



Australian Government

Australian Financial Security Authority

AFSA REGULATOR PERFORMANCE FRAMEWORK

1 JULY 2015 – 30 JUNE 2016 REPORT

BACKGROUND

In order to achieve the Government's goal of reducing the burden of regulation, 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 effect 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 will also be a useful tool for AFSA to identify opportunities for improvement and better target our resources for greater impact. The Framework will assist in highlighting where improvement of our regulatory framework could reduce compliance costs.

The Framework comprises 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 targeted external review every three years. The self-assessment of AFSA's performance under this Framework will be externally validated by the Bankruptcy Reform Consultative Forum (BRCF). The results of AFSA's self-assessment and BRCF's external validation will be published in the final report.

AFSA's self-assessment of performance under the Framework for 2015-16 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.

EXECUTIVE SUMMARY

KPI 1

Regulators do not unnecessarily impede the efficient operation of regulated entities

Commentary:

- AFSA's Insolvency practitioner compliance program (Compliance Program), Personal insolvency regulator (PIR), Personal insolvency practitioner compliance report (Compliance Report), Annual Report, Regulator Performance Framework – all used to communicate key messages to regulated entities.
- Deregulatory measures resulted in savings of \$3,666,866 over the financial year.
- Pre enforcement referral (PRE) process introduced to reduce regulatory burden on practitioners.

Status: Achieved

KPI 2

Communication with regulated entities is clear, targeted and effective

Commentary:

- All web based guidance materials have been reviewed to ensure accessibility.
- Survey undertaken with all practitioners to identify improvement opportunities in efficiency and effectiveness.
- Podcasts and PIR articles released based on feedback from practitioners during stakeholder survey.

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 Program
- 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 move to a more sophisticated risk profiling system.

Status: Achieved

KPI 4

Compliance and monitoring approaches are streamlined and coordinated

Commentary:

- The Compliance Program released and used to communicate targeted approach to compliance. Stakeholders consulted prior to release.
- Stakeholder liaison meetings held with Australian Restructuring and Insolvency Turnaround Association (ARITA), Personal Insolvency Professionals Association (PIPA), Australian Securities and Investments Commission (ASIC) and Australian Taxation Office (ATO) on a regular basis. Compliance and monitoring approaches are discussed during these meetings. MOUs are in place with ASIC and the ATO.

Status: Achieved

KPI 5

AFSA is open and transparent in our dealings with regulated entities

Commentary:

- IGPS1 Regulatory Framework is available on the AFSA website in html and PDF format.
- Ongoing engagement with ARITA, PIPA, Insolvency Law Reform Committee (ILRC), ASIC and International Association of Insolvency Regulators (IAIR) occurred between July 2015 and June 2016.

Status: Achieved

KPI 6

AFSA actively contributes to the continuous improvement of regulatory frameworks

Commentary:

- IGPS 1 Regulatory Framework was reviewed and updated in 2016 after stakeholder consultation.
- AFSA is working closely with ASIC 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.

Status: Achieved

This self assessment was provided to the Bankruptcy Reform Consultative Forum for validation in September 2016. All feedback received was positive.

KPI 1

Regulators do not unnecessarily impede the efficient operation of regulated entities

PERFORMANCE MEASURES

- (i) AFSA's risk based Compliance Program is developed by applying appropriate regulatory principles and using available data and intelligence, including taking into account consultation with the profession prior to the programs annual public release.
- (ii) AFSA raises awareness of regulatory activity and known compliance risks through targeted delivery of information, including through publishing the results of the Compliance Program 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 2015-16 financial year. This assessment is based on the following factors:

- (i) AFSA's Compliance Program was released publicly on 13 August 2015. In developing the program, AFSA used available data and intelligence, including that obtained during regular meetings with the profession. Statistical sampling was validated. Practitioner feedback was obtained through a survey conducted in March 2015 and AFSA has consulted with professional associations prior to releasing the program in 2016
- (ii) AFSA raised awareness of regulatory activity and compliance risks via the PIR (October 2015, December 2015 and April 2016), the Regulatory Performance Framework (July 2015), AFSA's 2014-15 Annual Report, the annual Compliance Report (December 2015), media releases on enforcement outcomes and four guidance videos (podcasts)
- (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 is 22 days. Regulation complaints average is 48 days (due to the complexity of these complaints) and Enforcement is nine days. Complainants have been kept regularly updated on the progress of their complaint.

