Statement of Expectations Framework for Regulators

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* + 1. Context for the Statement of Expectations Framework

The Government’s objective is for the Statement of Expectations (SOE) Framework to promote greater efficiency and effectiveness in the administration and enforcement of regulation in the context of facilitating increased business investment and economic activity in Victoria.

The SOE objective is to establish clear expectations of regulator performance and improvement between responsible Ministers and regulators. This will improve regulator outcomes and reduce costs on regulated parties.

This policy forms part of the Government’s program to reduce red tape affecting businesses, not‑for‑profit organisations, government service providers and households.

Reforms to the regulatory framework can be grouped under two broad categories. The first involves ensuring the flow of new regulation and the stock of existing regulation are managed effectively to achieve the objectives of better regulation and reducing regulatory burden. The *Victorian Guide to Regulation*, which guides the development and evaluation of new regulation, the Red Tape Reduction Program and initiatives proposed by the Red Tape Commissioner fall into this category. The second category of regulatory reform involves embedding operational excellence by regulators in the task of administering and enforcing regulation, and in improving their performance. The SOE Framework is a part of this category of reforms. All of these reforms contribute to the delivery of better economic and social outcomes for Victoria.

The SOE Framework is aimed at improving performance along the regulatory cycle (below). It improves design and development by requiring regulators to self-assess their current performance against the key elements of good regulatory practice to establish a ‘baseline’ that can be improved upon. This allows for the creation of Good Regulatory Practice Plans that assist in the implementation, administration and enforcement of regulation. Finally, evaluation of regulators’ performance by departments (which is mandatory under this Framework) ensures that post-implementation evaluation is meaningful and can be used to further improve the design and development of the next SOE.

Stylised regulatory life cycle

Design/
development (including impact assessment)

Implementation

Administration and enforcement

Post-implementation evaluation

Source: Victorian Competition and Efficiency Commission Inquiry into Victoria’s regulatory framework, *Strengthening Foundations for the Next Decade, Final Report April 2011*, p. xxix.

* + 1. Overview of the SOE Framework

Establishing clear expectations of regulator performance across critical elements of good regulatory practice can reduce the costs faced by Victorians and Victorian businesses. For this reason, the Government is issuing Ministerial SOEs to all Victorian business regulators.

The SOE Framework applies to all Victorian business regulators on an ongoing basis. Under the SOE Framework, regulators will be issued a new SOE every two years. The SOE Framework follows Stage One SOEs (2013-14), Stage Two SOEs (2014-16) and the reissue of Stage Two SOEs (2016-17).

The main features of the SOE Framework are:

* + - SOEs will be issued for a period of two years;
		- departmental evaluation of regulatory performance is mandatory (section 3.2.2);
		- there are three mandatory elements of good regulatory practice (timeliness, risk-based regulation and compliance-related assistance and advice) (section 4.1), one recommended element of good regulatory practice (incentive‑based regulation) (section 4.2) and other suggested elements of good regulatory practice (section 4.3);
		- publication of the SOE letter and the regulator response to the Minister is mandatory; and
		- public reporting against performance targets in the SOE is mandatory.
		1. SOE Framework policy and process
			1. Who does the SOE Framework apply to?

The SOE Framework applies to all Victorian business regulators, as listed in Attachment 1[[1]](#footnote-1). A business regulator is a State Government entity (either independent or within a department) that derives, from primary or subordinate legislation, one or more of the following powers in relation to businesses and occupations:

* + - inspection;
		- regulatory advice to a third party;
		- licensing;
		- accreditation; and
		- standards monitoring and enforcement.[[2]](#footnote-2)

SOEs are not intended to cover regulation of non‑business activities undertaken by individuals.

The regulatory activities of some bodies that fit this definition of a business regulator are not their sole or primary activities. In these cases, the scope of SOEs should be limited to regulatory functions.

Some regulators perform functions to administer national regulations, sometimes on behalf of other jurisdictions. In these cases, SOEs should be limited to issues or standards over which the Minister has direction or the regulator has control or flexibility in meeting outcomes.

SOEs are developed within the context of the existing statutory framework whereby the Government has passed legislation and the regulator has been charged with administering the legislation.

SOEs are not intended to override legislative requirements. If the process of developing an SOE identifies legislative barriers to performance improvement, the relevant department should consider pursuing these instances as reform opportunities.

* + - 1. Exempting regulators

In some rare circumstances the SOE Framework may not be applicable to a business regulator. To accommodate this possibility, the Treasurer may choose to remove a business regulator from the scope of the SOE Framework at the request of the responsible Minister.

* + - 1. The SOE process

The key stages of the SOE process are outlined below. The mandatory outputs from the SOE Framework are the SOE letter (issued from the relevant Minister to each regulator), the regulator response and the evaluation report (prepared by departments to evaluate regulators’ progress against their SOEs). These must be updated biennially.

The other steps of the SOE process make up a recommended pathway for departments and regulators to develop these outputs.

Each stage of the SOE process is outlined below.

