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Statement of Expectations Framework for Regulators

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1. Context for the Statement of Expectations Framework

The Statement of Expectations (SOE) Framework for Regulators was established in 2012 to enable portfolio Ministers to provide clear guidance to their regulators on the government's strategic priorities.

Following consultations with departments and regulators, this revised Framework has been developed to incorporate Ministerial guidance into regulators' existing business planning processes.

The primary purpose of this revised Framework and its related reporting requirements is to facilitate a dialogue between Ministers, departments and regulators to identify the government's priorities and emerging risks and to establish a process for addressing these priorities through regulators' business planning processes.

The changes are intended to improve the administration and enforcement of regulation in Victoria, which will allow regulators to manage harms confronting the Victorian community more effectively.

Under the revised Framework, portfolio Ministers will continue to provide a letter to their regulators outlining the government's priorities and emerging risks, but Ministers will have greater flexibility over the content of their letter. Regulators' business plans will then need to clearly demonstrate how they propose to meet the Minister's expectations and when the Minister's letter will next require to be updated or renewed. Regulators will be required to report on their progress in meeting their Minister's expectations through the annual reporting process.

Regulators' business planning processes remain subject to existing accountability measures under the *Financial Management Act 1994*, *Public Administration Act 2004* and regulators' own legislation.

2. Key changes to the Framework

The key changes from the previous Framework are set out in the table below.

Previous Framework	Revised Framework
Portfolio Minister issued a SOE letter that was required to cover specific elements of good regulatory practice.	Portfolio Ministers are to issue a SOE letter but aren't required to cover the specified elements of good regulatory practice. Ministers have greater flexibility over the content of their letter.
Regulators provided a response to their Minister's letter.	Regulators aren't required to provide a response to their Minister's letter, but their business plans must clearly demonstrate how they will meet their Minister's expectations.
Regulator's progress in meeting their Minister's expectations were evaluated by their department every two years prior to a new letter being developed.	<p>The biennial evaluation cycle has been replaced by regular milestones in the regulator's existing planning processes to demonstrate the regulator's progress in meeting their Minister's expectations.</p> <p>Regulators' business plans are to also include milestones to determine when their Minister's letter needs to be updated or renewed.</p>
The Minister's letter, regulator's response and evaluation report were made publicly available .	The Minister's letter and progress reports are to be made publicly available. Ministers can approve not publishing any sensitive information in the letter.

3. Who is covered by the Framework

The Framework applies to all Victorian business regulators, as listed in Attachment 1¹. A business regulator is a State Government entity (either independent or within a department) that derives from primary or subordinate legislation one or more of the following powers in relation to business and occupational inspections:

- regulatory advice to a third party;
- licensing;
- accreditation; and
- standards monitoring and enforcement.²

The Framework is only intended to cover business activities and is not intended to cover non-business activities.

Some agencies have regulatory activities that fit this definition of a business regulator, but these activities are not their sole or primary activities. In these cases, the application of the Framework should be limited to their regulatory activities.

Some regulators perform functions to administer national regulations, sometimes on behalf of other jurisdictions. In these cases, the Framework should be limited to issues or standards over which the Minister has direction or the regulator has control or flexibility in meeting outcomes.

Ministerial letters are to be developed within the context of the existing statutory framework whereby the government has passed legislation and the regulator has been charged with administering the legislation.

Ministerial letters can't override legislative requirements. If the process of developing a letter identifies legislative barriers to performance improvement, the relevant Minister and department should consider whether legislative changes are required.

3.1 Exempting regulators

This Framework applies to the regulators listed in Attachment 1. In some rare circumstances the Minister for Regulatory Reform may choose to remove a business regulator from the Framework at the request of the responsible Minister.

¹ The Framework does not apply to local government.

² Victorian Competition and Efficiency Commission, The Victorian Regulatory System, September 2013, p. 2.

4. The SOE process

4.1 Roles and responsibilities

The roles and responsibilities of Ministers, regulators and departments under the Framework are set out in the table below.

These roles and responsibilities operate within the context of legislative requirements such as those in the *Public Administration Act 2004*, the *Financial Management Act 1994* or regulators' own legislation.

