

# 2018-19 Assessment under the Regulator Performance Framework

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## Introduction

In 2014 the Australian Government released its Regulator Performance Framework (the Framework) as part of its commitment to reduce the cost of unnecessary or inefficient regulation imposed on individuals, business and community organisations. The Framework consists of six outcomes-based key performance indicators (KPIs) to articulate the Government's overarching expectations of regulator performance:

1. Regulators do not unnecessarily impede the efficient operation of regulated entities.
2. Communication with regulated entities is clear, targeted and effective.
3. Actions undertaken by regulators are proportionate to the regulatory risk being managed.
4. Compliance and monitoring approaches are streamlined and coordinated.
5. Regulators are open and transparent in their dealings with regulated entities.
6. Regulators actively contribute to the continuous improvement of regulatory frameworks.

The Framework aims to encourage regulators to undertake their functions with the minimum impact necessary to achieve regulatory objectives. It is focused on the administration, monitoring and enforcement of regulation, rather than the setting of policy.

The *Protection of the Word 'Anzac' Regulations 1921* (the Regulations) are the responsibility of the Department of Veterans' Affairs (DVA) and are the Department's only regulatory role. A very minor part of DVA's business, the Regulations affect a small number of organisations and individuals each year.

The Framework allows DVA to report objectively on the outcomes of our efforts to administer the Protection of the Word 'Anzac' Regulations fairly, effectively and efficiently. It is a useful tool for DVA to identify opportunities for improvement that could reduce compliance costs. DVA's Framework includes:

- DVA's outcomes-based key performance indicators;
- DVA's measures of good regulatory performance, and
- DVA's self-assessment methodology.

DVA developed a self-assessment methodology for the six KPIs and undertook stakeholder consultation on the proposed metrics by engaging with the ex-service community. On 26 June 2015, the then-Minister for Veterans' Affairs, Senator the Hon Michael Ronaldson, agreed to the KPIs and the use of the existing Ex-Service Organisation Round Table (ESORT) as the stakeholder mechanism for external validation of the self-assessment results. The KPIs are published on DVA's website and are available at Appendix A. The self-assessment report at Appendix B identifies the extent to which DVA is achieving the performance indicators in the Framework and highlights areas for improvement.

DVA is confident that it is complying with the Regulator Performance Framework.

## Use of the Word ‘Anzac’ Regulations

### KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities

DVA has kept detailed records of all applications to use the word ‘Anzac’ since late 2013. Those records are deemed adequate to meet KPI 1. All complaints received and enforcement actions taken in relation to the Protection of Word ‘Anzac’ Regulations are recorded.

During this assessment period, and particularly between March – June 2019, additional stakeholder interactions occurred due to an unforeseen change to how websites in the .au domain space are administered. The .au domain refers to websites that have .au in their registered domain name (for example, websites that include .com.au; or .edu.au; or .org.au; or .net.au; etc.). Changes to the registration policies for the .au domain space, introduced by the Department of Communications and the Arts, mean that approval from the Minister for Veterans and Defence Personnel (the Minister) approval is required to register certain words that have legislative protections under Australian law at the time a domain name is registered, renewed or when changes are made. The word ‘Anzac’ falls within this scope when used in an .au domain name.

The changes to the registration policies impacted several DVA stakeholders who use the word ‘Anzac’ in their domain name. Stakeholders were contacted by their website service providers, who advised them of the new registration policies. A large proportion of these stakeholders contacted DVA, expressing concern that their websites may be taken down, with many requesting clarification on the new registration policies and how it affected them. This concern was due in part to unfamiliar jargon used, and the absence of a communication strategy, by the website service providers. This was initially beyond the control of DVA, however, communication products were quickly developed and broadcast to inform stakeholders of the registration policies, the process to apply for Ministerial approval to use the word ‘Anzac’ in their domain name, and the need to retain a record of the approval to present to their website service provider on request.

Additionally between March – June 2019, significant media coverage of the Regulations in the lead up to Anzac Day heightened awareness in the broader community, which in turn caused a spike in complaints. Complaints about suspected misuse of the word ‘Anzac’ increased from 51 complaints in the 2017/18 reporting period, to 96 complaints in this reporting period, with many of these complaints about the use of social media in advertising campaigns that used the word ‘Anzac’ to promote ‘Anzac’ sales events.

DVA manages applications to use the word ‘Anzac’ through a shared mailbox. The processing of applications is assigned to and generally requires 1.5 full-time equivalent positions. Record-keeping comprises a large portion of the workload and is primarily done for reporting purposes, such as under the Framework. DVA does not keep detailed records of feedback received on the Regulations themselves.