The four key steps of the process for developing the SOE letter are:

Identification of key elements of good regulatory practice;

A self‑assessment against the elements of good regulatory practice being undertaken for each regulator in order to establish a ‘baseline’ of current performance;

A Good Regulatory Practice Plan being developed for each regulator, focusing on elements identified in the self‑assessment as having the greatest opportunity for improvement; and

A Ministerial SOEs being issued to each regulator, taking into account each regulator’s Good Regulatory Practice Plan.

The key steps in the process for developing the regulator response are:

Consult with business and the broader community (as appropriate) in developing actions to achieve improvements and targets;

Publish on the website the actions that will be taken to meet Ministerial expectations and performance targets; and

Commence reporting publicly on progress (predominantly through corporate planning and annual financial reporting cycles).

The two key steps of the process for evaluating performance are:

Each department preparing evaluation reports on regulators’ performance against the elements of good regulatory practice in their respective SOEs; and

Evaluation reports being provided to regulators, who then must publish the reports on their website alongside their SOEs and regulator responses.

More details on these steps are provided in 3.2.1 and 3.2.2 below.

* + - * 1. Developing the SOE letter

The four‑step process for developing the SOE letter is intended to provide a consistent framework for regulators to improve the administration and enforcement of regulation.

The SOE Framework is provided as a suggested approach to developing an SOE. It is not intended to replace or duplicate frameworks or processes for continuous improvement that might already be in place. Where departments and regulators believe, and the relevant Minister agrees, that existing processes and tools provide a suitable means of establishing rigorous performance improvement targets for inclusion in an SOE, those existing processes can be used to complement or replace one or more of the recommended steps.

This recognises that:

* + - many regulators and departments have existing tools and frameworks that can support the development of SOEs; and
		- prior reviews of regulator performance by relevant agencies (e.g. the Victorian Auditor‑General’s Office (VAGO), the Victorian Competition and Efficiency Commission (VCEC), internal departmental or regulator reviews) may be valuable inputs to informing the development and content of SOEs.

It also allows regulators and departments flexibility in the way they achieve the required outputs (the SOE letter, the regulator response and the evaluation).

Where the steps outlined in the SOE Framework are applied, the outcomes of the self‑assessment (Step 2) and Good Regulatory Practice Plan (Step 3) are likely to vary between regulators depending on the size, maturity and capability of the regulator and the availability of data to inform baselines and improvement plans. The approach taken in Steps 2 and 3 should be proportional to the scale and reach of the regulator and, where adequate data does not exist, should emphasise data collection as a key component of the SOE, to inform future SOEs. SOEs for new regulators in particular may have a greater emphasis on data collection and establishing baselines for future reference than those for established regulators with sophisticated data sets.

Steps 2 and 3 will require close collaboration between regulators and their respective policy departments, prior to departments developing Ministerial SOE letters.

The Red Tape Commissioner uses a well‑developed business engagement network to collect and log business intelligence on the impact of regulation. Given the focus of SOEs on reducing regulatory burden on businesses, departments and regulators are encouraged to engage with the Red Tape Commissioner, as well as DTF’s Regulation, Planning and Local Government team, in developing and refining SOEs. There is also an expectation that regulators consult with business and the broader community in developing actions to achieve the improvements and targets included in the SOE.

* + - * 1. Evaluating performance

The SOE Framework has an increased focus on evaluation. It is mandatory for departments to evaluate SOEs. Evaluation findings will be an important input into subsequent SOEs. Baseline data should be established for each regulator, with evaluation and monitoring of the data an ongoing part of regulators’ operations.

At a minimum, departmental evaluation reports must include:

* + - an assessment of how well the regulator has performed against their intended outcomes;
		- identification of any key risks or barriers that regulators experienced impacting their performance; and
		- an outline of any lessons applicable going forward.

To conserve resources, departments are encouraged to integrate the evaluation process into existing processes where this is possible and does not diminish the quality of evaluation reports. Furthermore, evaluations should be kept proportionate so that they can be done by VPS staff, without the need for consultants.

Once evaluation reports have been prepared, the Commissioner for Better Regulation will review each of these evaluation reports. These reviews will focus on the rigour of analysis and presentation of the evaluation (rather than the findings of the evaluation). The Commissioner will identify and highlight the best characteristics of these reports at the Commissioner’s regulator performance improvement forum each year.

* + 1. The elements of good regulatory practice

This section outlines the elements of good regulatory practice using a governance and performance matrix.

