



PARLIAMENT OF AUSTRALIA

Report 512: Report of the inquiry into the administration of Commonwealth regulations

Joint Committee of Public Accounts and Audit

March 2025

CANBERRA

© Commonwealth of Australia 2025

ISBN 978-1-76092-799-8 (Printed version)

ISBN 978-1-76092-800-1 (HTML version)

All material in this report is provided under a Creative Commons Attribution-NonCommercial-NoDerivs 4.0 Australia licence. The material may be shared, copied and redistributed provided that:

- it is for non-commercial purposes
- the committee named on the previous page is credited as the author
- the committee is not represented as endorsing the use of the material
- any changes are clearly identified
- no additional legal or technical restrictions are applied to restrict use that complies with the licence.

If the material is remixed, transformed or built upon, the modified material may not be distributed.



Full details of this licence are available on the Creative Commons website:
<https://creativecommons.org/licenses/by-nc-nd/4.0/>.

Contents

Chair's foreword	ix
Membership of the Committee	xi
Terms of reference	xiii
List of abbreviations	xv
List of recommendations.....	xvii

Report

1. Introduction	1
Background to the inquiry	1
Conduct of the inquiry	1
Approach to the report	2
Regulator legal and policy framework.....	2
Public Governance, Performance and Accountability Act and Rule.....	3
Fraud control obligations	4
Regulatory Policy, Practice & Performance Framework.....	4
Resource management guides.....	5
RMG 128: Regulator performance.....	5
RMG 131: Developing Performance Measures	6
Audit reports	6
Department of Health—Therapeutic Goods Act non-compliance	6
Department of Industry, Science and Resources—Trade measurement.....	7
Department of Health, and Aged Care Quality and Safety Commission—Aged Care Reforms	8
Australian Taxation Office—Management of GST fraud risk.....	9
Home Affairs—Regulation of migration agents	10
2. Governance.....	13
Introduction	13
Framework policy advice	15

Resource management guide policy advice	16
Audit office insights.....	16
Data collection and management of information	16
Assessment of compliance risk	18
Home Affairs—Regulation of migration agents	18
Department of Industry, Science and Resources—Trade measurement.....	19
Industry level risk assessments	20
Trader level risk assessments	21
‘Getting bang for your buck’ or efficiency.....	22
Australian Taxation Office—Management of GST fraud risk.....	22
Department of Health—Therapeutic Goods Act non-compliance	23
Policies, procedures and plans	24
Home Affairs—Regulation of migration agents	24
Department of Industry, Science and Resources—Trade measurement.....	25
Australian Taxation Office—Management of GST fraud risk.....	26
Department of Health and ACQSC—Aged Care Reforms	27
Department of Health—Therapeutic Goods Act non-compliance	28
Statements of expectations and intent.....	28
Department of Industry, Science and Resources—Trade measurement.....	29
Department of Health and ACQSC—Aged Care Reforms	29
Home Affairs—Regulation of migration agents	30
3. Practice	31
Introduction	31
Policy guidance—Department of Finance	33
Insights—Australian National Audit Office.....	34
Compliance monitoring	34
Home Affairs—Regulation of migration agents	35
Registration and re-registration	35
Monitoring agent conduct	36
Monitoring continuing professional development providers.....	37
Department of Health—Therapeutic Goods Act non-compliance	38
Department of Health and ACQSC—Aged Care Reforms	39
Regulatory roles.....	39

Risk-based and randomised targeting	40
Department of Industry, Science and Resources—Trade measurement	41
National Measurement Act 1960 obligations versus contracted responsibilities	41
Regulatory activity under National Measurement Act 1960 obligations.....	42
Australian Taxation Office—Management of GST fraud risk.....	44
Use of regulatory powers	45
Action in response to non-compliance.....	45
Department of Health—Therapeutic Goods Act non-compliance	45
Department of Industry, Science and Resources—Trade measurement	46
Department of Health and ACQSC—Aged Care Reforms	49
Home Affairs—Regulation of migration agents.....	50
Investigation functions	54
Department of Health—Therapeutic Goods Act non-compliance	55
Australian Taxation Office—Management of GST fraud risk	57
4. Performance	59
Introduction	59
Policy guidance—Resource management guide	61
Audit Office insights.....	62
Performance reporting	62
Department of Health—Therapeutic Goods Act non-compliance	63
External performance reporting	63
Established performance measures	63
Established targets for performance measures	64
Performance measures and targets are meaningful, relevant and appropriate.....	64
Department of Health and ACQSC—Aged Care Reforms	64
External performance reporting	64
Established performance measures	65
Established targets for performance measures	65
Performance measures and targets are meaningful, relevant and appropriate.....	65
Home Affairs—Regulation of migration agents	65
External performance reporting	65
Established performance measures	66
Established targets for performance measures	66

Performance measures and targets are meaningful, relevant and appropriate.....	66
Department of Industry, Science and Resources—Trade measurement.....	67
External performance reporting	67
Established performance measures	67
Established targets for performance measures	68
Performance measures and targets are meaningful, relevant and appropriate.....	68
2023–24 performance statements audits	68
Department of Health and Aged Care	70
Home Affairs.....	70
Department of Industry, Science and Resources.....	70
Australian Taxation Office	70
5. Policy guidance	71
Introduction	71
Role of the Department of Finance.....	71
Stewardship.....	71
Scope of Finance’s role.....	72
Finance principles-based guidance	73
Findings of the inquiry on regulator performance	74
Appropriateness of principles-based guidance.....	76
6. Committee comment.....	81
Introduction	81
Governance	82
Data	82
Risk-based compliance	84
Policy, procedure and plans	85
Ministerial statements of expectations and regulator statements of intent.....	86
Practice	87
Compliance monitoring.....	87
Performance	90
Policy advice.....	92
Approach to the Committee	95
Incomplete statements with the potential to mislead	96