Other:

1. AFSA's deregulatory reports to AGD from 1 July 2015 – 30 June 2016 outlined \$3,666,866 in regulatory savings (from annual estate return improvements and inspection program).
2. The introduction of a pre-referral enquiries (PRE) process, to reduce time required by practitioners in referring offences has resulted in positive feedback via the AFSA compliments register.
3. AFSA conducted an internal review of regulation and enforcement, focussed on increasing efficiency and effectiveness of regulatory activities. As a result externally used forms have been reviewed and improvements identified. Quick fixes are in place with remaining improvements to be implemented by 31 December 2016.



Case study:

The introduction of the pre-referral enquiry form and process has led to a marked reduction in the regulatory burden on practitioners, in assessing and preparing referrals pursuant to their obligation under s19 of the Bankruptcy Act.

The introduction of the new online form was supported by a podcast to provide information to practitioners on how it should be used.

The statistics support a material reduction in regulatory burden. The total number of PREs received from 1 July 2015 to 30 June 2016 was 775.

Based on a preliminary assessment of the information provided in the PRE, 68.5 per cent (or 531) did not require a detailed offence referral from the practitioner. This has reduced the time/effort for practitioners in preparing a full offence referral, when it is likely that it won't be accepted for investigation and/or prosecution.

KPI 2

Communication with regulated entities is clear, targeted and effective

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 2015-16 financial year. This assessment is based on the following factors:

- (i) all web based guidance is issued in HTML format for accessibility. Rolling review dates have been established to ensure currency of information. Four practitioner guidance videos (podcasts) have been released. Policies and procedures about rights of review are published via the 'Can I Appeal' page on AFSA's website. This product is available in multiple languages. The AFSA website is currently under a full review. Consultation with stakeholders has been undertaken to improve navigation and accessibility of information.
- (ii) AFSA uses a tailored consultative approach to regulatory changes. Feedback from relevant stakeholders is sought and considered prior to finalisation of any changes and AFSA provides a response to feedback provided. AFSA's process has been documented in a new procedure to ensure consistency.
- (iii) the KPIs for complaints and Inspector-General (IG) reviews are time-based and monitor completion of activities. These KPIs are published in our Corporate Plan and reported in our Annual Report. Exceptions are investigated to support the identification of improvement opportunities. Procedures for complaints and IG reviews have been standardised and released internally. The KPIs for decisions overturned by the Administrative Appeals Tribunal (AAT) are also monitored. One IG decision was set aside by the AAT in 2015-16. (An objection to discharge was cancelled by consent of all parties after information was provided by the bankrupt). There have been no justified Ombudsman complaints this year.



Case study:

The 2015 practitioner survey confirmed a high level of satisfaction with the usefulness of AFSA's guidance, (83 per cent indicated our guidance was appropriate or good).

Noting there are 289 insolvency practitioners, a review of Google analytics indicates that there were 22694 hits on 33 practice statements (or an average of 687 per practice statement) on the AFSA website for the 1 July 2015 – 30 June 2016 period.

There were also 1238 hits on the Compliance Program, 287 hits on the Compliance Report and 1726 hits on the guidance videos.

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 Program is developed applying appropriate regulatory principles and using available data and intelligence, including taking into account consultation with the profession prior to the programs annual public release.
- (ii) AFSA raises awareness of regulatory activity and known compliance risks through targeted delivery of information, including through publishing the results of the Compliance Program 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 2015-16 financial year. This assessment is based on the following factors:

- (i) refer to KPI 1 (i)
- (ii) refer to KPI 1 (ii). AFSA's process documents have been updated to require consideration of a media release once regulatory or enforcement outcomes are achieved. The results of the 2014-15 Compliance Program were reported in AFSA's Compliance Report in December 2015. A new tip off procedure for stakeholders has been implemented and published on the AFSA website.
- (iii) the risk based process is outlined in Inspector-General Practice Statement (IGPS) 1 and other practice and procedural statements. As an example, the procedure for proactive monitoring contains a step for a risk based assessment before committing resources to a full review. The risk process and regulatory framework have been reviewed and a new internal Regulatory Compliance Framework has been developed. The IGPS 1 has been updated after feedback from practitioner associations was sought. The current risk assessment process has been automated and will be enhanced to capture a greater range of data and intelligence to assess risk, by the end of 2016-17.



Case study:

AFSA has increased its focus on risk in the compliance program. Implementing a risk based approach, it has reduced inspection numbers to facilitate targeted inspections and when available and appropriate, is electing to use remote access to inspect suitable practitioners.

Targeted compliance projects have also been utilised for some risk areas where a selection of, or sometimes all practitioners, are contacted and asked to provide information by email as a compliance information request.

This targeted process has focussed on identified risk areas and has sought to reduce the impact on regulated entities.