* + - 1. Mandatory elements of good regulatory practice

For the SOE Framework, three elements of good regulatory practice have been identified as mandatory for all regulators. These three elements are: (1) timeliness, (2) risk-based regulation, and (3) compliance related assistance and advice (particularly as it relates to small business). This approach will afford a degree of commonality and consistency between regulators. The matrix outlines minimum standards expected for all regulators for each mandatory element of good regulatory practice, and suggested best practice stretch targets for higher‑volume and higher‑impact regulators.

|  |  |  |
| --- | --- | --- |
| Elements of good regulatory practice | Minimum standards | Characteristics of best practice |
| **Performance objectives** |
| **Timeliness** Regulatory costs can often result from issues around the timeliness of approval processes, unanticipated delays and coordination problems in administrative decisions, rather than from regulatory design. | * + - 1. Processes/systems are in place to make it as easy as possible for businesses to complete forms.
			2. Regulator provides clarity about the timing and scope of regulatory processes.
			3. Timetables for completing forms take into account all requests for information that a regulated party is dealing with, including requests from other regulators.
			4. Processes/systems are in place to make it easy for businesses to submit required data and to check on the status of any applications.
 | * + - 1. Regulator strives for improved e‑capability.
 |
| **Risk‑based strategies** Risk‑based strategies can improve regulatory outcomes by more strategically focusing on activities where the risks are the greatest. Enforcement approaches that are not targeted at or proportionate to risk may be too onerous on compliant businesses and result in insufficient enforcement activity being focused on high-risk businesses. Failure to apply risk‑based regulation may result in inappropriate priority setting and inefficient allocation of scarce resources. | * + - 1. Regulator has collected relevant data to inform a risk‑based approach to regulation, and to evaluate outcomes.
			2. Regulator has an established approach to risk assessment.
			3. Requests for data from regulated parties are proportionate to risk.
			4. Risk‑based approaches to compliance and enforcement are considered and adopted where appropriate (for example, regulator tailors sanctions so that they are proportionate and meaningful).
 | * + - 1. Risk assessment is consistently applied across all activities.
			2. Knowledge of risk informs inspection targeting.
			3. Risk assessment processes and methodologies are transparent.
			4. Resources are concentrated in areas of greatest risk to the achievement of outcomes.
 |
| **Compliance related assistance and advice** Effective assistance and advice reduces the risk of non‑compliance. Poor or inaccessible advice may increase the time spent by regulated parties to understand regulatory requirements. Regulated parties should be able to access advice without fear of enforcement action. | * + - 1. Regulator provides assistance and advice in order to secure compliance.
			2. Advice is: easily available (for example, accessible in appropriate formats); accurate; easy to understand (i.e. written in plain English); comprehensive (e.g. include illustrative examples); timely (e.g. provided in time for individuals and businesses to adjust to changes in regulation); and, regularly reviewed and updated in light of feedback.
			3. Administration and enforcement is accompanied by ongoing advice.
			4. Regulator judges the effectiveness of its assistance and advice by monitoring regulated parties’ awareness and understanding of the services.
			5. Regulator provides clarity about the status and objectives of advice (i.e. whether it is statutory or non‑statutory).
 | * + - 1. Assistance and advice services cover the full range of regulated activities and are tailored where appropriate to different groupings of regulated parties.
 |

* + - 1. Recommended element of good regulatory practice

Incentive-based regulation is an extension beyond risk-based regulation[[3]](#footnote-3), and requires an understanding of regulated entities’ behaviour and motivations. Developing this understanding can take time.

Under the SOE Framework, regulators that have operated in an area of regulatory continuity for more than three years are encouraged to focus on incentive-based regulation and have moves towards greater incentive-based regulation included in their SOEs.

The following matrix outlines recommended minimum standards for regulators focusing on incentive-based regulation, and suggested best practice stretch targets for larger and higher‑impact regulators. Where different minimum standards and stretch targets are considered more appropriate, these can be used instead.

|  |  |  |
| --- | --- | --- |
| Element of good regulatory practice | Minimum standards | Characteristics of best practice |
| **Performance objective** |
| **Incentive-based regulation**Strategies that adopt incentive regulation demonstrate an understanding of regulated entities. These strategies use rewards and punishments to induce behaviours consistent with the outcomes that regulators wish to achieve. Effective use of such regulation can create opportunities to better target resources elsewhere while still maintaining or improving regulatory outcomes. Failure to apply such regulation may result in inappropriate priority setting and inefficient allocation of scarce resources. | * + - 1. Regulator has collected relevant data to evaluate regulatory outcomes.
			2. An understanding of regulated entities’ behaviour and incentives.
			3. Incentive-based approaches to compliance are considered and adopted where appropriate. Examples may include:
* rewarding a track record of compliance with a less frequent, and in turn less burdensome, audit inspection cycle
* rewarding investment in risk-mitigating processes or equipment
 | * + - 1. Incentives and signals are clear and meaningful to regulated entities.
			2. Incentives and signals are not overly complex, and lead to desired responses from regulated entities.
			3. Reduced enforcement activity necessary to achieve particular regulatory outcomes.
			4. Redeployment of enforcement activities to target other regulatory outcomes following implementation of incentives.
 |

* + - 1. Other suggested elements of good regulatory practice

The following matrix outlines recommended minimum standards for all regulators, and suggested best practice stretch targets for higher‑volume and higher‑impact regulators. These may not be relevant to all regulators. Consistent with a proportionate approach, when applying the matrix to complete a self‑assessment and develop their Good Regulatory Practice Plan, departments and regulators should select the most appropriate and highest priority elements for their circumstances. Where different minimum standards and stretch targets are considered more appropriate, these can be used instead.