Statement of principles without supporting evidence	96
Not answering the question asked	97
Approach of entities to the Committee	97

Appendixes

Appendix A. Submissions	99
Appendix B. Public hearing.....	101

List of Tables

Table 1.1	Residential aged care reforms.....	8
Table 2.1	Audit findings on regulator performance – Governance	14
Table 3.1	Audit findings on regulator performance – Practice.....	32
Table 3.2	DISR compliance targets and actual performance	42
Table 3.3	Trader audits and non-compliance rates	43
Table 3.4	National Measurement Institute enforcement actions	46
Table 3.5	Effectiveness of NMI regulatory tools 2020–2024	48
Table 4.1	Audit findings on regulator performance – Performance	60
Table 4.2	Summary of 2023–24 performance statements audits.....	69
Table 5.1	Selected findings on regulator performance.....	74
Table 6.1	Audit findings	81



Chair's foreword

Though it may sound dry, the manner in which Commonwealth entities administer the regulations for which they are legally responsible has a profound effect on the daily lives of all Australians. Where it is administered effectively, regulation protects the public interest, ensures the efficient delivery of services, promotes trust, and improves community safety and wellbeing.

During the course of this inquiry, the Committee examined many aspects of regulator performance, from the collection and use of data, the employment of risk-based approaches, and the quality of underpinning policies and procedures, to the nature of compliance activities, the use of regulatory powers, and the accountability of regulatory entities through performance measures.

What the Committee found was diverse—some entities were failing to effectively regulate at all, or their regulation was only partially effective. Even where entities were found to be largely effective, there were gaps and inconsistencies across various areas that go to the effectiveness of the administration of regulation.

Some of the shortcomings, particularly the Department of Home Affairs' failure to effectively regulate migration agents, and the Department of Industry, Science and Resources' oversight of trade measurement, were plainly unacceptable. The Committee made specific recommendations with regard to these entities to ensure ongoing accountability for rectifying the issues discovered in the audits that formed the basis of this inquiry.

Accountable authorities of entities with regulatory obligations are ultimately responsible for ensuring these obligations are met. The Committee concluded transparency as to regulator obligations is an important aspect of accountability. Accordingly, it made a very important recommendation that the Department of Finance expand the scope of the Regulator Stocktake to require entities with regulatory responsibilities to publish a Regulator Statement that provides information on regulatory obligations and how these are operationalised.

By implementing this recommendation, Finance will go some way to establishing a framework that will allow for greater accountability for what are significant responsibilities with potentially wide-ranging consequences if not performed appropriately.

The Committee also included a recommendation with regard to Finance's assurance over the policy advice it is responsible for developing and stewarding. Principles-based policy advice provides information on the general disposition of regulators; the findings of audits by the Australian National Audit Office over many years show entities require more practical advice on how to go about their regulatory responsibilities.

Finance has not been able to satisfy the Committee that its policy advice is actually fit-for-purpose in the light of the shortcomings in performance consistently uncovered by the

Australian National Audit Office. Consequently, again the Committee has recommended that Finance develops an approach, including robust metrics, to provide reasonable assurance that the policy framework it administers with regard to regulatory policy, practice and performance is effective in ensuring regulatory systems function as intended by law.

Together, the nine recommendations in this report, when implemented, will go some way to establishing transparency and robust accountability across the broad scope of Commonwealth entities with regulatory responsibilities, and the policy owner. It is through transparency and accountability that the Australian public can maintain its trust and confidence in the regulation that contributes so profoundly to improving their daily lives in myriad ways.

I thank the Deputy Chair and other Committee members for their participation in the inquiry. I also thank the entities who engaged with the inquiry by making submissions and appearing at the public hearing. As is always the case, I thank the Committee Secretariat for its professionalism in supporting the work of the Committee.

Hon Linda Burney MP
Chair



Membership of the Committee

Chair

Hon Linda Burney MP (from 12 August 2024)

Mr Julian Hill MP (to 29 July 2024)

Deputy Chair

Senator the Hon Linda Reynolds CSC

Members

Dr Michelle Ananda-Rajah MP

Hon Karen Andrews MP (from 5 February 2025)

Senator Catryna Bilyk

Senator the Hon Matthew Canavan

Senator Lisa Darmanin (from 24 June 2024)

Dr Carina Garland MP

Mr Ian Goodenough MP (until 5 February 2025)

Mr Brian Mitchell MP (from 12 August 2024)

Dr Daniel Mulino MP

Mr Henry Pike MP

Senator Barbara Pocock (from 31 July 2023)

Mr Sam Rae MP (from 1 August 2023)

Senator Tony Sheldon

Mr Aaron Violi MP

Mr Josh Wilson MP (from 28 November 2023 to 12 August 2024)

This committee is supported by staff of the Department of the House of Representatives.



Terms of reference

On 4 July 2024, the Joint Committee of Public Accounts and Audit adopted an inquiry into the administration of Commonwealth regulations.

The Committee will examine how Commonwealth entities assess compliance risk, inform compliance and enforcement strategies, and identify and address incidences of non-compliance with Commonwealth rules and regulations. Performance and evaluation frameworks for compliance with Commonwealth regulations will also be assessed.