Ministers	<p>Portfolio Ministers are responsible for engaging with their regulators and department to develop a Ministerial letter and to issue that letter.</p> <p>Where there are multiple Ministers with a policy interest in a regulator, the portfolio Minister who is primarily responsible for the regulator should liaise with the other Ministers to develop an agreed position on the Ministerial letter.</p>
Regulators	<p>Regulators, who are the recipient of the Minister's letter, are to advise the Minister on emerging risks, strategic priorities and any other matters they believe the Minister should consider in developing their expectations for the regulator.</p> <p>Regulators are responsible for developing business plans that demonstrate how they will achieve the Minister's expectations, implementing those plans and reporting on their progress in meeting those expectations.</p>
Departments	<p>Departments are responsible for providing advice and support to the Minister on the policy context, legislative obligations and regulator performance.</p>
Department of Treasury and Finance (DTF)	<p>DTF is responsible for administering the Framework which includes providing advice to departments and regulators on the operation of the Framework and recommending changes to the Minister for Regulatory Reform.</p>
Better Regulation Victoria (BRV)	<p>BRV is responsible for developing guidance material on the Framework and supporting regulators in meeting their Minister's expectations.</p>

4.2 Key components of the Framework

The key components of the Framework are set out in the table below and outlined in the following sections.

Ministerial guidance	<p>Portfolio Ministers are to issue a letter outlining their expectations.</p> <p>These expectations will usually be based on a three-way discussion with the portfolio Minister, regulator and department on the government's priorities and emerging risks.</p>
Business planning	<p>Ministerial expectations are to be incorporated into the regulator's existing business planning processes.</p> <p>Regulator's business plans are to clearly show how they will meet the Minister's expectations and when Ministerial letters are to be updated or renewed.</p> <p>Annual light touch reviews to fine tune Minister's letter and milestones, if required.</p>
Reporting	<p>Business plans to include milestones to report on regulators' progress in meeting their Minister's expectations and when to propose updates to their Ministerial letters.</p> <p>Portfolio Ministers can request reports or issue a new letter at any time.</p>
Accountability	<p>Regulators are required to comply with existing accountability frameworks such as those established under the <i>Public Administration Act 2004</i>, <i>Financial Management Act</i> and in their own legislation.</p>
Regulator best practice guidance	<p>Better Regulation Victoria to develop guidance material and to support regulators in meeting their Minister's expectations.</p>

4.2.1 Minister's letter

Portfolio Ministers are to issue a letter outlining their expectations for the regulator. An example of a Ministerial letter is available at Attachment 2.

These letters are to be based on a dialogue between the Minister, department and regulator to clarify the government's priorities and to identify emerging risks. During consultation for developing this Framework, regulators noted that the formal discussions with their Minister in developing their SOE letter was a major benefit of the SOE process. Retaining and strengthening these discussions is to be a key feature of this revised process.

Unlike the previous Framework, Ministers aren't required to cover specified elements of good regulatory practice and can include a larger range of expectations. These could include expressing a view about:

- a government policy, such as an election commitment, that the Minister wants the regulator to be aware of or to contribute to its implementation.
- the regulatory philosophy or approach to engagement that the regulator should adopt
 - for example, the need to take strong enforcement action against certain behaviours or the need to actively engage with certain regulated entities.
- the regulator's performance
 - for example, concerns about the delivery of outputs or how the regulator is responding to a Victorian Auditor -General's Office or a Royal Commission report.
- the regulator's behaviour or conduct
 - for example, the regulator's use of public money, or provision of bonuses or failure to keep Ministers properly informed. If this information is sensitive, Ministers may exempt the regulator from making their letter publicly available.

Ministers don't need to cover existing statutory requirements in their letter.

In their letter, Ministers should include actions they expect the regulator to take in response to their expectations.

When setting their expectations, Ministers should consider their regulator's funding capacity and capabilities to deliver on their expectations and tailor their expectations accordingly.

Ministers' expectations are to be incorporated into regulators' existing business planning processes and these processes are to include milestones for reporting on the regulator's progress in meeting their Minister's expectations. The reporting requirements should be customised by the type of expectations included in the letter.

Unlike the previous Framework, Ministers' letters aren't required to have a fixed term. Rather they are to be updated or renewed as needed. The regulator's business planning processes are to include milestones for determining when their Minister's letter needs to be updated or renewed. These milestones are likely to coincide with some of the progress reporting milestones.

Given that the Minister's expectations are to be incorporated into the regulator's planning processes, Ministers will need to consider their regulators' planning and delivery cycles when determining when to issue their letter and any timelines in their letters for when they expect their regulators to meet their expectations.