|  |  |  |
| --- | --- | --- |
| Elements of good regulatory practice | Minimum standards | Characteristics of best practice |
| **Governance objectives** |
| **Role clarity**Clearly defined roles and responsibilities and a clear understanding of the objectives that regulatory interventions hope to achieve supports improvements in regulatory practices and performance over time, as well as strengthening regulatory outcomes. This is particularly important where there are multiple regulators involved in implementing, administering and enforcing a regulation. | * + - 1. Regulator has in place a monitoring and assurance regime to ensure that their regulatory objectives are being met.
			2. There is a clearly understood and documented chain of accountability and communication between departments/agencies and their regulators.
			3. Formal instruments clarify regulator roles where there are shared accountabilities and promote cooperation amongst regulators (see below).
 | * + - 1. Regulator provides assurance to the Victorian community that regulated entities are meeting their mandated requirements.
 |
| **Cooperation amongst regulators**Sharing information and developing a common understanding of the regulatory context promotes regulatory coherence, capability development and a cooperative compliance culture. Over time, cooperation amongst regulators can strengthen the legitimacy of regulation and improve regulatory outcomes. | * + - 1. Regulators come together to identify good practice and share lessons.
			2. Regulator has considered and explored ways to facilitate data sharing.
			3. Regulator performance is benchmarked.
 | * + - 1. The regulator engages and coordinates on a regular basis with other regulators whose regulated parties overlap with their own.
			2. Regulatory practices are streamlined between regulators (for example, information is only required to be provided to government once and that data is shared between regulators).
 |
| **Stakeholder consultation and engagement**Effective communication and engagement with stakeholders can reduce regulatory burden, facilitate improved regulator performance and lead to better regulatory outcomes. Stakeholder consultation and engagement includes sharing information, providing opportunities to express views and contribute to regulatory design (where appropriate), considering views and advising on the outcome of consultation. | * + - 1. Forms, data requests and other administrative and compliance processes are regularly reviewed with feedback sought from stakeholders (for example, forms include a short feedback section with suggestions for improvement).
			2. Regulator provides feedback on the outcome of consultation exercises to those who took part.
			3. Regulator understands the changing needs of business and the community throughout the regulatory cycle.
 | * + - 1. Regulator routinely involves regulated parties and the community in identifying risk, analysis and evaluation.
			2. Consultation has a demonstrable impact on the design and administration of regulatory processes.
 |
| **Accountability and transparency**Administration of regulation should be subject to public scrutiny. Performance reporting can provide regulators, their stakeholders, the community and the government with a clearer picture of the strengths of Victorian regulators’ existing practices and processes, and where effort is needed to improve performance. However, unless the right things are measured and reported clearly, it is difficult to know how effective a regulator is in achieving its regulatory outcomes. | * + - 1. Regulator is transparent about how they administer and, where appropriate, how they enforce regulation (for example, transparent complaints and disputes mechanisms and transparency about the reasons for enforcement decisions).[[4]](#footnote-4)
			2. Regulator collects and publishes data that enables it to measure its operational performance.
			3. Government priorities are addressed as part of regulator performance reporting.[[5]](#footnote-5)
 | * + - 1. Regulator regularly reviews the efficiency and effectiveness of their regulatory practices and complaint handling processes in order to determine whether regulatory outcomes are being realised.
			2. Regulator publishes outcome‑focused data on operational performance.
 |
| **Performance objective** |
| **Clear and consistent regulatory activities** Inefficient practices represent a regulatory burden to regulated parties and the community. Ineffective enforcement practices can distort regulatory outcomes. | * + - 1. Regulator has documented key administrative and compliance processes and activities.
			2. There is a clear purpose for all information that is collected.[[6]](#footnote-6)
			3. Regulator is responsive to lessons learned.
			4. Regulator undertakes appropriate planning and resource management.
 | * + - 1. Regulator strives to continuously improve administrative and compliance processes and activities.
			2. Enforcement activities are carried out in a way that minimises the impact on business (for example, joint inspections with other regulators, businesses are notified in advance of inspections where appropriate). This can be assisted through greater cooperation with other regulators (see above).
 |

* + 1. Good regulatory practice self‑assessment

This self‑assessment table has been designed to help regulators assess their current practices against good practice. It is recommended to serve as the basis for the regulator to consider what can be done to improve current practices and move towards best practice.

For each element of good regulatory practice outlined in the governance and performance matrix under section four of the SOE Framework, the following questions can be used as a guide to help the regulator assess current regulatory practices. Based on the self‑assessment in response to these questions, the regulator should be able to rank their proficiency in each of the identified good regulatory practices.

Other inputs to the self‑assessment could include reports or recommendations from external review bodies such as the VAGO, VCEC or Parliamentary committees.

The self‑assessment is recommended for use in section six of the SOE Framework to develop a Good Regulatory Practice Plan that will underpin the SOE.

