



UNIVERSITY OF
CANBERRA



INSTITUTE FOR
GOVERNANCE
& POLICY ANALYSIS

REPORT TO THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY ON THE REGULATORY PERFORMANCE FRAMEWORK

John Halligan and Graham Smith
Institute for Governance and Policy Analysis, University of Canberra

June 2015

REPORT TO THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY ON THE REGULATORY PERFORMANCE FRAMEWORK

CONTENTS

Brief and task	3
Purpose.....	3
Context and Purpose of RPFS	3
Approach	4
Reviewing performance indicators	7
Comparative experience.....	7
Principles for establishing and reviewing performance indicators	8
Program logic.....	8
Difficulties in defining and measuring performance	9
ACMA self-assessment framework	11
DPMC guidelines.....	11
KPIs	11
Self-assessment questions.....	11
KPIs and indicators	12
Links between self-assessment questions and performance indicators.....	13
Use of case studies	14
Detailed comments	14
Suggestions for the future	15
Refining performance indicators	15
Additional evidence	15
Focus on areas to improve	15
Conclusion	16
References	17
Appendix: final detailed comments on the performance framework	18
Performance measures.....	18
Key performance indicators	18



BRIEF AND TASK

The Australian Communications and Media Authority (ACMA) has sought assistance in its implementation of the Regulator Performance Framework (RPF), which is due to commence on 1 July 2015. As indicated in the Statement of Requirement (SoR), this process is to enable the ACMA to implement the RPF in a way that is meaningful to stakeholders and properly fulfils the objectives of the RPF.

The Statement of Requirement requires the provider to evaluate and make recommendations on the ACMA's proposed performance indicators and performance assessment methodology in fulfilment of the RPF.

PURPOSE

The purpose of this report is to summarise the nature of the advice provided by the consultants during the development of the ACMA Regulator Performance Framework document, to provide comments for consideration based on the latest available version of the Framework (28 May), and to provide recommendations for future development of the Framework.

CONTEXT AND PURPOSE OF RPFS

A centrepiece of the government's deregulation agenda is the improvement of regulators' performance through the application of the Regulator Performance Framework. The RPF requires regulators to self-assess against six Key Performance Indicators (KPIs):

- KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities
- KPI 2 – Communication with regulated entities is clear, targeted and effective
- KPI 3 – Actions undertaken by regulators are proportionate to the risk being managed
- KPI 4 – Compliance and monitoring approaches are streamlined and co-ordinated

- KPI 5 – Regulators are open and transparent in their dealings with regulated entities
- KPI 6 – Regulators actively contribute to the continuous improvement of regulatory frameworks.

The purpose of the overall exercise is to focus on ‘reducing red tape’, i.e. assessing the impact of regulation on industry costs and efficiency, rather than an overall assessment of the effectiveness of regulation.

APPROACH

The Statement of Requirement lists two activities:

1. Evaluate the ACMA’s proposed performance measures and self-assessment methodology
2. Provide specific, actionable recommendations on revisions or improvements to the ACMA’s proposed approach, to enable the ACMA to commence performance measurement against the RPF from July 2015

The process adopted to conduct the consultancy included the following steps:

- Review of Commonwealth guidance – the RPF itself, criteria from the Department of the Prime Minister and Cabinet (DPMC) and material from the ACMA.
- Review of literature related to regulatory performance and international better practice for performance measures in general.
- Conduct of discussions and briefing with ACMA staff.
- Detailed consideration of the various versions of the ACMA Self-Assessment Framework, KPIs, indicators, self-assessment questions and supporting evidence prepared by the ACMA.
- Construction of a program logic diagram showing linkages between key RPF concepts, the KPIs proposed by DPMC and ACMA indicators.

- Development of several iterations of proposed changes to the layout and substance of ACMA indicators and supporting evidence.
- Consideration of comments relayed to us by the ACMA about the views of the Department of Communications and of industry stakeholders on the ACMA RPF framework.
- Development of proposed revisions to the ACMA list of indicators.
- Development of suggestions for further enhancement of the RPF in the future.

In evaluating ACMA's proposed performance measures and self-assessment methodology, we have taken on face value the nature and extent of the evidence listed by the ACMA in its draft Regulator Performance Framework documents. In other words, it was not practicable for external reviewers to assess or validate the accuracy, availability or comprehensiveness of this evidence. We were however aware that the evidence is derived from established processes that have been through a series of audits.