The inquiry will have particular regard to any matters contained in or connected to the following Auditor-General reports:

- Auditor-General Report No. 3 of 2023–24, *Management of Non-Compliance with the Therapeutic Goods Act 1989 for Unapproved Therapeutic Goods*
- Auditor-General Report No. 5 of 2023–24, *Trade Measurement Compliance Activities*
- Auditor-General Report No. 8 of 2023–24, *Design and Early Implementation of Residential Aged Care Reforms*
- Auditor-General Report No. 15 of 2023–24, *Australian Taxation Office’s Management and Oversight of Fraud Control Arrangements for the Goods and Services Tax*
- Auditor-General Report No. 26 of 2023–24, *Department of Home Affairs’ Regulation of Migration Agents*.



List of abbreviations

24/7 RN	registered nurse on site and on duty 24 hours a day, 7 days a week
ACQSC	Aged Care Quality and Safety Commission
AGIS	Australian Government Investigations Standards
ANAO	Australian National Audit Office
APS	Australian Public Service
APSC	Australian Public Service Commission
ATO	Australian Taxation Office
BAS	business activity statement
CGRM	contemporising GST risk models
Committee	Joint Committee of Public Accounts and Audit
CPD	continuing professional development
DISR	Department of Industry, Science and Resources
Finance	Department of Finance
Framework	Australian Government <i>Regulatory Policy, Practice & Performance Framework</i>
GST	goods and services tax
Health	Department of Health and Aged Care
Home Affairs	Department of Home Affairs
MARS	Migration Agents Regulatory System
Migration Act	<i>Migration Act 1958</i>
NMI	National Measurement Institute
OMARA	Office of the Migration Agents Registration Authority
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>

PGPA Rule	Public Governance, Performance and Accountability Rule 2014
RMA	registered migration agent
RMG 128	<i>Resource Management Guide 128: Regulator performance</i>
RMG 131	<i>Resource Management Guide 131: Developing performance measures</i>
RN	registered nurse
TGA	Therapeutic Goods Administration
TMARS	Trade Measurement Activity Recording System
TPP	tobacco plain packaging

List of recommendations

Recommendation 1

- 6.13** The Committee recommends that the Department of Finance develops for entities with regulatory responsibilities, minimum requirements for data capability. This would include minimum requirements for the collection, analysis and practical application of data with regard to regulatory responsibilities, and minimum requirements for data expertise within regulatory entities.

Recommendation 2

- 6.21** The Committee recommends that the Australian National Audit Office undertakes a follow-up performance audit of the Department of Industry, Science and Resources' implementation of the recommendations of Auditor-General Report No. 5 2023–24 Trade Measurement Compliance Activities, to assess the extent to which those recommendations have been implemented.

Recommendation 3

- 6.41** The Committee recommends the Department of Home Affairs provides an update every six months on its material progress towards reporting on whether it has used its regulatory powers. The update should identify which powers were used, for each complaint received against a registered migration agent, whether or not the complaint results in a sanction. The Committee expects the Department of Home Affairs will continue to provide this update until the end of 2025–26.

Recommendation 4

- 6.44** The Committee recommends the Department of Industry, Science and Resources provides to the Committee the detailed analysis it relies upon to be certain it is comprehensively regulating its target population, as required under the National Measurement Act 1960, prior to undertaking contracted regulatory activities on behalf of other entities.

Recommendation 5

- 6.46** The Committee recommends the Department of Industry, Science and Resources provides to the Committee data on the actual scope of activities

undertaken by inspectors during trader audits in each of the years from 2017–18 to the present, to support its evidence to the Committee that the number of trader audits has declined because inspectors are conducting more comprehensive audits.

Recommendation 6

6.49 The Committee recommends the Department of Industry, Science and Resources provides to the Committee in deidentified format, a report detailing the regulatory action it has taken when an infringement notice has been issued but non-compliance is detected during a follow-up audit. This report is to be provided each six months, commencing from the 2022–23 year. This report is to be provided to the Committee to the conclusion of 2025–26.

Recommendation 7

6.56 The Committee recommends Finance updates Resource Management Guide 131: Developing performance measures, following the publication annually of the Australian National Audit Office’s performance statements audits, to include contemporary examples and provide clear instruction to entities as to what constitutes best practice performance measures.

Recommendation 8

6.68 The Committee recommends the Department of Finance develops an approach, including robust metrics, to provide reasonable assurance that the policy framework it administers with regard to regulatory policy, practice and performance is effective in ensuring regulatory systems remain fit-for-purpose. An update is to be provided to the Committee within six months, including timelines to complete this work.

Recommendation 9

6.71 The Committee recommends the Department of Finance updates the requirements for the Regulator Stocktake to require each entity with regulatory functions to publish a Regulator Statement, on a common template and reviewed annually, that would provide, at a minimum, the following:

- itemised regulatory obligations with reference to legislation
- detail of the regulated population
- the risk-based approach to compliance, including information on how risk is calculated
- the compliance and enforcement process
- the regulatory powers available to the regulator

- **offences and penalties under legislation**
- **regulator measures of impact, and appropriate and robust performance measures.**