* + - 1. Self-assessment for mandatory elements of good regulatory practice

|  |  |  |
| --- | --- | --- |
| Good regulatory practice minimum standards (high‑volume/high‑impact regulators should also include best practice characteristics) | Outline how current regulatory practices compare to standards, including evidence where possible | Highlight areas for improvement between standards and current practice |
| **1. Timeliness** |  |  |
| 1a. Processes/systems are in place to make it as easy as possible for businesses to complete forms. |  |  |
| 1b. Regulator provides clarity about the timing and scope of regulatory processes. |  |  |
| 1c. Timetables for completing forms take into account all requests for information that a regulated party is dealing with, including requests from other regulators. |  |  |
| 1d. Processes/systems are in place to make it easy for businesses to submit required data and to check on the status of any applications. |  |  |
| **2. Risk-based strategies** |  |  |
| 2a. Regulator has collected relevant data to inform a risk based approach to regulation, and to evaluate outcomes. |  |  |
| 2b. Regulator has an established approach to risk assessment. |  |  |
| 2c. Requests for data from regulated parties are proportionate to risk. |  |  |
| 2d. Risk based approaches to compliance and enforcement are considered and adopted where appropriate (for example, regulator tailors sanctions so that they are proportionate and meaningful). |  |  |
| **3. Compliance related assistance and advice** |  |
| 3a. The regulator provides assistance and advice in order to secure compliance. |  |  |
| 3b. Advice is: * easily available (for example, accessible in appropriate formats);
* accurate;
* easy to understand (i.e. written in plain English);
* comprehensive (e.g. include illustrative examples);
* timely (e.g. provided in time for changes to regulation); and
* regularly reviewed and updated in light of feedback.
 |  |  |
| 3c. Administration and enforcement is accompanied by ongoing advice. |  |  |
| 3d. Regulator judges the effectiveness of its assistance and advice by monitoring regulated parties’ awareness and understanding of the services. |  |  |
| 3e. Regulator provides clarity about the status and objectives of advice (i.e. whether it is statutory or non‑statutory). |  |  |

* + - 1. Self-assessment for the recommended element of good regulatory practice

|  |  |  |
| --- | --- | --- |
| Good regulatory practice minimum standards (high‑volume/high‑impact regulators should also include best practice characteristics) | Outline how current regulatory practices compare to standards, including evidence where possible | Highlight areas for improvement between standards and current practice |
| **1. Incentive-based regulation** |
| 1a. Regulator has collected relevant data to evaluate regulatory outcomes. |  |  |
| 1b. An understanding of regulated entities’ behaviour and incentives. |  |  |
| 1c. Incentive-based approaches to compliance are considered and adopted where appropriate. |  |  |

* + - 1. Self-assessment for other suggested elements of good regulatory practice

|  |  |  |
| --- | --- | --- |
| Good regulatory practice minimum standards (high‑volume/high‑impact regulators should also include best practice characteristics) | Outline how current regulatory practices compare to standards, including evidence where possible | Highlight areas for improvement between standards and current practice |
| **1. Role clarity** |
| 1a. Regulator has in place a monitoring and assurance regime to ensure their regulatory objectives are being met. |  |  |
| 1b. There is a clearly understood and documented chain of accountability and communication between departments/agencies and their regulators. |  |  |
| 1c. Formal instruments clarify regulator roles where there are shared accountabilities and promote coordination between regulators (for example, memorandums of understanding, formal agreements or contracts for service provision). |  |  |
| **2. Cooperation amongst regulators** |
| 2a. Regulators come together to identify good practice and share lessons. |  |  |
| 2b. Regulator has considered and explored ways to facilitate data sharing. |  |  |
| 2c. Regulator performance is benchmarked. |  |  |
| **3. Stakeholder consultation and engagement** |
| 3a. Forms, data requests and other administrative and compliance processes are regularly reviewed with feedback sought from stakeholders (for example, forms include a short feedback section with suggestions for improvement). |  |  |
| 3b. Regulator provides feedback on the outcome of consultation exercises to those who took part. |  |  |
| 3c. Regulator understands the changing needs of business and the community throughout the regulatory cycle. |  |  |
| **4. Accountability and transparency** |
| 4a. Regulator is transparent about how they administer and enforce regulation (for example, transparent complaints and disputes mechanisms and transparency about the reasons for enforcement decisions). |  |  |
| 4b. Regulator collects and publishes data that enables it to measure its operational performance. |  |  |
| 4c. Government priorities are addressed as part of regulator performance reporting. |  |  |
| **5. Clear and consistent regulatory activities** |
| 5a. Regulator has documented all administrative and compliance processes and activities. |  |  |
| 5b. There is a clear purpose for all information that is collected. |  |  |
| 5c. Regulator is responsive to lessons learned. |  |  |
| 5d. Regulator undertakes appropriate planning and resource management. |  |  |

This document provides an assessment of the regulator’s practices at a particular point in time and will provide a useful point of reference for subsequent self‑assessments and evaluation reports.

* + 1. Good Regulatory Practice Plan

Undertaking a Good Regulatory Practice Plan is recommended to help regulators articulate how better practice can be achieved and measured. The plan is based on the outcome of the self‑assessment conducted under section five of the SOE Framework. The content of plans will be specific to each business regulator, reflecting the capacity, capability, opportunities and challenges they face.

It is recommended that a Good Regulatory Practice Plan be developed to support the regulator in ranking and prioritising areas where there is the greatest opportunity for improvement.