Throughout this process, there was continual interaction with ACMA staff. This included providing written and oral comments on the various ACMA documents as they were made available and responding to ACMA questions about these comments. During the course of the consultancy, there were several different iterations of the RPF as the ACMA responded to comments provided.

The main areas where our comments have been substantially incorporated or at least taken into account included:

- Discussion of the best classification of indicators; for example, categories such as business process efficiency indicators, effectiveness indicators and quantitative indicators are now dropped in favour of a categorisation based on the program logic concept. Quantity indicators can be useful in some circumstances, such as demonstrating that funds have been used to produce a reasonable amount of output. However, for the purpose of assessing impact on a regulated industry, they are less useful.
- Refinement of the definitions of efficiency and effectiveness.

BRIEF AND TASK

- Inclusion of the distinction between the 'Better regulation design' and 'Better regulation administration' contributions to the outcome.
- Reduction in the number of indicators
- Merging of KPI 2 and KPI 5
- Development of separate sets of evidence for the industry sectors

REVIEWING PERFORMANCE INDICATORS

COMPARATIVE EXPERIENCE

Comparison with the approach of individual overseas communications and media regulators has not been attempted. This is context dependent, relying on ACMA knowledge of the business and therefore the relevance of any international comparisons.

The international experience is nevertheless highly significant with two types being of particular relevance to the RPF exercise: these are encapsulated in the OECD work on regulation and on performance measurement (2009, 2014). We were unable from a desktop search to locate cases in other countries that were directly relevant in the sense of being comparable and with potential for benchmarking. The international surveys are inclined to be more general with different foci and scope on questions about regulation, although some attention has been given to burden reduction programs (OECD 2014).

Nevertheless there are significant lessons to be had from the OECD studies, which reflect extensive programs of activity over time and cover a number of countries. These include the challenges of acquiring the appropriate information and applying performance indicators. A standard set of indicators is advocated by OECD for measuring the performance of regulatory policy following the input-output-outcome logic (OECD 2014).

PRINCIPLES FOR ESTABLISHING AND REVIEWING PERFORMANCE

INDICATORS

In this section, we first discuss some general principles that apply to the establishment and review of performance indicators, and then some specific considerations that apply to the particular context of regulatory performance measures for the ACMA.

PROGRAM LOGIC

Program logic is a concept that helps to structure performance indicators. Under a program logic approach, the overall objective or desired impact of a program is identified, and then the lower level outputs, processes and inputs that are designed to lead to the achievement of that objective. If possible, the top-level impact or outcome¹ is measured. Often, this is impracticable, so indicators at a somewhat lower level such as outputs or processes are assessed. Indicators at the input level (e.g. funds spent or person-hours contributed) may provide some essential accountability information, but only if all the higher level indicators are not available would they be used to try to assess the overall impact.

The ACMA has referred to the OECD document, *OECD Framework for Regulatory Policy Evaluation* OECD (2014). The levels of the program logic described in that document are adopted here as being categories that are accepted internationally:

- Strategic Outcome
- Intermediate Outcome
- Output
- Process
- Input

¹ The objective is what is intended; the outcome is what actually happened.

In the indicators proposed so far, there has been no need to use input measures. So there are four levels of the program logic that can be used to categorise performance indicators. This approach is preferable to using categories such as qualitative and quantitative; or efficiency indicators and effectiveness indicators; or regulatory reform versus administration of current regulation. This is because it is considered more important to define what an indicator is meant to show, rather than where it came from or whether it is qualitative or quantitative.

Outputs measures are generally associated with a range of types of measures, such as efficiency and effectiveness, and are regarded as the 'building blocks' of the majority of performance indicators (OECD 2009).

DIFFICULTIES IN DEFINING AND MEASURING PERFORMANCE

It can be difficult to achieve a performance measure that is both easily calculated and relevant to the program objective. We suggest that relevance, i.e. a measure that reflects outcomes as closely as possible, is often more important than having an easily defined quantitative measure. In some circumstances, performance is difficult to measure and hence a performance story or qualitative assessment is necessary. However, to be a sound assessment that will stand up to external scrutiny, there needs to be some rigour and structure about these qualitative assessments. In other words, even a qualitative assessment should be able to be reproduced by an independent person using the same basic data. This is important in order for the RPF self-assessment framework to stand up to independent scrutiny.

