



Australian Government
Department of Veterans' Affairs

transforming
DVA

2022–23 Word Anzac Regulator Framework Report

July 2024

Endorsement

This document been reviewed and approved by the people in this list. Evidence of the approvals is retained in TRIM.

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1. Introduction

The *Protection of Word 'Anzac' Regulations 1921* (the Regulations) broadly state that to use the word 'Anzac' or any word resembling 'Anzac' in an official or corporate manner, permission from the Minister for Veterans' Affairs (Minister) is required. The Regulations are the responsibility of the Department of Veterans' Affairs (DVA) and are DVA's only regulatory activity. The Regulations affect a small number of organisations and individuals each year.

Between 2016 and 2020, DVA published an annual Regulator Performance Framework (RPF) externally validated self-assessment report, with the last report published in December 2021 for the 2020–21 reporting year. A new reporting framework was introduced in 2021, the Word Anzac Regulator Framework (WARF), which is also an externally validated self-assessment report adopting best-practice principles of:

- Continuous improvement and building trust;
- Risk based and data driven; and
- Collaboration and engagement.

DVA used 2021–22 as a transition year to refine the WARF, and the first WARF report was published in November 2023 on the DVA website.

The outcomes of our efforts to manage the Regulations are measured against an overarching Key Performance Indicator (KPI) and several individual measurements, underpinned by the best-practice principles. Requests to use the word 'Anzac' is demand driven and it is not reliably possible to measure this demand. High-level statistics are included elsewhere in the WARF report for the current reporting period, compared to previous years.

2. Process

The self-assessment report process contains the KPI, performance measures and the evidence used to identify the extent to which DVA is achieving good regulatory performance. Once a draft report is prepared, it is circulated to the Ex-Service Organization Round Table (ESORT) for external validation, with their comments included in the final report. The final report is then published on the DVA website.

3. 2022–23 Summary

Specific DVA executives, as delegates for the Minister for Veterans' Affairs (the Minister), assess applications and issue permits to use the word 'Anzac'. The application process is simple, and it is free to apply for a permit. Permits last for varying lengths of time, depending on the purpose of the permitted activity/product, but can be made to last a number of years, reducing the burden on

regulated entities to re-apply. Once a permit has been issued, DVA does not usually require any regular follow-up reporting from regulated entities.

Permission is also required from the Minister or delegate to import goods into Australia that bear the word 'Anzac', under the *Customs (Prohibited Imports) Regulations 1956 (Cth)*. If an applicant requests permission to import 'Anzac' goods, it is considered on the same basis as any other application to use the word 'Anzac'.

4. Key Performance Indicator

The Regulations do not unnecessarily impede the efficient operation of regulated entities, building trust and confidence in Australia's regulatory settings.

4.1. Measured By:

- Actions taken to minimise the potential for unintended negative impacts of regulatory activities on regulated entities or affected supplier industries and supply chains. This includes regularly examining the end-to-end process for regulated entities to see where enhancements can be made.
 - Evidence of procedural fairness, being responsive and accessible by providing guidance and information that is clear, up-to-date and accessible.
 - 90% of applications receive an outcome within the published timeframe of four weeks.
 - 100% of incoming correspondence is responded to within 7 days of receipt.
 - 100% of potentially adverse application recommendations are given the opportunity to provide more information to support their case before the recommendation is given to the delegate (procedural fairness).
 - Adopting a whole-of-system perspective and continuously analysing and improving performance, capability and culture, where possible, to reduce the costs of compliance for those it regulates.
 - Conducting environmental scanning, sharing intelligence through cross-agency regulatory activity and cross-border regulatory activity (interactions with the .au Domain Administration [auDA], Australian Border Force and the Department of Defence).
 - Proactive interactions with peak bodies, seeking their assistance to ensure regulated entities understand their obligations under legislation.
 - Conducting an annual mail-out to peak bodies of relevant industries in advance of Anzac Day each year to draw attention to protections around the use of the word 'Anzac'.
 - Proactive communication with the community about the Regulations:
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- In the lead-up to Anzac Day each year, using a range of DVA communication platforms, including social media, to raise broader community awareness regarding the protections around using the word 'Anzac'.

4.2. Evidenced By:

- A combination of quantitative and qualitative forms of evidence, as relevant to different measures. Measures and evidence are reviewed each year and adjusted as necessary.