The section below provides some examples of improvement strategies and measures to serve as a guide. The Good Regulatory Practice Plan is intended to be a helpful way to build on the findings of the self‑assessment to identify improvements for inclusion in the SOE letter. It is not intended to form part of the SOE, or be published.

* + - 1. Strategies and measures for mandatory elements of good regulatory practice

|  |  |
| --- | --- |
| Improvement strategies | Improvement measures/evidence |
| **Timeliness**  |  |
| Develop a strategy to establish, document, publish and improve administrative processes. | Set and publish targets for reducing key approval processes.Collect timeliness measures relating to administrative and compliance processes and report against them in annual report.Measure take‑up of e‑enabled systems.Ratio of e‑enabled data collection to manual completion/paper‑based forms. |
| **Risk‑based strategies**  |  |
| Develop a risk management framework.Undertake a comprehensive risk assessment of regulated businesses.Develop a strategy for targeted enforcement and compliance activities that are proportionate to risk category. | Demonstrate in annual reports how risk‑based strategies have been applied to high impact inspection and enforcement activities. |
| **Compliance related assistance and advice**  |  |
| Undertake stakeholder consultation on existing guidance and developing new guidance to ensure it is easy to understand and comprehensive. | Publish measures relating to the quality of information (for example, timely, reliable and comprehensive).Monitor impact of assistance and advice on regulated parties. For example, majority of businesses benefit from advice and guidance. |

* + - 1. Strategies and measures for the recommended element of good regulatory practice

|  |  |
| --- | --- |
| Improvement strategies | Improvement measures/evidence |
| **Incentive-based regulation** |  |
| Collect relevant data to evaluate regulatory outcomes.Develop understanding of regulated entities’ behaviour and incentives | Data sets on interactions between regulator and regulated entities, including but not limited to:number and frequency of audits/inspections;number and frequency of requests made by regulated entities; andrates of non-compliance. |

* + - 1. Strategies and measures for other suggested elements of good regulatory practice

|  |  |
| --- | --- |
| Improvement strategies | Improvement measures/evidence |
| **Role clarity** |  |
| Develop or document coordination of regulatory activities.Establish or document a clear chain of accountability between regulators and departments involved in the regulatory regime.Develop or review monitoring and assurance regimes to ensure that regulatory objectives are being met. | Up to date arrangements on regulator’s website and in annual report. |
| **Cooperation among regulators** |  |
| Develop strategies to enhance information exchange and capability development between regulators. | Report against participation in relevant portfolio‑based forums or communities of practice. Provide examples of data‑sharing initiatives. |
| **Stakeholder consultation and engagement** |  |
| Establish and publish stakeholder consultation and engagement strategies. Strategies may include developing websites, newsletters with sector specific or personalised information, on‑site visits and ‘on the ground’ learning networks and seminars.Conduct interviews and focus groups with representatives from regulated parties. | Document communication activity undertaken by:* + - business category;
		- communication tool used;
		- list consultation documents and stakeholder surveys undertaken by the regulator.
 |
| **Accountability and transparency** |  |
| Establish or improve operational performance reporting systems and processes. | Expectations around the publication of targets, results and outcomes of regulator operational performance. |
| **Clear and consistent regulatory activities** |  |
| Review of quality control in regulatory practice development and improvement processes. | Review administrative processes associated with regulation and develop process performance indicators to use in conjunction with efficiency and effectiveness performance indicators. |

* + 1. The SOE letter

SOEs under the SOE Framework will be developed by departments, taking into account the key opportunities identified in Good Regulatory Practice Plans (where these have been undertaken), and will be issued by Ministers to regulators. A pro forma SOE letter is provided at **Attachment 2**.

To the maximum extent possible, performance improvements and targets contained in the SOE should be quantified and expressed in terms of outcomes rather than inputs or activities. Where applicable, performance improvements or targets can include data collection to inform future SOEs. As a guide, it is recommended that an SOE contain between five and 10 improvement measures and performance targets.

The content of SOE letters will vary across regulators. Improvements and targets will be informed by the results of the self‑assessment and improvement plan (or similar tools), which will be unique to each regulator. SOEs will reflect this diversity.

* + 1. Process and timelines for implementing the SOE Framework

Under the SOE Framework, SOEs will be issued every two years. However, it is intended that SOEs be living documents that can be updated and amended at any time.

Producing quality SOEs can be time‑consuming for departments. Therefore, under the SOE Framework, departments may stagger the expiry of SOEs to smooth peak demands on their resources from their regulators. The SOE Framework will be implemented in two tranches that will lead to a rolling schedule of biennial SOEs.

In order to determine which regulators will be included in each tranche, Ministers will nominate in writing to the Treasurer up to half of their regulators to be included in the second tranche of SOEs.

Existing Stage Two SOEs can be carried over (or reissued if necessary) until regulators have been issued with an SOE under the SOE Framework. Thereafter, all SOEs expire after two years. Furthermore, there will be no further opportunities to carryover existing SOEs.