1. Introduction

Background to the inquiry

- 1.1 Under section 8(1) of the legislation establishing the Joint Committee of Public Accounts and Audit (the Committee), the *Public Accounts and Audit Committee Act 1951*, the Committee has several duties, one of which is to ‘examine all reports of the Auditor-General that are tabled in each House of the Parliament’. The Committee is empowered to ‘report to both Houses of the Parliament, with any comment it thinks fit, on any items or matters in those reports, or any circumstances connected with them, that the Committee thinks should be drawn to the attention of the Parliament’.
- 1.2 On 4 July 2024, the Committee adopted an inquiry into the administration of Commonwealth regulations, with a view to examining how Commonwealth entities assess compliance risk, inform compliance and enforcement strategies, and identify and address incidences of non-compliance with Commonwealth rules and regulations. Performance and evaluation frameworks for compliance with Commonwealth regulations were also to be assessed.
- 1.3 The inquiry was to have particular regard to any matters contained in or connected to the following Auditor-General reports:
 - Auditor-General Report No. 3 of 2023–24, *Management of Non-Compliance with the Therapeutic Goods Act 1989 for Unapproved Therapeutic Goods*
 - Auditor-General Report No. 5 of 2023–24, *Trade Measurement Compliance Activities*
 - Auditor-General Report No. 8 of 2023–24, *Design and Early Implementation of Residential Aged Care Reforms*
 - Auditor-General Report No. 15 of 2023–24, *Australian Taxation Office’s Management and Oversight of Fraud Control Arrangements for the Goods and Services Tax*
 - Auditor-General Report No. 26 of 2023–24, *Department of Home Affairs’ Regulation of Migration Agents*.

Conduct of the inquiry

- 1.4 The inquiry received seven submissions and nine supplementary submissions containing responses to questions provided in writing by the Committee or taken on notice at the public hearing, as well as corrections to evidence. The Committee held one public hearing in Canberra on Friday, 22 November 2024.

- 1.5 A list of submissions and supplementary submissions is at Appendix A. Witnesses who appeared at the public hearing are listed at Appendix B.

Approach to the report

- 1.6 While focussed on regulatory responsibilities, there was some diversity in the nature and coverage of the five audit reports that formed the basis of this inquiry. The report has been organised around key areas of regulator activity:
- governance—how entities collect, manage and use data; whether entities take a risk-based approach to compliance; the existence of policies and procedures; and statements of expectation and intent
 - practice—how entities identify and address incidences of non-compliance with the law; to what extent entities use their regulatory powers; and the application of investigation standards
 - performance—how entities evaluate the performance of their regulatory functions, including whether meaningful targets are established
 - policy guidance—the nature of the policy guidance produced by the Department of Finance (Finance), and whether it addresses the issues raised in the five audits.
- 1.7 The Committee does not relitigate in detail the findings of the audit reports that form the basis of its inquiries. Rather, it highlights a selection of key issues that in its judgement should be drawn to the particular attention of the Parliament, and makes recommendations with regard to these issues where appropriate. Entities should not draw from the content of a Committee report any conclusion as to the Committee’s views on the importance of the breadth of Australian National Audit Office (ANAO) findings and recommendations contained in a report of the Auditor-General.
- 1.8 With regard to this particular inquiry, it is also important to note each of the five audits dealt with different regulators and an entity’s regulatory responsibilities in a manner particular to that entity and report. This report may explore where an entity performed well or where shortcomings were identified. The performance of other entities on the same matter may not be discussed, either because it was not raised in the relevant audit, or because the Committee was of the view the particular matter was sufficiently dealt with in the audit and/or the entity’s genuine response to the audit.

Regulator legal and policy framework

- 1.9 When it conducts its audits, the ANAO establishes criteria against which to assess the performance of a particular activity. These criteria serve as benchmarks for evaluation. Criteria are required to be ‘relevant, complete, reliable, neutral and understandable’ and may be drawn from a number of sources, including:
- policy decisions or policy statements
 - legislation and regulations

- published performance measures and internal measures
- policies and guidance developed by central entities, regulators or government
- standards of good practice, relevant benchmarks and relevant practice guides developed by professions, associations or other recognised authorities
- statistics, practices, benchmarks, performance standards or procedures developed within the entity
- subject matter or general literature.¹

1.10 In the case of the audits in this inquiry, the ANAO referenced a number of sources that establish performance requirements for regulators. The legal and operational frameworks for regulators can vary, but include:

- enabling legislation that provides the regulatory powers and obligations to the entity, in addition to underpinning policies and relevant directions
- the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and delegated legislation including the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule)
- the Australian Government *Regulatory Policy, Practice & Performance Framework* (Framework) maintained by Finance
- resource management guides produced by Finance.²

Public Governance, Performance and Accountability Act and Rule

1.11 Specific aspects of the PGPA Act and PGPA Rule are relevant to the regulatory responsibilities of entities examined in the audits that formed the basis of this inquiry.

1.12 Sections 37–40 of the PGPA Act deal with the performance of Commonwealth entities, and require, amongst other things that: records about the performance of a Commonwealth entity be kept; the performance of the entity in achieving its purpose must be measured and assessed; and annual performance statements are prepared.³

1.13 Section 16E of the PGPA Rule establishes the requirements for an entity’s corporate plan, including the requirements for the corporate plan to detail how an entity’s performance in achieving the entity’s purpose will be measured and assessed through performance measures and targets.⁴

¹ Australian National Audit Office (ANAO), *ANAO Audit Manual—Performance Audit Services Group Specific*, January 2025, paragraphs 207.30, 207.32–207.33.

² See: ANAO, *Insights: Audit lessons—Administering Regulation*, January 2021, www.anao.gov.au/work/insights/administering-regulation, viewed 26 February 2024.

³ *Public Governance, Performance and Accountability Act 2013*, hereafter PGPA Act, sections 37–39.

⁴ *Public Governance, Performance and Accountability Rule 2014*, hereafter PGPA Rule, section 16E(2).

