Guidelines for Evaluation of Statements of Expectations for Regulators

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* + 1. Introduction

Under the Statement of Expectations (SOE) Framework for Regulators (the SOE Framework), there is a mandatory requirement for departments to evaluate the SOEs of the regulators within their portfolios. This is a new requirement and this document provides guidelines for the evaluations.

The Government’s objective is for the SOE Framework to promote greater efficiency and effectiveness in the administration and enforcement of regulation. SOEs should establish clear expectations of regulator performance and improvement between responsible Ministers and regulators to improve regulator outcomes and reduce costs on regulated parties.

The evaluation requirement is consistent with the Victorian Government’s commitment to better regulation and a culture of continuous improvement. The requirement also meets the Victorian Auditor-General’s recommendation that the Department of Treasury and Finance (DTF) develop appropriate evaluation frameworks for regulatory reform programs before they are implemented, which clearly describe how performance will be assessed and who is responsible for doing this.[[1]](#footnote-1) Within the context of the SOE Framework, evaluations will help improve the SOE process, the quality of SOEs and the influence of the SOE Framework. As such, evaluations should be completed in time for their findings to inform the development of the regulator’s next SOE.

Evaluation is more than just measuring whether stated improvements and targets have been delivered. Evaluations will enhance the process for selecting improvements and targets, and improve our understanding of regulatory practices and how efficient and effective different approaches are in achieving defined outcomes. This will support the SOE Framework outcome, which regulators use to learn from each other to better understand and implement best practice.

* + 1. Overview of the SOE Framework including evaluation requirements
       1. Snapshot of the SOE Framework

The SOE Framework seeks to improve regulator performance by promoting greater efficiency and effectiveness in the administration and enforcement of regulation to deliver better economic and social outcomes for Victoria.

**The SOE Framework has nine elements of good regulatory practice**

|  |  |
| --- | --- |
| Performance objectives | Governance objectives |
| Timeliness | Role clarity |
| Risk-based strategies | Cooperation among regulators |
| Compliance-related assistance and advice | Stakeholder consultation and engagement |
| Incentive-based regulation | Accountability and transparency |
| Clear and consistent regulatory activities |  |

**Focus on these nine elements in order to:**

* + - improve regulator performance;
    - improve regulator outcomes; and
    - reduce costs on regulated parties.

The diagram on page 3 illustrates the hierarchy of the mandatory, recommended and suggested elements of good regulatory practice. SOEs must include improvements and targets for the three mandatory elements of good regulatory practice as well as two to seven additional improvements and targets, depending on the size of the regulator. (It is recommended incentive-based regulation be included as one of these targets.)



* + - 1. The SOE process

This diagram illustrates the key activities under the SOE Framework, and who is responsible for each part of the process in preparing the mandatory outputs.



* + - 1. SOE evaluation requirements

The SOE evaluation requirements are intended to ensure an objective review of the SOE Framework’s success in improving regulator performance, improving regulator outcomes and reducing costs for regulated parties. The evaluation should recommend appropriate actions for improvement for future SOEs and future iterations of the SOE Framework. The purpose of the SOE evaluation is to identify opportunities for continuous improvement in the SOE process, the quality of SOEs and the SOE Framework.

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| --- | --- |
| Type of evaluation | Suggested key evaluation questions |
| Process evaluation | How appropriate was the process for developing the SOE letter?  Did the regulator deliver the improvements and targets established in the SOE letter and regulator response on time and on budget? |
| Outcome evaluation | What difference did the SOE make towards achieving greater efficiency and effectiveness in the administration and enforcement of regulation? |

The evaluation report should identify lessons applicable going forward and make recommendations for improvement for future SOEs and the SOE Framework.

* + 1. Evaluation roles and responsibilities
       1. Responsible Ministers, departments and regulators

As with all steps of the SOE process, there will need to be strong collaboration between departments (on behalf of the responsible Minister) and regulators in planning for and conducting the SOE evaluation.

The SOE evaluation plan will be developed by departments in consultation with regulators during the SOE’s development.

Ministerial endorsement of the SOE evaluation plan is optional.

The regulator will be responsible for collecting the data and information required to inform the SOE evaluation. Such requirements should be clearly documented and agreed in the SOE evaluation plan.