Implementation of the SOE Framework

**SOE Framework Tranche 2
2018–2020**

**SOE Framework Tranche 2
2020–2022**

**SOE Framework Tranche 1
2017–2019**

**SOE Framework Tranche 1
2019–2021**

**Stage Two SOE carried over**

* + 1. Regulator performance improvement forum

A key aspect of the SOE Framework is the Commissioner for Better Regulation’s Regulators’ Community of Practice (also known as the Regulators’ Forum). This forum will allow business regulators to meet regularly to benchmark their performance on key regulatory activities against other regulators, share lessons learned and discuss approaches for continuous improvement in compliance and enforcement practices.

The Commissioner for Better Regulation will review each tranche of evaluation reports. These reviews will focus on the rigour of analysis and presentation of the evaluation (rather than the findings of the evaluation).

The forum will serve as a platform for the Commissioner to identify and highlight the best characteristics of each tranche of evaluation reports.

* + 1. Roles and responsibilities under the SOE Framework

The Treasurer, supported by DTF, is responsible for developing, evaluating and enhancing the SOE Framework, maintaining the SOE guidelines, and updating the list of Victorian business regulators (Attachment 1). DTF will periodically advise the Treasurer on the implementation of the SOE Framework.

Regulators and departments will collaborate in undertaking self‑assessments and developing Good Regulatory Practice Plans.

Departments will develop SOEs in consultation with regulators and submit them to the responsible Minister.

DTF is available to support regulators and departments in the development of SOEs by providing advice on the consistency of draft SOEs with the SOE Framework and to suggest improvements and targets that could be considered.

Responsible Ministers will issue SOE letters to all their business regulators.

Regulators will formally respond to their SOE letter outlining how they will meet the expectations and achieve the performance targets. In developing the response there is an expectation that regulators will consult with the Red Tape Commissioner, regulated businesses and the broader community as appropriate.

Regulators will then commence work towards meeting their SOE obligations and report publicly on their progress (predominantly through corporate planning and annual financial reporting cycles).

Departments will evaluate regulators’ performance and write evaluation reports. Evaluation findings will be an important input into subsequent SOEs.

Once evaluation reports have been prepared, the Commissioner for Better Regulation will review each of these evaluation reports. These reviews will focus on the rigour of analysis and presentation of the evaluation (rather than the findings of the evaluation). The Commissioner will identify and highlight the best characteristics of these reports at the Commissioner’s regulator performance improvement forum each year.

# Attachment 1 – List of Victorian business regulators

This list is true as of 1 May 2017. This list may be varied at any time at the Treasurer’s discretion.

|  |  |  |
| --- | --- | --- |
| Business regulator | Ministerial responsibility | Department |
| * Biosecurity
* Dairy Food Safety Victoria
* Fisheries Victoria
* Forest Protest Management
* Game Management Authority
* PrimeSafe
* Veterinary Practitioners Registration Board of Victoria
 | Minister for Agriculture | Economic Development, Jobs, Transport and Resources |
| Employment Information and Compliance Unit | Minister for Industry and Employment | Economic Development, Jobs, Transport and Resources |
| Taxi Services Commission | Minister for Public Transport | Economic Development, Jobs, Transport and Resources |
| Port of Melbourne Corporation | Minister for Ports | Economic Development, Jobs, Transport and Resources |
| Transport Safety Victoria | Minister for Public Transport Minister for Roads and Road SafetyMinister for Ports | Economic Development, Jobs, Transport and Resources |
| Earth Resources Regulation Branch | Minister for Resources | Economic Development, Jobs, Transport and Resources |
| * Automotive Alternative Fuels Registration Board
* VicRoads
 | Minister for Roads and Road Safety | Economic Development, Jobs, Transport and Resources |
| Victorian Small Business Commissioner | Minister for Small Business, Innovation and Trade | Economic Development, Jobs, Transport and Resources |
| * Energy Safe Victoria
* Environment and Climate Change
* Environment Protection Authority Victoria
* Parks Victoria
 | Minister for Energy, Environment and Climate Change | Environment, Land, Water and Planning |
| * Architects Registration Board of Victoria
* Heritage Victoria and Heritage Council of Victoria
* Land Victoria
* Surveyors Registration Board
* Victorian Building Authority
 | Minister for Planning | Environment, Land, Water and Planning |
| Victorian Institute of Teaching | Minister for Education | Education and Training |
| Victorian Registration and Qualifications Authority | Minister for Education Minister for Training and Skills | Education and Training |
| Victorian Children’s Services | Minister for Families and Children | Education and Training |
| * DHHS – Communicable Disease Prevention and Control Unit
* DHHS – Cooling Towers And Warm Water Systems
* DHHS – Drugs And Poisons Regulation
* DHHS – Food Safety Unit
* DHHS – Pest Control Operators
* DHHS – Private Hospitals And Non‑Emergency Patient Transport
* DHHS – Public Swimming Pools and Spa Baths
* DHHS – Radiation Safety
* DHHS – Safe Drinking Water
* DHHS – Tobacco Policy
* Victorian Assisted Reproductive Treatment Authority
* Victorian Pharmacy Authority
 | Minister for Health | Health and Human Services |
| DHHS – Supported Residential Services | Minister for Housing, Disability and Ageing | Health and Human Services |
| Professional Boxing and Combat Sports Board of Victoria | Minister for Sport | Health and Human Services |
| DHHS Standards and Regulation Unit | Minister for Families and CommunitiesMinister for Housing, Disability and Ageing | Health and Human Services |
| * Legal Services Board and Legal Services Commissioner
* Victorian Legal Admission Board
* Working with Children Check Unit
 | Attorney-General | Justice and Regulation |
| * Business Licensing Authority
* Consumer Affairs Victoria
* Victorian Commission for Gambling and Liquor Regulation
 | Minister for Consumer Affairs, Gaming and Liquor Regulation | Justice and Regulation |
| Victoria Police – Licensing and Regulation Division | Minister for Police | Justice and Regulation |
| * Greyhound Racing Victoria
* Harness Racing Victoria
 | Minister for Racing | Justice and Regulation |
| Aboriginal Victoria | Minister for Aboriginal Affairs | Premier and Cabinet |
| * Essential Services Commission
* WorkSafe
* Housing Registrar
 | Minister for Finance | Treasury and Finance |
| State Revenue Office | Treasurer | Treasury and Finance |

