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Joint Committee of Public Accounts and Audit
Regulatory Activities: Inquiry into Auditor-General's Reports
33, 47, 48 (2019-20) and 5, 8 (2020-21)

4 March 2021

Opening Statement by the Deputy Auditor-General

Introduction

1. Good morning Chair and Committee Members. Thank you for the opportunity to appear before the committee today. This opening statement outlines the ANAO's approach to performance audits of regulators.
2. Australian Government regulators are empowered by, and subject to, a range of legal and other requirements including:
 - the specific legislation that establishes the regulatory powers of the entity, and underpinning policies and relevant directions;
 - the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) along with delegated legislation such as the PGPA Rule 2014, the Commonwealth Procurement Rules and the Commonwealth Risk Management Policy; and
 - the Australian Government Regulator Performance Framework — introduced in October 2014 to encourage regulators to achieve their objectives while minimising their impact on regulated entities.
3. A key part of the Australian Government Regulator Performance Framework is that actions undertaken by regulators are proportionate to the regulatory risk being managed. Drawing from this framework, ANAO performance audits of regulators include examination of the design, implementation and enforcement of regulation activities to enable regulators to deliver on regulatory objectives. Audits also include consideration of entity risk assessments and how planned compliance activities align with the assessment of risk across the sector and on individual entities.

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4. ANAO performance audits also have regard to the impact of internal regulation within entities. Internal regulation has been defined as referring to 'requirements that are mandatory for all or most entities, or guidance, practice or procedure that is treated as such'.¹

Regulator audit findings

5. As noted in the Auditor-General's *Mid-term report*, regulatory activity is the second category recording a high proportion of negative audit conclusions after the category of procurement. The five regulatory audits selected by the Joint Committee for this inquiry are consistent with this trend.
6. The effectiveness of the Tertiary Education Quality and Standards Agency's regulation of higher education was mixed.² The Australian Electoral Commission's administration of financial disclosure requirements under the *Commonwealth Electoral Act 1918* was partly effective.³ The Australian Energy Regulator was a partly effective regulatory of energy markets.⁴
7. The Department of Agriculture, Water and the Environment's administration of referrals, assessments and approvals of controlled actions under the *Environment Protection and Biodiversity Conservation Act 1999* was not effective.⁵ The Attorney-General's Department did not implement the recommendation from Auditor-General Report No.27 of 2017-18, *Management of the Australian Government's Register of Lobbyists*.⁶

Insights across the audits

8. Insights from the ANAO performance audits included with the scope of this inquiry can be grouped into the following key themes, which align with key elements of the Regulator Performance Framework:
 - collection and management of compliance information;
 - assessment of compliance risk;
 - implementation of risk-based compliance programs;

¹ B Belcher, *Independent Review of Whole-of-Government Internal Regulation, Report to the Secretaries Committee on Transformation*, 2015, Volume 1, p. 7.

² Auditor-General Report No. 33 of 2019-20, *Tertiary Education Quality and Standards Agency's Regulation of Higher Education*, p. 8.

³ Auditor-General Report No. 8 of 2020-21, *Administration of Financial Disclosure Requirements under the Commonwealth Electoral Act*, p. 7.

⁴ Auditor-General Report No. 5 of 2020-21, *Regulation of the National Energy Market*, p. 10.

⁵ Auditor-General Report No. 47 of 2019-20, *Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999*, p. 8.

⁶ Auditor-General Report No. 48 of 2019-20, *Management of the Australian Government's Lobbying Code of Conduct*, p. 8.

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- record keeping; and
- measuring performance.

Collection and management of compliance information

9. Accurate, integrated and reliable information on regulated entities, activities and individuals supports regulators in assessing the risk of non-compliance and the development of targeted compliance and enforcement strategies. It also forms data which can be used as intelligence in planning future compliance strategies.

Assessment of compliance risk

10. Clear and consistent processes for understanding which regulated entities, activities and individuals pose the highest risk of non-compliance with key regulatory requirements will position regulators to design and implement risk-based compliance programs. An effective risk assessment process should include strong linkages between risk ratings and regulatory activities, including compliance assessments informed by recent and comprehensive compliance intelligence. Collecting regulatory information from a range of reliable sources assists regulators to ensure their information is complete and accurate and enables a stronger level of assurance that regulatory objectives are being met.

Implementation of risk-based compliance programs

11. The development of compliance programs using the full scope of regulatory powers and responsibilities, proportionate to assessed compliance risk, supports the effective targeting of regulatory resources. Regulators should select entities or individuals for compliance activities by applying an appropriate risk-based approach that is capable of providing assurance that the overall purpose of the compliance review program is being achieved. A well-planned and strategically targeted compliance program will also enable an assessment of improvements or deterioration of compliance of regulated entities, activities or individuals over time and possible drivers of this, which can inform associated activities such as education and awareness raising.

Record keeping

12. Appropriate recording of regulatory actions and the rationale for regulatory decisions supports transparency and accountability, particularly as a regulator's decisions or actions may be subject to external scrutiny or be challenged. A regulator, through its records, should be able to demonstrate that approval decisions align with requirements and that compliance activity and/or actions undertaken were warranted given risk, the evidence available, the compliance framework developed and legislative powers.

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Measuring performance

13. To promote transparency and accountability, regulators should publicly report on the number and outcomes of core compliance activities such as compliance assessments. Regulators should also report on the extent to which regulated entities and individuals comply, and fail to comply, with obligations under the legislation. This provides the Parliament with transparency about whether regulatory objectives are being met.
14. We would be happy to answer any questions the Committee may have.