The department will conduct the SOE evaluation and produce an evaluation report in consultation with the regulator.

The department will publish the SOE evaluation report on its website along with a link to the SOE and regulator’s response to the SOE, which will also be published on the regulator’s website.

* + - 1. Review by the Commissioner for Better Regulation

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 as part of the Commissioner’s monthly regulator performance improvement forums. This analysis will also inform future iterations of the SOE Framework.

* + - 1. DTF review of the SOE Framework

DTF will periodically advise the Treasurer on the implementation of the SOE Framework. Evaluation reports will provide valuable feedback about the extent to which the SOE Framework is delivering its objectives of promoting greater efficiency and effectiveness in the administration and enforcement of regulation.



* + 1. Process for evaluations

To conserve resources, departments are encouraged to integrate the evaluation process into existing reporting cycles and processes where this is possible and does not diminish the quality of evaluation reports.

* + - 1. The proportionality principle

Evaluations should be kept proportionate so they can be done by VPS staff, without the need for consultants.

The complexity and depth of analysis contained in the evaluation should be reasonable (evidence-informed and defensible) and proportionate to both the size of the regulator and the scale of regulatory activity. Evaluations should be as comprehensive as possible without imposing significant additional, and potentially costly, extra work.

To ensure proportionality is applied, the following principles should be considered:

* + - **Treatment of uncertainty:** Where sufficient information does not exist, or is too costly to obtain, reasonable assumptions should be made about the data. For example, measurement may rely on proxy data or qualitative analysis.
    - **Transparency of assumptions:** Any assumptions should be appropriately documented and referenced. This will allow the reader to understand how the regulatory improvement has been achieved.

It is important to emphasise that proportionality is a matter of informed judgement.

* + - 1. Suggested timing of evaluations

Where possible, the evaluation process should be incorporated into existing reporting cycles and processes. The approach will differ depending on institutional structures and processes that are unique to each department.

So evaluations can provide a useful input into subsequent SOEs, it will be important for evaluation reports to be completed in time to feed into the self-assessment process for the next SOE. As a guide, the evaluation process should be completed six months prior to the end of the SOE so learnings from the evaluation can feed into the development of subsequent SOEs. For tranche one SOEs that are 18 months long, this will mean there will be limited data to feed into the evaluation. This will be an important consideration for the evaluation plan.

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| --- | --- |
| **Tranche One** | **SOEs issued for the period 1 January 2018 – 30 June 2019**  **As a guide, the evaluation report should be completed by the end of December 2018.** |
| **Tranche Two** | **SOEs issued for the period 1 July 2018 – 30 June 2020**  **As a guide, the evaluation report should be completed by the end of December 2019.** |

* + - 1. The evaluation plan

While the evaluations are an important new requirement under the SOE framework, it is not intended they absorb a disproportionate amount of time or resourcing. The evaluation should be straightforward, proportionate and timely so there is an opportunity for learnings to be incorporated into future SOEs.

To avoid the duplication of evaluation efforts, where specific improvements and targets will be subject to evaluation under an alternative evaluation process, they can be exempted from the SOE evaluation process on agreement by the Minister, department and regulator.

Where possible, the evaluation should be incorporated into existing processes without diminishing the report’s quality. The approach will differ depending on institutional structures and processes.

Given evaluations are intended to be conducted prior to the SOE’s completion, it is important to identify the relevant data and information and when it will be required to enable a meaningful and timely evaluation.

Planning for the evaluation should occur during the SOE’s development. This will ensure a fit-for-purpose evaluation plan is established concurrently with the SOE.

Evaluation plans should be developed by departments in consultation with regulators so expectations on both parties are transparent. There should be agreement between departments and regulators on how the improvements and targets in the SOE can be meaningfully evaluated as part of the evaluation plan. Ministerial endorsement of the SOE evaluation plan is optional.

The evaluation plan should include the data (quantitative or qualitative) and information to be collected. DTF prefers quantitative data is collected and used where appropriate and possible. Where adequate data does not exist, the evaluation plan should emphasise data collection in order to inform future SOEs. Where improvements and targets cannot be quantified by data, qualitative data should be collected to provide the evidence base. Some SOEs may contain longer-term objectives that will not be completed within the duration of the SOE and this should be taken into account during the evaluation plan’s preparation. It is expected the evidence base available for each SOE will be different and unique to each regulator.

