016, AFSA responded to complaints received from practitioners about unsolicited emails received from a recruitment firm inviting expressions of interest from registered trustees who wanted to 'scale back' their hours and work part-time as a trustee on behalf of their client. An email was sent from AFSA to all registered trustees raising our concerns with the ability of a trustee to fully comply with their duties as a trustee in such an arrangement. The email also raised our concerns about the impact of such an arrangement on the credibility of the profession. AFSA contacted ARITA to discuss this offer, and ARITA shared our concerns with the suggested arrangement. This email reinforced AFSA's expectations of the insolvency profession in an open and transparent manner.

KPI 6

AFSA actively contributes to the continuous improvement of regulatory frameworks

PERFORMANCE MEASURES

- (i) Stakeholder meetings, including with the AGD, relevant professional associations, and ASIC (as key co-regulator) occur regularly throughout the year to inform updates to the risk-based compliance programme.
- (ii) Feedback is provided to the BRCF and professional associations at least annually on key regulatory outcomes and issues.
- (iii) Practitioners are provided with various channels to provide feedback to improve regulatory practice and procedure. Feedback is used to inform AFSA's regulatory practice and procedure amendments, with stakeholders informed about improvements made in response to feedback received.

SELF ASSESSMENT AND SUPPORTING EVIDENCE

AFSA considers it has met this KPI for the 2016–17 financial year. That assessment is based on the following factors:

- (i) Refer to KPI 4 (ii). Meetings with the AGD on potential law reform. Participation in the IAIR Conference took place in September 2016.
- (ii) Refer to KPI 4 (iii). The PIR is published quarterly and is used to communicate with practitioners on feedback received, and key regulatory outcomes and issues. The most recent publication date was March 2017.
- (iii) Refer to KPI 1 Other, KPI 4 (iii) and KPI 5 (ii).



Case study:

Regular liaison has occurred with the AGD regarding proposals for law reform relevant to the personal insolvency system. Feedback received from regulated entities is communicated to the AGD during these interactions.