All applications and complaints regarding the protection of the word ‘Anzac’ were logged over the period. During this time, 71 applications were received, of which 59 were approved, six were declined and six did not require formal approval under the Guidelines.

As reported in previous assessment reports, general enquiries were not logged. However, DVA has recently implemented a revised method of categorising stakeholder interactions to provide a more accurate snapshot of the caseload. This 2018/19 assessment report will reflect a combination of

previous and revised methodology. From December 2018, inquiries are recorded as either complex or simple inquiries, and total 33 and 27 respectively for this truncated reporting period.

Permission is also required by the Minister to import into Australia any goods that bear the word 'Anzac' as per the *Customs (Prohibited Imports) Regulations 1956*. 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'. Of the 59 approved applications during this reporting period, two included permission to import 'Anzac' goods.

## KPI 2: Communications with regulated entities are clear, targeted and effective

Guidelines setting out the rules governing the use of the word 'Anzac' are available on the DVA website. DVA's website and the Guidelines are 100 per cent compliant with government accessibility guidelines. The Guidelines have codified several protocols associated with use of the word 'Anzac' and assist in meeting the requirements of KPI 2.

This includes various exemptions for Ministerial approval under the Regulations such as:

- When using the words 'Anzac Day' in connection with events or entertainment held on 25 April itself, or on consecutive days including 25 April;
- When naming a street, road or park containing (or near) a memorial to the First or Second World War;
- When naming a memorial, or using the word 'Anzac' on a memorial plaque;
- When using the word 'Anzac' in a personal manner, such as the naming of a child or pet;
- When producing a book or poem, on the condition that the party producing the book or poem is not a professional writer and the content of the book or poem is historical in nature; and
- When the word 'Anzac' is used outside Australia.

The publication of the Guidelines on the DVA website eliminated a significant workload associated with answering general enquiries on use of the word 'Anzac'. DVA does not record detailed information on decision-making times. Rather, the time between an applicant's first contact with DVA and a response is recorded. Clarification is often required of an initial enquiry and it is often some time before an application is made in terms that a decision-maker is able to assess. No feedback has been recorded regarding the timeliness of decisions.

## KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed

Risk associated with the Regulations is low. All decisions on applications to use the word 'Anzac' are made by the Minister, or by a senior officer of DVA to whom the Minister has delegated the authority to make routine decisions. Recommendations regarding decisions are based on precedent. As a result, there are limited risk management actions that need to be taken around applications to use the word 'Anzac'.

As the rules associated with the word 'Anzac' are not well known, there exists a risk of businesses and members of the public misusing the word 'Anzac' unintentionally. This happens multiple times each year, with a significant increase around Anzac Day and Remembrance Day. The Guidelines outline what penalties are associated with misusing the word 'Anzac'. During the reporting period, DVA took 17 compliance actions, which involved DVA staff contacting offending parties, noting the rules around the word 'Anzac' and the penalties for misuse. In all but a few cases during the

reporting period, offending parties were quick to note their ignorance of the Regulations and remove the offending content.

No legal action was required or taken during the reporting period. Indeed, departmental records show that prosecution action to enforce the Regulations is a rare occurrence.

Governance arrangements and sanctions associated with the use of the word 'Anzac' are outlined in the Guidelines, providing adequate information to potential applicants and those already complying with the Regulations.

#### KPI 4: Compliance and monitoring approaches are streamlined and coordinated

DVA maintains a good relationship and shares information with the Army Brand Manager's (ABM) Office. This is because the imagery controlled by the ABM (the Rising Sun Badge and other Army Logos) will often be used alongside the word 'Anzac', especially by unauthorised people.

DVA does provide autonomy to organisations to use the word 'Anzac' where they are able to demonstrate that they have adequate controls to ensure that its use is strictly in accordance with the Regulations. For example, the RSL has broad permission to use the word 'Anzac' in connection with the 'Anzac Appeal', an annual fundraising event. This allows the RSL to handle standard Anzac Appeal business without the hindrance of seeking permission to use the word 'Anzac' for any new promotions or merchandise. It is worth noting that as per the *Customs (Prohibited Imports) Regulations 1956*, the RSL still require Ministerial authority to import goods on an item specific basis.