- 1.14 Under the PGPA Rule, performance measures are to:
- relate directly to one or more of those purposes or key activities
 - use sources of information and methodologies that are reliable and verifiable
 - provide an unbiased basis for the measurement and assessment of the entity's performance
 - where reasonably practicable, comprise a mix of qualitative and quantitative measures
 - include measures of the entity's outputs, efficiency and effectiveness if those things are appropriate measures of the entity's performance
 - provide a basis for an assessment of the entity's performance over time.⁵
- 1.15 An entity's annual performance statements, included in the annual report, are to set out the results of the measurement and assessment of the entity's performance.⁶

Fraud control obligations

- 1.16 The Australian Taxation Office (ATO) audit deals with fraud control arrangements. Section 10 of the PGPA Rule contains obligations with regard to preventing, detecting and responding to fraud; its purpose is to ensure there is a minimum standard for accountable authorities to prevent, detect and respond to fraud. Paragraph 10 places a number of obligations on accountable authorities, including:
- conducting regular assessments of fraud risk
 - developing and implementing control plans to deal with fraud risks
 - conducting periodic review of the effectiveness of fraud controls
 - ensuring the entity has structures and processes to effectively oversee and manage risks of fraud; and appropriate mechanisms to detect and investigate fraud and suspected fraud.⁷

Regulatory Policy, Practice & Performance Framework

- 1.17 The August 2024 Framework,⁸ which applies to policymakers and regulators, is a 'better practice approach to regulation,' that aims to drive modern, fit-for-purpose regulation. It is an expectation that regulators should align the implementation of regulation and regulatory management with the six principles in the framework:
- targeted and risk based
 - identification and assessment of risk factors leads to targeted solutions, relative to the risk profile

⁵ PGPA Rule, section 16EA.

⁶ PGPA Rule, section 16F.

⁷ PGPA Rule, section 10.

⁸ Department of Finance (Finance), *Submission 2*, p. 2.

- integrated in existing systems
- user-centred
 - regulation meets the needs of the entities it affects, solves clear, well-defined problems and fosters changed behaviours that result in greater compliance and reduced need for enforcement
- evidence-based and data-driven
 - regulatory systems should plan for, collect and use evidence from a variety of data sources throughout the regulatory life cycle, and involve the development of evidence based fit-for-purpose education, monitoring, compliance, and enforcement strategies that are risk-based
- reflective of the digital era
- continuously improved and outcomes-focussed.
 - monitoring and evaluation of regulatory systems to ensure fit-for-purpose, meeting identified need, and achieving desired regulatory outcomes; establishing a regulatory issues register; putting systems in place to receive feedback and implement regular review cycles to inform continuous improvement.⁹

Resource management guides

RMG 128: Regulator performance

- 1.18 The Framework underpins the best practice approach and principles of regulator performance in *Resource Management Guide 128: Regulator performance* (RMG 128).¹⁰
- 1.19 RMG 128 establishes the three principles of regulator best practice against which regulators are required to report in their corporate plans and annual reports:
- continuous improvement and building trust—regulators should embed methodologies to understand costs, impact and outcomes of regulation; embedded organisational values and culture; have transparent external accountability processes; undertake regular and independent performance reviews
 - risk-based and data driven—all elements of the regulatory cycle, including operational policy development, administration, compliance and enforcement are risk-based and informed by data, evidence and intelligence; allows regulators to respond in a proportionate way to the harm being managed and direct resources in the most efficient way
 - collaboration and engagement—regulators should be transparent, open and responsive to feedback; engage genuinely with stakeholders and the broader

⁹ Finance, *Regulatory Policy, Practice & Performance Framework*, August 2024, hereafter *Regulatory Framework*, pages 4–13.

¹⁰ Finance, *Regulatory Framework*, p. 6.

community through a range of meaningful and timely consultation mechanisms; and implement innovative approaches.¹¹

- 1.20 RMG 128 also outlines the purpose of a ministerial statement of expectations and regulator statement of intent. A ministerial statement of expectations is to provide greater clarity about government policies and objectives relevant to the regulator's statutory objectives and how it conducts its operations. The responding regulator statement of intent identifies how the regulator will deliver on the Government's expectations. These statements should be issued or refreshed every two years, or when there is a change in minister, change in regulator leadership, or significant change in policy.¹²

RMG 131: Developing Performance Measures

- 1.21 *Resource Management Guide 131: Developing performance measures* (RMG 131), produced by Finance, provides guidance on the obligations accountable authorities have to measure and assess the performance of an entity in achieving its purpose. It provides information on how entities might satisfy each of the requirements established in section 16EA of the PGPA Rule, discussed above.¹³

Audit reports

- 1.22 The following provides a brief summary of the regulatory role of the entity, and the scope and findings of the five audit reports that form the basis of the inquiry. Various aspects of these audits are examined throughout this report

Department of Health—Therapeutic Goods Act non-compliance

- 1.23 The Department of Health and Aged Care (Health), through the Therapeutic Goods Administration (TGA), is responsible for regulating the import, export, manufacture, supply and advertising of products defined as therapeutic goods. The audit was focussed on regulation of the import and supply of unapproved therapeutic goods, and unlawful advertising.¹⁴
- 1.24 The audit found Health's management of non-compliance with the *Therapeutic Goods Act 1989* for unapproved therapeutic goods was largely effective:
- the compliance approach was largely fit for purpose, and included risk-based compliance priorities

¹¹ Finance, *RMG 128: Regulator performance*, July 2023, hereafter *RMG 128*, <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128>, viewed 26 February 2025.

¹² Finance, *RMG 128*.

¹³ Finance, *RMG 131: Developing performance measures*, May 2024, hereafter *RMG 131*, <https://www.finance.gov.au/government/managing-commonwealth-resources/developing-performance-measures-rmg-131>, viewed 26 February 2025.