These target areas are initially communicated via professional associations, and then in the published annual Compliance Program.

PERFORMANCE MEASURES

- (i) AFSA's risk based Compliance Program is developed applying appropriate regulatory principles and using available data and intelligence, including taking into account consultation with the profession prior to the programs annual public release.
- (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 Program.
- (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 2015-16 financial year. This assessment is based on the following factors:

- (i) AFSA's Compliance Program was released publicly on 13 August 2015. Available data and intelligence, including that obtained during regular meetings with the profession—and validation of statistical sampling, was incorporated during development of the program. Earlier feedback was also obtained through a practitioner survey conducted in March 2015. A new consultation process has been developed for 2016 to formally seek feedback from professional associations prior to releasing the program. This is now being adopted.
- (ii) meetings with ARITA, PIPA, AGD, ILRC, ASIC and the IAIR occurred between July 2015 and June 2016. Stakeholder meetings were also held with the AFP, the CDPP, and QUT (which undertakes academic research of insolvency practitioners).
- (iii) an online stakeholder survey of practitioners was undertaken in March 2015 to seek input into regulatory processes. The survey was used to inform focus group meetings held with practitioners and the professional associations in October - November 2015. High level results were shared with ASIC and ARITA. The review progressed in December 2015 with AGD. Other communication channels included industry liaison meetings; regulatory surveys, entry meetings during inspections, podcasts, the PIR, Compliance Program and Compliance Report and enforcement information sessions. The Compliance Report provides detailed information on trends and results of inspections.
- (iv) Memorandums of Understanding (MOUs) are in place with regulatory and relevant stakeholders including ASIC, the ATO, Department of Human Services (DHS), and the New Zealand Insolvency & Trustee Service (NZITS). These include information sharing arrangements. AFSA has also commenced participation in the Interagency Regulators Forum.

Other: Refer to KPI 1 Other 3



Case study:

AFSA undertook a survey of regulated entities during early 2015 to seek input into regulatory reform and regulatory practice improvements.

This was followed up with focussed sessions at the Registered Debt Agreement Administrators (RDAA) forum and four focus group meetings with registered trustees across Australia in late 2015. Representatives from AGD and ASIC also attended these meetings.

Collated feedback from the meetings and forum was communicated to relevant agencies (i.e. AGD) and other areas of the business (i.e. Official Trustee (OT) or Official Receiver (OR)) to ensure that recommendations for improvement can be progressed appropriately.

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 2015-16 financial year. That assessment is based on the following factors:

- (i) IGPS 1 was last reviewed in 2016. Prior to changes being finalised it was shared with ARITA and PIPA as part of the consultation process. It is available on the AFSA website in HTML and PDF format.
- (ii) refer to KPI 4 (iii). AFSA's Compliance Report, including a summary of feedback received, was published in December 2015. The September 2015 survey conducted to test practitioners' experience with AER Online, showed that 74 per cent were satisfied/very satisfied with the lodgement process and 70 per cent said it was quicker to complete compared to previous years. Focus group meetings were held in October/November 2015 to receive further feedback on AFSA's regulatory practice. Feedback about AFSA's regulatory practice is also sought from PIPA and ARITA as a standing agenda item at liaison meetings. There is also an on-line portal on the AFSA website for practitioners to provide feedback about AFSA's services.
- (iii) AFSA's Compliance Report was published on AFSA's website in December 2015. All regulatory performance measures were included.



Case study:

AFSA has used focus groups and practitioner surveys in its review of regulation.

Recommendations from this review are being implemented and potential law reform has been identified.

PERFORMANCE MEASURES

- (i) Stakeholder meetings, including with Attorney-General's Department (AGD), 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 Program.
- (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 2015-16 financial year. That assessment is based on the following factors:

- (i) refer to KPI 4 (ii)
- (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 2016 (released in April). June newsletter was released in July 2016 due to caretaker conventions in place.
- (iii) refer to KPI 1 Other, KPI 4 (iii) and KPI 5 (ii). AGD and ASIC were involved in regulatory focus group meetings with practitioners over October/November 2015. Professional associations are provided with high level feedback on key issues raised. Practitioners provided with the website channel to electronically provide feedback, complaints and compliments about AFSA. IGPS1 was reviewed in 2016 and re-released after stakeholder consultation. It updates AFSA's approach to risk based regulation and other best practice regulatory practices. An internally facing regulatory compliance framework has been drafted, reviewed by the internal auditors and approved by the National Management Board. It is aligned to IGPS 1.



Case study:

AFSA shared its registration and deregistration procedural documents with ASIC 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.