DVA has also granted a level of autonomy to those organisations whose domain names include the word 'Anzac' in the context of the geographic location of the business to a street, road, avenue, or similar that is named 'Anzac'. For example, as a hypothetical, a restaurant located on Anzac Avenue may request approval to use the word 'Anzac' in their website and domain name 'www.restaurantonanzacparade.com.au'. In these types of scenarios, DVA may grant a level of autonomy, provided that the organisation and nature of the business meets community expectations in using the word 'Anzac'.

During this assessment period, the use of the word 'Anzac' in domain names, coupled with complaints about the rise of social media use in 'Anzac' related advertising campaigns, highlighted the enduring, strong community sentiment around use of the word 'Anzac', even after the conclusion of the Centenary of Anzac events. DVA closely examines the risks of granting autonomy to organisations and ongoing careful consideration is necessary before doing so, while balancing the needs of stakeholders and meeting community expectations. DVA will continue to carefully monitor any organisation granted broad permission to use the word 'Anzac'.

#### KPI5: Regulators are open and transparent in their dealings with regulated entities

DVA's enforcement strategy is outlined in the Guidelines, which are publicly available. While the Guidelines do not include information on the number of applications approved, these details are maintained as part of the Framework.

DVA has not received any direct feedback on the Guidelines. It can be assumed that, based on the quality of the applications submitted, the Guidelines are helpful to regulated entities.

## KPI 6: Regulators actively contribute to the continuous improvement of regulatory frameworks

DVA is committed to the continuous improvement of the Regulations. For example, departmental staff recently met with representatives of the Australian Border Force (ABF) operated by the Department of Home Affairs to discuss the Border Permits Review (BPF). The BPF aims to create a future international trade system for Australia that is seamless, digital, automated and user-friendly. This will ensure the international competitiveness of Australian businesses and strengthen border integrity. DVA provided input into this process and have since been advised that a public consultation process has occurred and the BPF team are now considering possible recommendations based on analysis of public submissions and meetings with various permit issuing agencies (such as DVA).

Based on feedback from several stakeholders, an application form to use the word 'Anzac' would remove some confusion about the type of information DVA requires, rather than relying on dot points in the Guidelines. DVA have consulted with the relevant area to have an application form developed, and has been uploaded to the DVA website for use.

Feedback mechanisms, including how to appeal a decision, are available in the Guidelines.

Documented procedures and use of templates assist in ensuring clarity, consistency and continuity in how applications to use the word 'Anzac' are processed.

## Appendix A: Key performance indicators

Key Performance Indicator	Measure	Output/activity-based evidence	Self-assessment
<b>KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities</b>	<ol style="list-style-type: none"> <li>1. DVA takes actions to minimise the potential for unintended negative impacts of regulatory activities on regulated entities or affected supplier industries and supply chains.</li> <li>2. DVA implements continuous improvement strategies to reduce the costs of compliance for those they regulate.</li> </ol>	<ul style="list-style-type: none"> <li>• Documented responsiveness to feedback from regulated entities, including feedback from existing complaint mechanisms and surveys of regulated entities.</li> <li>• Environment scanning is undertaken regularly and at a minimum, on an annual basis.</li> </ul>	Logging all applications, queries, complaints and other feedback regarding the protection of the word 'Anzac'.
<b>KPI 2 – Communication with regulated entities is clear, targeted and effective</b>	<ol style="list-style-type: none"> <li>1. DVA provides guidance and information that is up to date, clear, accessible and concise through media appropriate to the target audience.</li> <li>2. DVA's decisions and advice are provided in a timely manner, clearly articulating expectations and the underlying reasons for decisions.</li> <li>3. DVA's advice is consistent and supports predictable outcomes.</li> </ol>	<ul style="list-style-type: none"> <li>• Percentage of guidance materials that complies with government accessibility guidelines.</li> <li>• Maximum, minimum and average time for decision.</li> <li>• Published timeframes for decision making.</li> <li>• Percentage of decisions accompanied by statement of reasons and advice about relevant review or appeal mechanisms, where appropriate.</li> <li>• Approved procedures for communications (including issue-specific scripts if relevant) are available for staff use when interacting with regulated entities.</li> <li>• Advice provided to regulated entities is consistent with communication policies.</li> </ul>	<p>A Use of the word 'Anzac' Guidelines document, featuring information on use of the word 'Anzac' and how to apply, timeframes, and appeal mechanisms published on the DVA website.</p> <p>A staff handbook comprising of procedural information and templates for use of the word 'Anzac', available to DVA staff and staff from the Minister's office.</p>
<b>KPI 3 – Actions undertaken by regulators are proportionate to the regulatory risk being managed</b>	<ol style="list-style-type: none"> <li>1. DVA applies a risk-based, proportionate approach to compliance obligations, engagement and regulatory enforcement actions.</li> <li>2. DVA's preferred approach to regulatory risk is regularly reassessed. Strategies, activities and enforcement actions are amended to reflect</li> </ol>	<ul style="list-style-type: none"> <li>• Risk management policies and procedures are available to regulator staff and the public.</li> <li>• Compliance and enforcement strategies, consistent with agreed risk management policies are published.</li> <li>• Documented enforcement strategy which allows for the</li> </ul>	<p>The Use of the Word 'Anzac' Guidelines are reviewed as necessary.</p> <p>Enforcement strategies are documented in the Guidelines.</p> <p>The number of enforcement actions are tracked.</p>