¹⁴ ANAO, *Management of Non-Compliance with the Therapeutic Goods Act 1989 for Unapproved Therapeutic Goods*, Auditor-General Report No. 3 2023–24, hereafter *TGA report*, paragraphs 2, 1.20.

- activities for identifying, preventing and addressing non-compliance had been implemented largely effectively.¹⁵
- 1.25 The audit made six recommendations, dealing with: reviewing annually reported performance information; finalising investigation procedures; ensuring the minimum level of qualifications of investigators; managing declarations of interest; improving complaint handling; and developing an investigations quality assurance policy. Health agreed to all recommendations.¹⁶
- 1.26 The potential for scrutiny can improve entity performance. So as to capture some of the impacts of the existence an external audit, the ANAO includes in its reports a summary of key improvements made by entities during the course of an audit. During the course of the audit itself, the ANAO observed Health officials assessing the updates required for a range of standard operating procedures and policies; updating one procedure; preparing a manual for new starters; and releasing an updated education plan.¹⁷

Department of Industry, Science and Resources—Trade measurement

- 1.27 Trade measurement refers to all transactions in which the price of the commodities or goods is based on measurement of quantity or quality. The National Measurement Institute (NMI), a division within the Department of Industry, Science and Resources (DISR), is responsible for trade measurement compliance—the Legal Metrology Branch is the NMI’s measurement regulator. DISR has regulatory responsibility to ensure accurate measurement underpins the pricing of traded goods, based on quantity or quality.¹⁸
- 1.28 The ANAO found the administration of trade measurement compliance was partly effective:
- sound governance arrangements were not fully in place to support trade measurement compliance activities
 - there were gaps, overlays and inconsistencies in policy and procedural documents
 - appointment processes for officers may not have complied with legislation
 - targeting of compliance activities was not demonstrably risk-based
 - the approach to trade measurement compliance was partly effective
 - the level of monitoring activity had declined significantly with no evidence of change in the risk environment or risk assessment
 - actions in response to non-compliance were not timely or demonstrably effective

¹⁵ ANAO, *TGA report*, paragraphs 9–12.

¹⁶ ANAO, *TGA report*, pages 10–11.

¹⁷ ANAO, *TGA report*, p. 71.

¹⁸ ANAO, *Trade Measurement Compliance Activities*, Auditor-General Report No. 5 2023–24, hereafter *Trade measurement report*, paragraphs 1–2, 4–5.

- monitoring and reporting arrangements did not include assessment of the effectiveness of the regulatory approach, and were not compliant with reporting obligations.¹⁹

1.29 DISR agreed to five of the six recommendations made by the ANAO, relating to: the legal appointment of inspectors; improving record-keeping; putting in place improved and transparent risk assessments; improving the conduct of follow-up audits; and establishing and reporting on meaningful indicators of performance and regulatory effectiveness. DISR partially agreed to one recommendation regarding the prioritisation of its legislated regulatory obligations ahead of compliance and enforcement activities undertaken on behalf of other entities.²⁰

1.30 During the course of the audit, the ANAO observed: modifications to the procedure for appointing trade measurement inspectors, and Legal Metrology Branch officer authorisations and appointments; the development of a guide for some enforcement actions; the approval of a new procedure for questioning alleged offenders; and the commencement of a process to update certain procedures.²¹

Department of Health, and Aged Care Quality and Safety Commission—Aged Care Reforms

1.31 The residential aged care reforms arose from recommendation 86 of the Royal Commission into Aged Care Quality and Safety, which dealt with the introduction of mandatory minimum staffing standards for residential aged care facilities. The Government announced in July 2022 some aspects of recommendation 86 would be implemented early, as detailed in the table below.

Table 1.1 Residential aged care reforms

Date	Activity
1 July 2023	Residential facilities to have a registered nurse (RN) on site and on duty 24 hours a day (24/7 RN)—12 months earlier than recommended
1 October 2023	'Average' aged care residents to receive at least 200 minutes of care per day, including at least 40 minutes of RN care – 200/40 mandatory care minutes
1 October 2024	'Average' aged care residents to receive 215/44 care minutes

Source: Australian National Audit Office²²

1.32 The aged care audit differs from the other four audits in this inquiry in that it examines the implementation of a new policy and regulatory requirement rather than ongoing regulatory responsibilities arising from existing obligations. The audit found

¹⁹ ANAO, *Trade measurement report*, paragraphs 8–10.

²⁰ ANAO, *Trade measurement report*, pages 10–11; paragraphs 3.27–3.30.

²¹ ANAO, *Trade measurement report*, p. 66.

²² ANAO, *Design and Early Implementation of Residential Aged Care Reforms*, Auditor-General Report No. 8 2023–24, hereafter *Aged care report*, paragraphs 2–4, table 1.2.

the design and early implementation of the response to recommendation 86 had been largely effective:²³

- despite not undertaking a structured risk analysis, Health provided largely robust policy advice on the residential aged care reforms, which was informed by workforce data and modelling, and dealt to some extent with the costs, benefits and risks
- Health's introduction of the new workforce requirements was largely effective
- Health and the Aged Care Quality and Safety Commission (ACQSC) were largely prepared to monitor and enforce compliance, though compliance plans were delayed
- while Health had performance measures in place, there was no evaluation plan; the ACQSC had not planned how it would measure regulatory impact.²⁴

1.33 The audit made four recommendations: two to Health dealing with the completion of the risk potential assessment tool and establishing evaluation plans; and two to the ACQSC regarding intelligence briefs and assessing regulatory impact—all were agreed to.²⁵

1.34 The ANAO observed that during the period examined by the audit, Health and the ACQSC made numerous changes to governance arrangements and administrative processes.²⁶