There are other potential difficulties recognised in defining and managing performance measures. One significant issue is the potential for distortion: managers may seek to have the performance measure display a result that is favourable to them. The counter to this is the independent review process mentioned above, together with clear and if practicable numerical definitions of the measures.

Another limitation to effective performance measurement is that of time delay. Action taken in one particular reporting period (e.g. to conduct relevant research) may not allow sufficient time to produce

REVIEWING PERFORMANCE INDICATORS

a desired impact on overall outcomes. In this case, outcome measurement is not practicable, and it becomes necessary to go a level down in the program logic to measure outputs. For example, the ACMA might assess the production of research that is assessed to be relevant and important (even if it has not yet had an impact on the regulated bodies).

ACMA SELF-ASSESSMENT FRAMEWORK

DPMC GUIDELINES

The Framework consists of six outcome-based KPIs. All six are to be used for assessing regulators, but a regulator may differentiate among them in terms of the emphasis on each. A KPI that is less relevant to the regulator can be expected to attract less evidence (DPMC 2015).

The question of comparability means that benchmarking between regulators is not required where there are differences in roles and relevant performance metrics, but not where they have similar roles. Other advice is that evidence may be used for more than one KPI, but that a range of different types of evidence is necessary for effective assessment. The assessments are also expected to cover the gamut of the regulator's interactions with stakeholders, and to incorporate formal mechanisms for obtaining views and feedback. The ACMA draft Framework has recognised this flexibility by linking two of the KPIs, and using evidence for more than one KPI.

KPIS

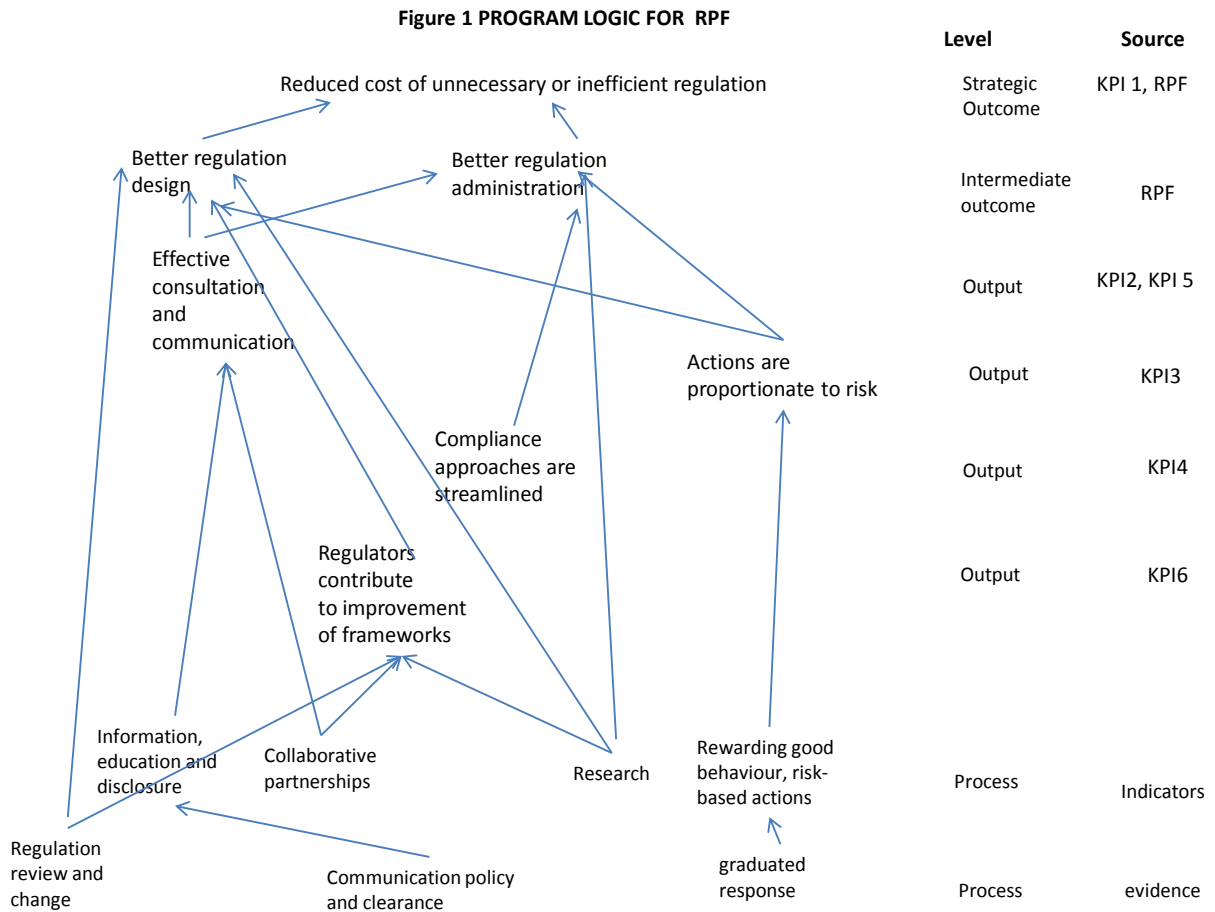
The KPIs are a given (although several overlaps can be noted). The DPMC guide recognises that not all may be of equal significance, and that demonstrating performance against KPI 6 in particular should not entail changes that do not benefit stakeholders.