While it is preferable that issuing and reporting on Ministers' letter follow the timelines in their regulators' planning processes, the Minister can request a report on their regulators' progress in meeting their expectations or to issue a new letter at any time. If a Minister is considering issuing a new letter, they should consult with the regulator and department and consider the impact on their regulator's planning cycles and operations before issuing a new letter.

There may be some situations where a Minister may wish to issue a new letter without consulting with the regulator, such as when there are serious performance or conduct issues with the regulator. In these circumstances, the Minister can issue a new letter without consultation with the regulator.

Some regulators are covered by legislation that provides their Minister with a power to issue Ministerial directions to the regulators. Those powers are separate from this Framework and the provisions of this Framework don't apply to those powers.

To promote accountability and transparency, regulators are to make their Minister's letter publicly available on their website as soon as practicable after the Minister has issued the letter. If the letter contains sensitive information, the Minister may approve not making the sensitive components of the letter publicly available.

Regulators should retain previous letters on their websites as a public record of how their Minister's expectations have changed over time.

Where there are multiple Ministers with a policy interest in a regulator, the portfolio Minister who is primarily responsible for the regulator should liaise with the other Ministers to develop an agreed position on the Ministerial letter.

4.2.2 Business planning

Ministers' expectations are to be incorporated into regulators' existing business planning processes and are intended to be *business as usual* elements of these processes.

Under the previous Framework, regulators were required to provide a response to their Minister's letter that set out how they intended to meet their Minister's expectations. Their performance in meeting these expectations was evaluated biennially by their department.

Under this Framework, regulators aren't required to provide a response to their Minister's letter, but their business plans are to clearly demonstrate how they will meet those expectations. Nor are they required to meet their Minister's expectations within a fixed two-year timeframe. The Framework is intended to be a continuous process of setting, meeting and renewing expectations, rather than expectations being met within a fixed timeframe.

To achieve this, regulator's business plans are to include milestones to report on their progress in meeting their Minister's expectations. These milestones are to be customised to reflect the kinds of expectations that have been set in their Minister's letter. For example, if the expectations are about:

- delivering on a government policy commitment or engaging with stakeholders in a particular way, there may be quarterly meetings to discuss progress with the Minister with reporting in the annual report. A new letter will be required when the regulator has met the Minister's expectation.
- responding to an external review (for example, VAGO or by a Royal Commission), there may be a specified timeframe for the regulator to report back. A new letter will be required when the regulator has provided the report.

The regulator's business plans are to also include milestones to determine when their Minister's letter needs to be updated or renewed.

Some regulators don't have their own business planning processes as their business planning is part of their department's planning processes. In these cases, the department's business planning processes will need to include these milestones.

In addition to these milestone reviews, regulators and departments are required to undertake an annual light touch review of their Minister's letter and their milestones. These reviews are to consider whether:

- their Minister's expectations remain relevant and appropriate and whether their Minister's letter should be updated or renewed.
- the milestones in their business plans to report on their progress in meeting their Minister's expectations remain relevant and appropriate and whether these milestones should be amended.

Regulator's business planning is to be undertaken in accordance with the government's broader accountability requirements such as those in the Standing Directions issued under the *Financial Management Act 1994* and the Resource Management Framework.

4.2.3 Reporting

Under the previous Framework, departments were required to biennially evaluate their regulator's performance in meeting their Minister's expectations and to make their evaluation report publicly available.

Under this Framework, the biennial evaluation has been replaced by reporting milestones in the regulator's business plans so that regulators can report on their progress in meeting their Minister's expectations and to update or renew their Minister's letter.

Regulators are encouraged to work with their departments when preparing reports for their Minister.

This reporting requirement can be met through regulators' annual reporting requirements under the *Financial Management Act 1994* or any other reporting requirements under their own legislation.

Alternatively, providing they meet their statutory obligations, regulators can publicly provide a progress report as a separate document on their website. This option is most likely to be used by regulators that are a departmental business unit but wish to demonstrate the independence of their regulatory activities from their department. (See section 5 Impact on different types of regulators.) These reports are to be published in line with the annual reporting cycle.

While it is preferable that reporting on a regulator's progress follows the timelines in the regulator's business plans, the Minister can request a report on the regulator's progress at any time. These reports are not required to be made publicly available.