Key Performance Indicator	Measure	Output/activity-based evidence	Self-assessment
	<p>changing priorities that result from new and evolving regulatory threats, without diminishing regulatory certainty or impact.</p> <p>3. DVA recognises the compliance record of regulated entities, including using earned autonomy where this is appropriate. All available and relevant data on compliance, including evidence of relevant external verification is considered.</p>	<p>compliance records of regulated entities to be considered in determining regulatory actions.</p> <ul style="list-style-type: none"> <li>Documented enforcement strategy includes options for graduated compliance actions consistent with regulators' powers.</li> </ul>	
<b>KPI 4 – Compliance and monitoring approaches are streamlined and coordinated</b>	<p>1. DVA utilises existing information to limit the reliance on requests from regulated entities and shares the information among other regulators, where possible.</p> <p>2. DVA bases monitoring and inspection approaches on risk and, where possible, takes into account the circumstance and operational needs of the regulated entity.</p>	<ul style="list-style-type: none"> <li>Information shared and received among regulators.</li> <li>Evidence of collected information being acted upon, stored and re-used.</li> <li>Regular review and assessment of agreed monitoring and compliance strategies, including use of earned autonomy approaches.</li> </ul>	<p>Information will be shared with similar regulators, such as the Army Brand Manager.</p> <p>Information collected will be used to update the Use of the Word 'Anzac' Guidelines as necessary.</p> <p>Where appropriate, earned autonomy approaches will be considered for organisations that make use of the word 'Anzac' regularly.</p>
<b>KPI 5 – Regulators are open and transparent in their dealings with regulated entities</b>	<p>1. DVA's risk-based framework is publicly available in a format which is clear, understandable and accessible.</p> <p>2. DVA is open and responsive to requests from regulated entities regarding the operation of the regulatory framework, and approaches implemented by regulators.</p> <p>3. DVA's performance measurement results are published in a timely manner to ensure accountability to the public.</p>	<ul style="list-style-type: none"> <li>Enforcement strategy and risk approach are published.</li> <li>Performance measurement results are published.</li> <li>Number of responses to requests from regulated entities provided within specified timeframes.</li> <li>Advice and guidance is widely available to stakeholders, with feedback mechanisms in place to support and inform continuous improvement.</li> </ul>	<p>The Use of the Word 'Anzac' Guidelines will contain information on DVA's enforcement strategy and risk approach.</p> <p>Information on responses will be collected.</p> <p>The Guidelines include information for the public. Feedback will be used to update the Guidelines as necessary.</p>

Key Performance Indicator	Measure	Output/activity-based evidence	Self-assessment
<b>KPI 6 – Regulators actively contribute to the continuous improvement of regulatory frameworks</b>	<ol style="list-style-type: none"> <li>1. DVA establishes cooperative and collaborative relationships with stakeholders to promote trust and improve the efficiency and effectiveness of the regulatory framework.</li> <li>2. DVA regularly shares feedback from stakeholders and performance information (including from inspections) with policy departments to improve the operation of the regulatory framework and administrative processes.</li> </ol>	<ul style="list-style-type: none"> <li>• Feedback mechanisms are available.</li> <li>• Documented procedures are in place to facilitate the flow of information between the regulator and policy departments.</li> </ul>	<p>Regulated entities are able to provide feedback.</p> <p>A handbook outlining internal processes for use of the word 'Anzac', including standard words and templates is available to DVA staff.</p> <p>Based on feedback from several stakeholders, an application form for approval to use the word 'Anzac' would remove some confusion about the type of information DVA requires, rather than relying on dot points in the Guidelines.</p>