SELF-ASSESSMENT QUESTIONS

The 'self-assessment questions' have been developed from an ACMA perspective of the detail behind the six KPIs as laid out by the Department of the Prime Minister and Cabinet. As they reflect context-specific knowledge, it is not appropriate for us to systematically review or critique these statements.

KPIS AND INDICATORS

Using the ACMA documents, the OECD definitions and policy documents on the RPF, we proposed a program logic diagram for the ACMA RPF. The initial draft was subject to review and feedback by ACMA staff, and the final version is in Figure 1.



The objective of the RPF for ACMA is presented in Figure 1. At the top of Figure 1 is a brief statement that attempts to encapsulate what we understand to be the objective of the RPF for ACMA, based on the RPF documents and discussions with ACMA staff. It focuses on cost reduction for stakeholders, which we understand to be the key objective. This is closely related to KPI 1, which refers to not

impeding the efficient operation of regulated entities; impeding efficiency is closely related to increasing costs.

At the next level of the diagram are two concepts, ‘better regulation design’ and ‘better regulation administration’. These are not in the set of KPIs, but are in the RPF policy document. They are kept in the diagram because it is considered a useful organising principle for the remaining indicators.

The remaining KPIs are considered to be indicators of output in the OECD nomenclature. KPI 2 and KPI 5 are put together on the diagram as they both refer to the related concepts of communication and consultation; this conjointness has been recognised by the ACMA in the latest version of their RPF framework.

At the bottom of the diagram are a number of process indicators that are derived from the ‘performance indicator’ and ‘existing evidence’ columns of the ACMA RPF Implementation document. Cost and timeliness indicators are considered to feed directly to top level KPI relating to cost reduction.

LINKS BETWEEN SELF-ASSESSMENT QUESTIONS AND PERFORMANCE INDICATORS

It is important that there is an explicit link between each self-assessment question and the relevant KPIs. One means of ensuring that the indicators address the self-assessment questions is for ACMA to prepare a simple grid for each KPI, such as the grid below for KPI 1.

Self-Assessment question	PI 1	PI 2	PI 3	PI 4	PI 5
1					*
2				*	*
3	*	*			
4			*		

For the rest of the KPIs, there are several concerns that the evidence may not always be necessary and sufficient; further discussion is in the Appendix.

USE OF CASE STUDIES

The ACMA self-assessment framework referred to the use of case studies. This can be a useful means of providing evidence for the performance indicators, but is not explicitly covered in the descriptions of the performance measures. For example, the performance measure on 'Research and environmental scanning' could be supplemented through the use of case studies of where the research has been or is likely to be, useful in reducing regulatory impact. Similar comments apply to all the following measures.

DETAILED COMMENTS

Some further detailed comments on the framework are provided in the Appendix.

SUGGESTIONS FOR THE FUTURE

REFINING PERFORMANCE INDICATORS

Over the next year, the ACMA might work to further refine performance indicators so that they are more measurable; this would enable tracking from year to year. For example, qualitative measures could be accompanied with definitions of, for example, what constitutes good, acceptable or poor performance.

Another possibility is to use a scale based on the Capability Maturity Model, e.g. initial /repeatable/ defined/ managed/optimising. This could work as it is primarily the quality of processes that is being assessed. Such a scale would be for ACMA to choose. Ideally, it would be developed before the assessment of performance for 2015-16 is carried out.