SOEs provide greater transparency for regulated parties and stakeholders about regulator performance. For this reason, where possible, stakeholder consultation may provide an important input into the selection of SOE improvements and targets, and the evaluation of their achievement.

There are two components to the evaluation. The first component is a process evaluation of the approach used to develop the SOE. This part of the SOE evaluation should focus on the process for the SOE’s development. Given the approach to meeting requirements under the SOE Framework can be tailored to reflect the institutional arrangements of each regulator, the intent of this part of the evaluation is to drive continuous improvement in the process to develop SOEs over time and to be able to share best practice across government. A suggested template to plan for the SOE process evaluation is included at section 5.

The second component is an outcome evaluation of the improvements and targets documented in the SOE. The evidence base available for each SOE evaluation will be different and unique to each regulator. A suggested template logic map for the outcome/impact evaluation is included at section 6.

The evaluation plan should include:

the team and point of contact within the department who will be responsible for conducting the evaluation;

the team(s) and points of contact within the regulator who will be responsible for collecting the data and information on each improvement/target to inform the evaluation;

a plan for the process evaluation, including the key evaluation questions and who should answer them (see section 5);

a plan for the outcome evaluation including data to be collected and criteria for judgement, as well as assigning responsibility and timelines for data and information collection (see section 6);

the evaluation’s timelines; and

a consultation plan for the evaluation (including consultation with the regulator).

* + - 1. The evaluation report

Departmental evaluation reports must include:

a short statement on the evaluation’s purpose;

a summary of what is being evaluated, including background, activities, improvements/targets and intended outcomes;

a discussion of the methodology used for the evaluation, including the rationale for selecting the methodology, data sources, any limitations and the criteria used to make judgements;

an assessment of the process by which the SOE was developed (How useful was the evidence base used to determine the improvements and targets?);

an assessment of how well the regulator has performed against the performance improvements and targets contained in the SOE, including an identification of the key factors that impacted on the regulator’s ability to achieve improvements and targets;

an outline of any lessons and recommendations to improve the development and implementation of future SOEs. In this section, departments should consider whether there are any lessons to be learned and opportunities to improve the SOE process going forward. These should be formally documented as recommendations in the evaluation report. The content for this section will fall out of the process evaluation and outcomes evaluation; and

who conducted the evaluation and their involvement in the SOE process.

* + - 1. Publication of evaluation reports

It is a requirement under the SOE Framework for evaluation reports to be published. The department will publish the SOE evaluation report on its website along with a link to the SOE and regulator’s response to the SOE that will be published on the regulator’s website. Where there is sensitive information in the evaluation report that cannot be made public, this can be removed for the purposes of publication on the approval of the responsible Minister.

* + 1. Suggested data collection table for SOE process evaluation

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| Key evaluation question | Sub-questions | Data collection | Criteria for judgement | Responsibility | Timing |
| How appropriate was the process for developing the SOE letter? | * Was the SOE process recommended in the SOE Framework (p.3) adopted? * If not, what was the approach? * Was the evidence base appropriate to develop the SOE letter? * How satisfied were all parties involved in the development of the SOE? * Was sufficient time allocated to complete each part of the process? | * Project plan * Interviews with project team | * Was there an appropriate baseline of current performance against each of the elements of good regulatory practice? (i.e. Was there a regulator self-assessment? And was it provided to the department?) * Was sufficient time invested in the development of the SOE? | Who will be responsible for collecting this data (name of departmental contact and team)? | When will this data be collected (timeline)? |
| Did the regulator deliver the improvements and targets established in the SOE letter and regulator response on time and on budget? | * Does the evidence and data demonstrate achievement of the improvements and targets? * Was there adequate understanding of and explanation for variations from intended performance improvements and targets? * Were the annual reporting requirements met? | Public reporting against SOE and regulator response | Were the SOE targets appropriate? | Who will be responsible for collecting this data (name of departmental contact and team)? | When will this data be collected (timeline)? |