Australian Taxation Office—Management of GST fraud risk

1.35 The ATO administers the goods and services tax (GST), and in 2022–23 collected \$81.4 billion of GST and raised an additional \$6.1 billion in GST liabilities. Australian Government entities must have fraud control arrangements in place, as specified in the Commonwealth Fraud Control Framework. Preventing and detecting GST fraud minimises loss of GST revenue and maintains public confidence in the tax system.²⁷

1.36 The ANAO found:

- management and oversight of fraud control arrangements for the GST was partly effective—there was a lack of clarity for roles and responsibilities, inadequate implementation of assurance requirements, and an absence of a holistic and contemporary view of GST fraud risks
- partly effective strategies to prevent GST fraud had been implemented—the enterprise framework for fraud was not fit for purpose or operating as intended
- processes to detect and deal with suspected GST fraud were largely effective

²³ ANAO, *Aged care report*, paragraph 8.

²⁴ ANAO, *Aged care report*, paragraphs 8–11.

²⁵ ANAO, *Aged care report*, pages 10–11.

²⁶ ANAO, *Aged care report*, p. 79.

²⁷ ANAO, *Australian Taxation Office's Management and Oversight of Fraud Control Arrangements for the Goods and Services Tax*, Auditor-General Report No. 15 2023–24, hereafter *ATO report*, paragraphs 1–3.

- governance arrangements for GST fraud control were partly effective—ownership of GST risks was not clear and artefacts to support risk assessment, monitoring and treatment were incomplete or in draft.²⁸

1.37 During the course of the audit, the ANAO observed that the ATO was reviewing roles and responsibilities for management of fraud risk; reviewing and updating Chief Executive Instructions; planning to redesign its external fraud conformance process; adding new enterprise risks to its corporate plan; working to embed GST fraud risk management as an enduring capability; reviewing mandatory training material; improving the availability of data for analytics and risk models; updating investigation procedures; and updating and assigning some risk responsibilities.²⁹

Home Affairs—Regulation of migration agents

1.38 The *Migration Act 1958* (Migration Act) requires the Office of the Migration Agents Registration Authority (OMARA) to protect consumers of migration assistance and the integrity of the Australian visa system by regulating registered migration agents (RMAs). It is to do so by: maintaining a register of RMAs and administering the registration process; investigating and assessing complaints and taking disciplinary action where appropriate; and approving continuing professional development (CPD) providers and performance.³⁰

1.39 The ANAO found Home Affairs' regulation of migration agents was not effective.³¹ This is one of the most serious findings the ANAO can make. The ANAO found:

- appropriate arrangements were not in place to support the regulation of migration agents
- some relevant policy and procedural documentation either did not exist or was not current
- there was no risk-based regulatory approach informed by analysis of data, evidence and intelligence even though data suitable for this purpose was available
- migration agents were not effectively regulated.³²

1.40 The ANAO also found Home Affairs was reticent to use its statutory regulatory powers to both investigate complaints and to sanction RMAs. Home Affairs was taking sanction action against fewer agents and the threshold required was increasing. Home Affairs did not monitor RMAs or CPD providers. The RMA

²⁸ ANAO, *ATO report*, paragraphs 7–10.

²⁹ ANAO, *ATO report*, pages 69–70.

³⁰ ANAO, *Department of Home Affairs' Regulation of Migration Agents*, Auditor-General Report No. 26 2023–24, hereafter *Migration agents report*, paragraph 2.

³¹ ANAO, *Migration agents report*, paragraph 7.

³² ANAO, *Migration agents report*, paragraphs 7–9.

registration and CPD processes were not ensuring those persons being registered by Home Affairs were fit and proper persons.³³

- 1.41 The ANAO made 11 recommendations, including recommendations dealing with:
- preparing a ministerial statement of expectations and regulator statement of intent
 - obtaining assurance the automated approval of applications for registration was compliant with the Migration Act
 - for the regulation of migration agents—developing and maintaining a documented risk assessment based on data, as well as a compliance strategy and plan
 - improving regulation of CPD and ensuring only agents who have met CPD requirements are registered
 - strengthening its regulation of migration agents, and making greater use of powers under the Migration Act to inform assessments for registration
 - undertaking regulatory monitoring
 - establishing and reporting on performance measures on actioning of complaints
 - implementing assurance processes for the exercise of regulatory powers.³⁴
- 1.42 During the course of the audit, the ANAO observed that Home Affairs clarified information on its website with regard to the actioning of complaints; and updated its Continuing Professional Development Provider Assessment Guide to improve the identification of agents who are delivering training.³⁵
- 1.43 The ANAO finding stood in stark contrast to Home Affairs' performance reporting and a June 2022 internal audit, which concluded OMARA was 'effectively carrying out its regulatory remit in its role as a regulator and also educator'.³⁶

³³ ANAO, *Migration agents report*, p. 6, paragraphs 15, 2.34, 3.31, 3.91, table 3.4.

³⁴ ANAO, *Migration agents report*, pages 9–11.

³⁵ ANAO, *Migration agents report*, p. 71.

³⁶ ANAO, *Migration agents report*, paragraphs 1.6, 1.9.