4.2.4 Accountability

Regulators' planning processes and reporting are subject to the government's existing accountability frameworks which include:

- **Public Administration Act** which provides for good governance in the Victorian public sector.
- **Financial Management Act (FMA)** which governs Victoria's public sector financial management and accountability and provides for annual reporting to Parliament by departments and public sector bodies.
- **Standing Directions** issued under the FMA by the Assistant Treasurer that specify public sector agencies' responsibilities for achieving high standards of public financial management and accountability.
- **Resource Management Framework** issued under the Standing Directions to provide a governance and operational framework for public sector accountability for the investment

of public resources. It includes mandatory requirements and guidance for departments of specific topics.

- **Regulators' own legislation** that sets out their purpose, powers, duties and functions.

The SOE Framework is intended to complement these existing accountability measures by allowing Ministers to set priorities within the context of these frameworks and to promote greater engagement with regulators.

4.2.5 Better Regulation Victoria

Under the previous Framework, the Commissioner for Better Regulation was to review the evaluation reports prepared by departments to identify and highlight the best characteristics of these reports at the Commissioner's regulator performance improvement forum each year.

As departments are no longer required to produce these reports, the Commissioner isn't required to review and report on regulator's progress in meeting their Minister's expectations.

The Commissioner and Better Regulation Victoria will continue to provide practical assistance and information sharing to regulators and departments. This will include developing best practice guidance for regulators to assist with implementing this Framework. Initial guidance is expected to be introduced from early 2022 which will be updated as required. Better Regulation Victoria will be the custodian of this guidance to ensure it remains fit for purpose.

5. Impact on different types of regulators

Victorian regulators have different governance structures and the new SOE Framework will have a different impact on different types of regulators regarding their engagement with their Minister, their business planning processes and annual reporting.

Type of Regulator	Ministerial guidance	Business planning	Annual reporting
Independent statutory authorities with own business planning processes and reporting (eg WorkSafe, Victorian Building Authority)	Board/ Commissioners to engage with the Minister.	Independent planning processes.	Likely to have their own Annual Report that can be used for annual reporting. Otherwise, incorporate into departmental Annual Report.
Statutory appointee supported by department (eg Consumer Affairs Victoria)	Commissioners/ Statutory appointee and Departmental Secretary to engage with the Minister.	Statutory appointees are usually supported by their department and their planning processes are likely to be dependent on their departmental planning processes.	Own Annual Report can be used, if they have one, otherwise include in Department Annual Report or as a separate public report.
Department business unit (eg Agriculture Victoria)	Departmental Secretary to engage with the Minister.	Planning processes likely to be part of broader departmental planning processes.	Unlikely to have own Annual Report, so reporting to be included in Department Annual Report or as a separate public report.

6. Transition to the new Framework

The transition to this revised Framework should be undertaken *as soon as practicable* within regulators' existing business planning cycles. Regulators aren't required to remake their existing business plans to transition to this Framework.

Regulators should identify the earliest point in their current business cycle where they could incorporate their Minister's expectations and aim to complete their discussions with their Minister by that time to enable the relevant milestones to be included in their business plans.

Regulators who have multi-year business plans can incorporate their Minister's expectations into their business plans on a progressive basis. Typically, this would involve including shorter term milestones in their annual work plans and adding longer term milestones as their longer-term plans are developed.

Regulators aren't required to wait until their current SOE letters have expired before introducing this new Framework. Once their Minister has issued a new letter, any existing SOE letter is deemed to have expired. Departments aren't required to complete an evaluation of these expired SOE letters.

Given the timing of the annual business planning cycle, it is anticipated that most regulators will be transitioning to the new Framework by 1 July 2022.

In some cases, Ministers who have recently issued a new SOE letter may prefer to transition to this new Framework when those letters have expired.

Attachment 1 – List of Victorian business regulators covered by the Statement of Expectations for Regulators framework

This list is true as of 13 October 2021. This list may be varied at any time at the Minister for Regulation Reform's discretion.