## Appendix B: Results and evidence against each metric

KPI	Output Metric	Evidence and Results
<b>KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities</b>	Documented responsiveness to feedback from regulated entities, including feedback from existing complaint mechanisms and surveys of regulated entities.	Register of interactions with regulated entities stored in Department's record keeping system.
	Environment scanning is undertaken regularly and at a minimum, on an annual basis.	Department-initiated enforcements resulting from environment scanning recorded.
<b>KPI 2 – Communication with regulated entities is clear, targeted and effective</b>	Percentage of guidance materials that complies with government accessibility guidelines.	100% of website and Guidelines complies with government accessibility guidelines.
	Maximum, minimum and average time for decision.	Information not recorded.
	Published timeframes for decision making.	No timeframes specified.
	Percentage of decisions accompanied by statement of reasons and advice about relevant review or appeal mechanisms, where appropriate.	Advice to all applicants on review rights available in Guidelines.  All decisions are communicated by explanatory letter or email. Letters include contact details in case of further queries.
	Approved procedures for communications (including issue-specific scripts if relevant) are available for staff use when interacting with regulated entities.	Templates exist and are used for decisions and enforcement actions.
	Advice provided to regulated entities is consistent with communication policies.	Advice is consistent with DVA's Communications Framework.
<b>KPI 3 – Actions undertaken by regulators are proportionate to the regulatory risk being managed</b>	Risk management policies and procedures are available to regulator staff and the public.	Handbook, available to staff, contains procedures.
	Compliance and enforcement strategies, consistent with agreed risk management policies are published.	Compliance and enforcement strategies contained in Guidelines.
	Documented enforcement strategy which allows for the compliance records of regulated entities to be considered in determining regulatory actions.	Handbook contains enforcement strategy.
	Documented enforcement strategy includes options for graduated compliance actions consistent with regulators' powers.	
<b>KPI 4 – Compliance and monitoring approaches are streamlined and coordinated</b>	Information shared and received among regulators.	Two matters referred to Army Brand Manager.  No referrals were received from Army Brand Manager in 2018-19.
	Evidence of collected information being acted upon, stored and re-used.	Register of interactions with regulated entities stored in Department's record keeping system.  Internal records consulted whenever complaint received.

KPI	Output Metric	Evidence and Results
	Regular review and assessment of agreed monitoring and compliance strategies, including use of earned autonomy approaches.	<p>During this reporting period several Anzac biscuit manufacturers (mostly small business) were deemed as a low risk and granted autonomy.</p> <p>In the context of websites/domain names containing Anzac, a level of autonomy is now being granted to those organisations whose geographic location is on a street, road, avenue, or similar, that is named 'Anzac' (hypothetical example: 'www.restaurantonanzacavenue.com.au')</p>
<b>KPI 5 - Regulators are open and transparent in their dealings with regulated entities</b>	Enforcement strategy and risk approach are published.	Compliance and enforcement strategies contained in Guidelines.
	Performance measurement results are published.	No results published.
	Number of responses to requests from regulated entities provided within specified timeframes.	No timeframes specified.
	Advice and guidance is widely available to stakeholders, with feedback mechanisms in place to support and inform continuous improvement.	Guidelines published on DVA website.
<b>KPI 6 – Regulators actively contribute to the continuous improvement of regulatory frameworks</b>	Feedback mechanisms are available and made known to all stakeholders.	Shared mailbox address published on DVA website.
	Documented procedures are in place to facilitate the flow of information between the regulator and policy departments.	<p>Following feedback from stakeholders, DVA is developing an application form for approval to use the word 'Anzac'. The form will reduce the need for additional stakeholder interactions as once completed by the applicant, the information contained in the form will be more targeted and specific. The aim is to streamline the application process by reducing interactions and timelines.</p> <p>Use of 'Anzac' policy and regulation co-compartmentalised.</p>

## Appendix C: Summary of feedback from consultation

Ex-Service Organisation	Feedback
Partners of Veterans Association of Australia	Nil
RSL of Australia	Nil
Vietnam Veterans Association of Australia	Nil
Legacy Australia Inc.	Nil
War Widows' Guild of Australia	Nil
Defence Force Welfare Association	Nil
TPI Federation Australia	Nil
Australian Special Air Service Association	Nil
Naval Association of Australia	Nil
Defence Families Australia	Nil
Australian Peacekeeper & Peacemaker Veterans Association	Nil
The Royal Australian Regiment Corporation	Nil
Defence Reserves Association	Nil
Royal Australian Air Force Association	The self-assessment methodology appear most adequate for the task.
Vietnam Veterans Federation of Australia	Nil