Guidance and information:

- The Use of the word Anzac Guidelines (Guidelines) associated with the Regulations are published on the DVA website. The Guidelines provide upfront information to applicants about using the word 'Anzac' and eliminate a significant workload associated with answering general enquiries. They are written in plain English, and help applicants interpret the Regulations. The Guidelines have codified several procedures associated with use of the word 'Anzac', including determining when permission to use the word is required and how to apply, and clarifying various exemptions from Ministerial approval under the Regulations. They also outline where to obtain further information.
- DVA has a dedicated mailbox that handles all client inquiries. The mailbox is constantly monitored to ensure client inquiries and applications are acknowledged as soon as possible, with most actioned within 7–10 days.

Analysing and improving performance

Outcome for the 2022–23 reporting period

- No feedback was received from regulated entities about the Regulations.
 - DVA received 59 complaints about potential misuse of 'Anzac' over this reporting period, from a range of different parties; note that not all of the complaints actually regarded a product or service using 'Anzac'. The majority of the complaints were found not to be a breach of the Regulations and required no further action. Twelve compliance actions were undertaken, involving the contacting of offending parties to explain the rules around using the word 'Anzac'. No legal action was required during the reporting period.
 - Applications, complaints and enquiries regarding the protection of the word 'Anzac' were logged over the reporting period (1 July 2022 to 30 June 2023).
 - 63 applications were received (11 fewer than 2021–22), of which 41 were approved, 2 were declined, 3 were withdrawn, 1 was still under consideration, 3 closed administratively (due to nil response from applicants) and 13 did not require approval under the Regulations (eight less than 2022–23).
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- Of the 41 approved applications during this reporting period, 6 included permission to import 'Anzac' goods.
- The system for managing the use of the word 'Anzac' is considered appropriate and the resourcing adequate, given the low caseload.

Assessment against key metrics for procedural fairness, being responsive and accessible

- **90% of applications meeting the published timeframe:**
 - DVA met the 90% benchmark of applications receiving an outcome within 4 weeks of receipt, with 9% of applications falling outside the timeframe.
 - **100% of correspondence responded to within 7 days:**
 - DVA met the seven-day benchmark for responding to incoming correspondence in all instances.
 - **100% of potentially adverse findings engage procedural fairness processes:**
 - In all cases where an application is most likely to not be recommended for approval, DVA contacted the applicant, referred them to the relevant section in the Guidelines, and outlined why the application was likely to be unsuccessful. At this point, the applicant was able to choose whether to continue with the application and provide further information in writing (DVA provided written advice to the applicant, exercising procedural fairness) or withdraw their application.
 - Two decisions to decline applications were made in the following reporting year (2023–24) but will be counted in this reporting year (2022–23), the year in which the applications to use the word 'Anzac' were made. One application requesting permission to use the word 'Anzac' was declined due to its commercial nature and its being unlikely to meet broader community expectations. The applicant was seeking to use the word 'Anzac' to name a sporting venue without a geographical reason for that name. The reference in the Guidelines to a geographical reason for use of the word 'Anzac' is generally related to the name of the location, for example a business located on 'Anzac Highway' or in close proximity to 'Anzac Park'. The second declined application was a complex, resource intensive case and is outlined in the case study in paragraph 5 of this report.
 - **Engagement with peak bodies and proactive communication:**
 - DVA continued to engage with the auDA extensively during the reporting period. This was due mainly to bedding down the introduction of Top Level Domains by the auDA (.au - as opposed to .com.au, .net.au,) and additional registrations of domain names that use the word 'Anzac'.
 - DVA requested auDA to intervene on one occasion to ensure that domain names of regulated entities were not de-registered, thus not affecting their business operations.
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- DVA continues to engage with Defence regarding the use of protected Defence emblems. DVA also regularly provides regulated entities the contact details for Defence Brand Managers who control the use of Defence official emblems, including the Rising Sun badge and service insignia.
 - In February 2023, DVA conducted its annual mail-out to peak bodies of relevant industries and major sporting codes to draw attention to protections around the use of the word 'Anzac'.
 - In the lead-up to Anzac Day 2023, DVA used different media platforms to raise awareness amongst the community about using the word 'Anzac', including social media posts on the DVA socials, including a flyer in the annual Anzac Day mail-out to schools.
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5. Case Study – Declined Application.

Details have been anonymised to retain privacy.

In August 2022, DVA received a referral from an ESO regarding a harness racehorse whose name included the word 'Anzac'. The horse was bred in New Zealand, had raced there for several years and had been registered with New Zealand harness racing authorities under the name that included 'Anzac'. In 2019 the horse was imported into Australia, registered with Australian harness racing authorities, and retained its name that included the word 'Anzac'. The horse was part of a harness racing stable (racing stable) and managed by one of the stable's Directors, also a part owner, along with a number of other parties, forming a racing syndicate.