Business regulator	Ministerial responsibility	Department
<ul style="list-style-type: none"> Agriculture Victoria Dairy Food Safety Victoria Game Management Authority PrimeSafe Veterinary Practitioners Registration Board of Victoria 	Minister for Agriculture	Jobs, Precincts, and Regions
Earth Resources Regulation Branch	Minister for Resources	Jobs, Precincts, and Regions
Victorian Small Business Commissioner	Minister for Small Business	Jobs, Precincts, and Regions
Professional Boxing and Combat Sports Board of Victoria	Minister for Tourism, Sport and Major Events	Jobs, Precincts, and Regions
Commercial Passenger Vehicles Victoria	Minister for Public Transport	Transport
Victorian Ports Melbourne	Minister for Ports and Freight	Transport
VicRoads	Minister for Roads and Road Safety	Transport
Victorian Fisheries Authority	Minister for Fishing and Boating	Transport
<ul style="list-style-type: none"> Energy Safe Victoria Department of Environment, Land, Water and Planning Office of the Conservation Regulator Environment Protection Authority Victoria Parks Victoria 	Minister for Energy, Environment and Climate Change	Environment, Land, Water and Planning
<ul style="list-style-type: none"> Architects Registration Board of Victoria Heritage Victoria Heritage Council of Victoria Land Use Victoria Surveyors Registration Board Victorian Building Authority 	Minister for Planning	Environment, Land, Water and Planning
<ul style="list-style-type: none"> Victorian Institute of Teaching Quality Assessment and Regulation Division 	Minister for Education	Education and Training

Victorian Registration and Qualifications Authority	Minister for Education Minister for Training and Skills Minister for Higher Education Minister for Jobs, Innovation and Trade	Education and Training
<ul style="list-style-type: none"> DH – Communicable Disease Prevention and Control (Notifiable Conditions as reported by Pathology Services and Medical Practitioners) DH – Medicines and Poisons DH – Environmental Health Regulation and Compliance – Legionella Team DH – Environmental Health Regulation and Compliance – Pest Control Team DH – Environmental Health Regulation and Compliance – Radiation Team DH – Food Safety Unit DH – Private Hospitals Unit DH – Tobacco Control Section DH – Water Unit Victorian Assisted Reproductive Treatment Authority Victorian Pharmacy Authority 	Minister for Health	Health
Human Services Regulator	Minister for Disability, Ageing and Carers	Families, Fairness and Housing
Commission for Children and Young People	Minister for Child Protection	Families, Fairness and Housing
<ul style="list-style-type: none"> Victorian Legal Services Board and Victorian Legal Services Commissioner Victorian Legal Admission Board Working with Children Check Victoria 	Attorney-General	Justice and Community Safety
WorkSafe Victoria	Minister for Workplace Safety	Justice and Community Safety
<ul style="list-style-type: none"> Business Licensing Authority Consumer Affairs Victoria Victorian Commission for Gambling and Liquor Regulation 	Minister for Consumer Affairs, Gaming and Liquor Regulation	Justice and Community Safety
Victoria Police – Licensing and Regulation Division	Minister for Police and Emergency Services	Justice and Community Safety
<ul style="list-style-type: none"> Greyhound Racing Victoria Harness Racing Victoria 	Minister for Racing	Jobs, Precincts, and Regions

Aboriginal Victoria	Minister for Aboriginal Affairs	Premier and Cabinet
Wage Inspectorate Victoria	Minister for Industrial Relations	Premier and Cabinet
<ul style="list-style-type: none"> • Essential Services Commission • Housing Registrar 	Assistant Treasurer	Treasury and Finance
State Revenue Office	Treasurer	Treasury and Finance

Attachment 2 – Example of Minister’s letter

XXXXX
Chief Executive
Regulator X
MELBOURNE VIC 3000

Dear XXXX

STATEMENT OF EXPECTATIONS FOR REGULATOR X

MINISTERIAL GUIDANCE FOR REGULATOR X

I am pleased to provide you with my expectations for Regulator X to guide the regulator’s business planning processes.

Legislative framework (context setting)

As Minister for X, I am responsible for administering the XXX Act [and XXX Act/s] and this guidance should be read in the context of the objectives, obligations and functions outlined in this/these Act/s as amended.

This guidance should also be read in the context of any other legislative and non-legislative obligations on Regulator X.

Emerging risks and priorities (critical component)

Based on consultation with Department X and Regulator X, about the government’s priorities and emerging risks, my expectations for Regulator X are as follows.

[Outline Minister’s expectations.]

I request Regulator X to incorporate these expectations into their business plans and include milestones for when Regulator X will meet these expectations. Their business plans should also include appropriate milestones to review the content of this letter and to advise me when it needs to be updated or renewed.

I further request Regulator X, in conjunction with the Department X, to undertake a light touch review of the expectations in this letter as part of their annual reporting obligations and to advise me if there are any refinements they would recommend.

Yours sincerely

Minister responsible for Regulator X