* + 1. Suggested data collection table for SOE outcome evaluation

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| --- | --- | --- | --- | --- | --- |
| Key evaluation question | Sub-questions(a) | Data collection | Criteria for judgement | Responsibility | Timing |
| What difference did the SOE make towards achieving greater efficiency and effectiveness in the administration and enforcement of regulation? | To what extent did the regulator improve **timeliness** through this SOE? | * What data and/or evidence is available to monitor and evaluate the delivery of the activities pursued to improve timeliness? * Is there baseline data for the activity? (i.e. Is there data that could serve as a basis for comparison over time?) If not, there should be a commitment to collect baseline data at a minimum. | Has the SOE contributed to identifying or furthering opportunities for performance improvement? (i.e. Did the SOE deliver performance improvements beyond business as usual activities? Have opportunities for performance improvement become evident through the SOE?) | Who will be responsible for collecting this data (name of departmental contact and team)? | When will this data be collected (timeline)? |
|  | To what extent did the regulator improve **risk-based strategies** through this SOE? | As above | As above | As above | As above |
|  | To what extent did the regulator improve **compliance-related assistance and advice** through this SOE? | As above | As above | As above | As above |
|  | To what extent did the regulator improve **(identify relevant element of good regulatory practice]** through this SOE?(b) | As above | As above | As above | As above |

(a) The sub-questions relate to the elements of good regulatory practice (refer to page 3).

(b) Taking into account the proportionality principle, select one to five additional elements of good regulatory practice to evaluate.

* + - 1. Examples

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| --- | --- | --- |
| Which element of good regulatory practice does the improvement strategy relate to? | What is the improvement strategy? | What are the specific activities to be conducted? |
| Risk-based regulation  Timeliness | To apply the newly developed risk-based approach to licensing and compliance activities. | Simplify processes for low risk and transfer applications.  Develop capability for applicants to lodge their temporary limited licence applications online.  Simplify the process for transfer applicants and reduce the number of documents required for evidence. Change process so that form can only be submitted after settlement has occurred.  Make new form available on VCGLR website. |

For further information, see VCGLR Annual Report 2015–16, p. 26.

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| --- | --- | --- | --- | --- | --- |
| Key evaluation question | Sub-questions | Data collection | Criteria for judgement | Responsibility | Timing |
| What difference did the SOE make towards achieving greater efficiency and effectiveness in the administration and enforcement of regulation? | To what extent did the regulator improve **timeliness** through this SOE? | * Number of temporary limited licence applications made online. * Average determination times for temporary limited licences. * Number of transfer applications. * Average determination times for transfer of applications. | Targets could include:   * % improvement in online applications * reduction in average determination times | Name of regulator contact and team who will collect the data | When will this data be collected (timeline)? |

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| Which element of good regulatory practice does the improvement strategy relate to? | What is the improvement strategy? | What are the specific activities to be conducted? |
| Compliance-related assistance and advice | Reducing the cost of compliance on regulated parties by increasing advice on how to comply, including providing tailored advice to specific industries and information on how to meet compliance requirements following inspections. | To provide clear and effective compliance related assistance and advice to duty holders. This includes providing duty holders with practical examples of what compliance looks like, targeting education and support materials to areas of need and for industries that are the focus of compliance inspections, and ensuring regulatory officers provide consistent and appropriate compliance advice. |

For further information, see EPA Annual Report 2015-16, pp. 22-23.

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| --- | --- | --- | --- | --- | --- |
| Key evaluation question | Sub-questions | Data collection | Criteria for judgement | Responsibility | Timing |
| What difference did the SOE make towards achieving greater efficiency and effectiveness in the administration and enforcement of regulation? | To what extent did the regulator improve **compliance-related assistance and advice** through this SOE? | * Number of publications produced in a year. * Establish and report on the percentages of duty holders that regard:   + EPA's guidance publications as accessible, sufficient and consistent; and   + the guidance contained in EPA's remedial notices as clear and easy to understand. | Target higher percentages of duty holder satisfaction against both measures in 2015-16 as compared to 2013-14. | Name of regulator contact and team who will collect the data | When will this data be collected (timeline)? |

1. Victorian Auditor-General’s Report, *Managing Regulator Performance in the Health Portfolio*, March 2015, p. xiii. [↑](#footnote-ref-1)