The horse had not previously come to the attention of DVA, and there was no record of permission to use the word 'Anzac'. DVA alerted the racing stable to the rules around using the word 'Anzac'. The manager, on behalf of the racing stable, subsequently submitted an application to continue using the word 'Anzac' as part of the horse's racing name. Following an initial assessment of the application, DVA advised the manager that it was likely that a recommendation to not approve the application would be made, due to the commercial nature of harness racing and its association with gambling. DVA accorded the racing stable procedural fairness and invited it to provide further information in support of the application, including any impact that non-approval would have on business operations and why it believed the application should be approved.

DVA consulted horse racing industry peak bodies, including Harness Racing Australia (HRA), regarding harness racing rules, which have been adopted and implemented by the various States' harness racing bodies. Under State rules, an imported racing horse must bear the name of the country it was imported from, for example USA or NZ, in parenthesis after the horse's name. Additionally, where a horse's name has been changed, the old name (in parenthesis), as well as the new, shall be shown in every program for a meeting or race in which the horse participates for a period of 3 months or until the horse has competed under the new name on at least 6 occasions, whichever shall be longer. The rules are there to ensure the public is aware of the racing history of the horse.

In response to procedural fairness, the racing stable responded that it did not accept any liability for the horse's name – it simply managed the racing and stabling of the horse on behalf of the syndicate; that when the horse was purchased from New Zealand on behalf of the syndicate, its name already included the word 'Anzac', and it was imported into Australia bearing the name. The manager also advised that in 2021 he had reached out to several ESOs to encourage service men and women to connect with the horse because of its racing name that included the word 'Anzac', during the tough times of Covid-19, however DVA could not verify this.

In terms of business impacts, the manager advised that non-approval of the horse's name would impact the potential to resell the horse, that the horse was currently on the market and the racing stable was in the process of potentially selling the horse on the USA market. A name change had the potential to harm the chance of reselling it, which could then impact the return for the syndicate. The manager indicated that it would work with DVA to prevent any further compliance action against the racing stable.

In considering the additional information provided in response to procedural fairness, and possible next steps, DVA had to consider the conflict between State and Commonwealth laws. Under s 109 of the *Australian Constitution*, where a law of a State is inconsistent with a law of the Commonwealth, the

Commonwealth law will prevail and the State law will, to the extent of the inconsistency, be invalid. Based on this conclusion, the racing stable's application to use the word 'Anzac' in the naming of the horse was declined, with the following 3 options provided to the racing stables:

- Retire the horse from racing within 30 days of receipt of the correspondence; or
- If the horse is continued to be raced, it must be re-named to remove the word 'Anzac', and confirmation of this change must be provided to DVA within 60 days of receipt of the correspondence; or
- Sell the horse internationally within 90 days (noting that the horse cannot be sold on the domestic market with its current name).

In February 2023, the racing stables confirmed with DVA that the horse's racing name had been changed to no longer include the word 'Anzac', as the sale to the USA had not proceeded. DVA considers that the racing stable had shown good faith and complied with DVA's request to remedy the situation and it was no longer in breach of the Regulations.

DVA monitored the horse's racing career for a period of six months to confirm the former name was no longer displayed in racing programs or on gambling websites. DVA continues to monitor any residual use of the horse's previous name and will assess any residual use on a case-by-case basis, and takes steps where necessary and within resourcing, however it is anticipated that residual use will be minor in nature.

DVA continues to engage with the HRA, Australian Turf Club, and Racing Australia as part of the annual peak body mail-out advising of the significance of the word 'Anzac' in Australian culture, clarifying when permission to use the word is required, and advising where additional information and instructions on how to apply to use the word 'Anzac' can be found.

Appendix A: Summary of feedback from consultation

Organisation	Feedback
Partners of Veterans Association of Australia Inc	Nil comment.
Returned Services League of Australia	Nil comment.
Vietnam Veterans' Association of Australia	Nil comment.
Legacy Australia Inc	Nil comment.
Australian War Widows Inc	Nil comment.
Defence Force Welfare Association	Nil Comment
TPI Federation Australia	Nil Comment
Australian Special Air Service Association	Nil comment
Naval Association of Australia	Nil comment
Defence Families of Australia	Nil comment
Australian Peacekeeper & Peacemaker Veterans' Association Ltd	Nil comment
The Royal Australian Regiment Corporation	Comment: I have read the ANZAC report and see no problems with it and in particular the case study calling a racehorse with Anzac in the title. We need to protect the name and the Day.
Defence Reserves Association	Nil Comment
Australian Air Force Association	Nil comment
Vietnam Veterans' Federation of Australia	Nil comment
Comcare	Nil comment
Soldier On	Nil comment