ADDITIONAL EVIDENCE

The ACMA might identify any further cost-effective methods of collecting evidence to assess regulatory impact, such as asking industry to assess the time it takes to comply with ACMA requirements, or by expanding their stakeholder survey to address selected KPIs more directly. With respect to the 'cost' performance indicator, more data may also be available – in future years if not now – from sources such as analysis of complaints or from proxy measures such as the length of forms to be filled in.

FOCUS ON AREAS TO IMPROVE

The Department of Communications commented that RPF improvement 'could be achieved by focussing on those regulatory actions that impose the greatest cost on business and the community, or by focussing on those areas where there is the greatest scope for reducing compliance costs.' This is supported, but we point out that using the new ACMA RPF performance indicators will add rigour to any current judgmental assessment of the most fertile areas for improvement. To assist this, and as suggested by the Department, establishing (where cost-effective) a performance trend going back 2-3 years, would assist in giving guidance on areas for improvement.

CONCLUSION

This review has established that the ACMA Framework and methodology has been refined to a point where it is suitable for the intended purpose.

It has also indicated opportunities for improving the proposed set of measures, and the nature of the improvements required. Better practice was taken into account in providing specific ideas for addressing any deficiencies involved. These have been repeatedly tested and extended through discussion with ACMA staff. Feedback from this process, which includes ACMA's own reviews of the self-assessment framework, has been included in this report. In this productive interactive process careful attention has been given by ACMA to developing an appropriate framework that serves the purpose of the RPF, the needs of ACMA, and the principles and practice of performance management.

REFERENCES

Department of the Prime Minister and Cabinet 2014. *Regulator Performance Framework*, Commonwealth of Australia.

Department of the Prime Minister and Cabinet 2015. Key Performance Indicators, January.

OECD 2009. *Measuring Government Activity*, OECD.

OECD 2014. *OECD Framework for Regulatory Policy Evaluation*, OECD Publishing, Paris.
<http://dx.doi.org/10.1787/9789264214453-en>

APPENDIX: FINAL DETAILED COMMENTS ON THE PERFORMANCE FRAMEWORK

A number of final detailed observations were made, as indicated below. The ACMA responded by either agreeing or clarifying in what respects the comments were being taken into account.

PERFORMANCE MEASURES

Measures and indicators: Both ‘performance measures’ (in the Framework part) and ‘performance indicators’ (in Attachment A) appear to be used interchangeably. It is better to choose one term.

Timeliness: It is possible to generate a quantified measure such as the percentage of processes that are within ACMA-specified targets

Stakeholder satisfaction: The intent of the measure is supported, but most of the current survey is limited to assessing ACMA’s communications rather than its effectiveness in reducing red tape. Perhaps the survey could be modified in the future.

Stakeholder engagement: There is no performance measure that is specifically on stakeholder engagement. There is reference to publications, and to forums or consultative bodies, but nothing to one-on-one communication with firms.

KEY PERFORMANCE INDICATORS

Introductory paragraphs to each KPI: It is not sufficiently clear what the purpose is of the introductory paragraph under each KPI. They seem to relate mostly to providing an outline of the sort of ACMA activities that contribute to the achievement of the KPI, which could provide useful context, and a lead in to the type of work needed to address the indicators. But they also seem to be partly phrased as a set of indicators, with some KPI paragraphs including terms such as ‘the effectiveness of ...’. If the latter is intended, it is not clear how this fits in the hierarchy between the KPI and the self-assessment questions.

APPENDIX: FINAL DETAILED COMMENTS ON THE PERFORMANCE FRAMEWORK

KPI 2/5: Self-assessment question 4: it is not clear that ‘with proper regard to due process’ is covered by the indicators

KPI 2/5: Fourth performance indicator (alternatives to traditional regulation). It is not clear this is required for this KPI – and it appears not to be reflected in the list of evidence.

KPI 3: The first and second self-assessment questions seem similar. Previous conduct is evidence that supports a risk assessment

KPI 3: Fourth self-assessment question: the reference to risk assessment may need an additional indicator, e.g. on the quality of the risk assessment process

KPI 3: The ‘Use of alternatives’ evidence is not in the ‘broadcasting’ box, not in the list of performance indicators. Is it needed?

KPI 4: Not clear that ‘internal clearance processes’ (first self-assessment question) or ‘engage with stakeholders’ (second self-assessment question) are covered by a performance indicator.

KPI 4: Research is in the menu of evidence, but may not be needed as it is not a performance indicator.