# Attachment 2 – Model SOE letter

XXXXX
Chief Executive
Regulator X
MELBOURNE VIC 3000

Dear XXXX

**STATEMENT OF EXPECTATIONS FOR REGULATOR X**

I am pleased to provide you with this Statement of Expectations (SOE) for Regulator X. This SOE applies for the period 20XX-YY and 20YY-ZZ, or until otherwise amended.

**Improving the administration and enforcement of regulation**

This SOE sets out my expectations of Regulator X’s contribution to the Government’s program to reduce red tape affecting businesses, not‑for‑profit organisations, government service providers and households by promoting greater efficiency and effectiveness in the administration and enforcement of regulation. It also outlines my expectations on broader improvements for Regulator X’s performance.

As Minister for XX, I am responsible for administering the XXX Act [and XXX Act/s] that affect businesses and the broader Victorian community. This SOE should be read within the context of the objectives, obligations and functions outlined in this/these Act/s as amended.

This SOE outlines key governance and performance objectives and targets aimed at improving the administration and enforcement of regulation and thus reducing its cost impact on business and the community.

*[If applicable, indicate whether this SOE replaces or appends an existing SOE]*

**Improvements and targets**

Based on consultation between Department X and Regulator X, I have identified key elements of governance and operational performance where there are opportunities for Regulator X to make improvements that would reduce cost impacts on business. Regulator X is expected to identify activities it will undertake to achieve the following performance improvements and targets:

*[Insert targets and improvements here for mandatory elements of good regulatory practice – targets should be quantified where possible and improvements should be outcome‑focused. improvements/targets can include data collection to inform future SOEs, where applicable]*

*[Insert 2‑7 additional targets and improvements here. it is recommended that incentive-based regulation be included as one of these targets, if appropriate (see section 4.2). Small or focused regulators may, at the minister’s discretion, have fewer than 2 additional targets and improvements, if two relevant targets and improvements cannot be found. As detailed above, targets should be quantified where possible and improvements should be outcome-focused.]*

In developing actions to achieve these improvements and targets, Regulator X is expected to consult with the Red Tape Commissioner, business and the broader community as appropriate.

**Reporting**

Reporting on your progress to achieve these SOE performance targets should be undertaken in the context of annual financial reporting to avoid dual reporting streams. As part of annual reporting, regulators are expected to report on:

* current baseline levels for performance targets set in this SOE; and
* activities to be undertaken to reach the performance targets and improvements set out in this SOE.

I also expect these SOE performance targets will be incorporated into Regulator X’s Corporate Plan, and this SOE should be published on Regulator X’s website upon receipt.

I expect that within X months of receipt of this letter, Regulator X will respond to this SOE, outlining how it intends to achieve the performance improvements and targets set in this SOE. This response should include details of the specific activities that will be undertaken by Regulator X.

I look forward to seeing Regulator X continuously working towards achieving best practice in the administration and enforcement of regulation.

Yours sincerely

Minister responsible for Regulator X

1. The Framework does not apply to local government. [↑](#footnote-ref-1)
2. VCEC, The Victorian Regulatory System, September 2013, p. 2. [↑](#footnote-ref-2)
3. Risk-based regulation involves identifying and monitoring key risks, and in turn determining the relative tolerance for certain risks. This form of regulation focuses on mitigating relatively larger risks, allowing regulators to better target their finite resources at higher risk entities. [↑](#footnote-ref-3)
4. It may not be appropriate to disclose all aspects of a regulator’s enforcement strategy e.g. where effort will be targeted. [↑](#footnote-ref-4)
5. Key Government priorities that SOEs should aim to address include the Red Tape Reduction target and implementation of proposals from the Red Tape Commissioner agreed by the Government. [↑](#footnote-ref-5)
6. Examples of legitimate needs for information include: monitoring and compliance; measuring outcomes; or updating risk models. [↑](#footnote-ref-6)