2. Governance

Data, risk assessments, policies and procedures, statements of expectation and intent

Introduction

- 2.1 This chapter deals with aspects of regulator governance, in particular, how entities collect, use and manage data; the extent to which risk-based assessments of compliance are undertaken; the nature and extent of policies, procedures and plans for compliance management; and the existence of ministerial statements of expectations and regulator statements of intent.
- 2.2 To set the context for regulatory responsibilities, the chapter first discusses the broad obligations on regulators with regard to these governance matters. The audits in the inquiry referenced regulatory performance criteria drawn from a number of sources including the Australian Government *Regulatory Policy, Practice & Performance Framework* (Framework), as well as the Department of Finance's (Finance) resource management guides.
- 2.3 The discussion in this chapter also draws on insights from the Australian National Audit Office's (ANAO) *Administering Regulation* publication. This publication consolidates lessons from the ANAO's audit work so as to promote their application more broadly across the public sector. It can often provide more informative insights than other guidance available.
- 2.4 As to regulator performance on governance issues, the audits found a broad range of practices, both effective and not effective. The chapter discusses key evidence provided in the audits and received during the inquiry as to entities that performed well and poorly in terms of their collection and use of data. It examines the risk-based approaches taken by regulators including where entities demonstrated best practice and where there was no risk-based regulatory approach or where compliance activities were not demonstrably risk-based. Several of the audits found policies and procedures to support regulatory activities were deficient and the chapter discusses these findings. Finally, the chapter examines the appropriateness, in addition to the complete absence of, statements of expectations and intent.
- 2.5 A risk-based regulatory approach requires: the collection, use and management of data; a risk-based assessment of compliance risk that focusses on the likelihood of harm; and policies and procedures that are contemporary, reflect legislative responsibilities, and provide for compliance that is informed by data and assessment

of compliance risk. Regulators should also have in place a statement of expectations from their minister, and corresponding regulator statement of intent.

2.6 Key insights of the ANAO's audits in these areas is provided in the table below, and some of these issues are discussed further in this chapter.

Table 2.1 Audit findings on regulator performance – Governance

	Therapeutic goods	Aged care reforms	Migration agents	Trade measurement	GST fraud risk
Audit finding	Largely effective	Largely effective	Not effective	Partly effective	Partly effective
Data collection & management	Intelligence gathering and data analysis; information used to provide threat assessment ¹	Data warehouse updated to ingest reports on compliance ²	Data not used to inform regulatory approach ³	Shortcomings in accuracy and consistency of data ⁴	Extensive collection and use of data; no aggregation of data across business lines for GST ⁵
Risk-based approach	Risk-based strategic approach ⁶	No structured risk analysis; plans to increase capability for risk profiling ⁷	No risk-based regulatory approach ⁸	Compliance activities not demonstrably risk-based ⁹	No business line GST fraud risk assessments since 2020 ¹⁰

¹ Australian National Audit Office (ANAO), *Management of Non-Compliance with the Therapeutic Goods Act 1989 for Unapproved Therapeutic Goods*, Auditor-General Report No. 3 2023–24, hereafter *TGA report*, paragraphs 2.10, 3.20–3.21.

² ANAO, *Design and Early Implementation of Residential Aged Care Reforms*, Auditor-General Report No. 8 2023–24, hereafter *Aged care report*, paragraph 4.19.

³ ANAO, *Department of Home Affairs' Regulation of Migration Agents*, Auditor-General Report No. 26 2023–24, hereafter *Migration agents report*, p. 19.

⁴ ANAO, *Trade Measurement Compliance Activities*, Auditor-General Report No. 5 2023–24, hereafter *Trade measurement report*, paragraphs 3.73–3.77.

⁵ ANAO, *Australian Taxation Office's Management and Oversight of Fraud Control Arrangements for the Goods and Services Tax*, Auditor-General Report No. 15 2023–24, hereafter *ATO report*, paragraph 3.33. See also: discussion on Contemporising GST Risk Models project, paragraphs 3.13–3.23.

⁶ ANAO, *TGA report*, paragraph 13.

⁷ ANAO, *Aged care report*, paragraphs 9, 12, p. 64.

⁸ ANAO, *Migration agents report*, p. 19.

⁹ ANAO, *Trade measurement report*, paragraph 9.

¹⁰ ANAO, *ATO report*, paragraph 12. The Australian Taxation Office (ATO) was found to have largely appropriate methods to detect potential GST fraud (see paragraphs 16, 3.10–3.33).

	Therapeutic goods	Aged care reforms	Migration agents	Trade measurement	GST fraud risk
Policies and procedures	Most compliance plans and procedures out of date or in draft form ¹¹	Policies and procedures being developed but not finalised ¹²	Policies and procedures out of date ¹³	Gaps, overlays, inconsistencies in policies and procedures; not updated in a timely manner ¹⁴	Fraud control and corruption plans not based on identified fraud risks; key artefacts not available ¹⁵
Statements of expectations and intent	N/A	Statement of intent does not address aged care regulation ¹⁶	No statement of expectations or intent ¹⁷	No appropriate statement of expectations or intent ¹⁸	N/A

Source: Australian National Audit Office

Framework policy advice

- 2.7 The Framework, produced by Finance, contains principles that require regulation to be, amongst other things: evidence-based and data-driven; and risk-based, targeted and proportionate.¹⁹ Advice on how this might occur comes from different sources including the Framework itself, in addition to Finance’s resource management guides.
- 2.8 An evidence-based regulatory system requires regulators to plan for, collect and use evidence throughout the regulatory life cycle to deliver fit-for-purpose practice and performance outcomes.²⁰ Regulators, according to the Framework, should establish evidence-based and data-driven regulatory governance and management policies and practices.²¹
- 2.9 According to the Framework, a risk-based approach identifies and assesses risk factors to develop and implement targeted solutions.²² A risk-based approach allows for regulatory intervention that is proportionate, drives compliance and acts as an effective deterrent.²³

¹¹ ANAO, *TGA report*, paragraph 13.

¹² ANAO, *Aged care report*, paragraph 23.

¹³ ANAO, *Migration agents report*, paragraphs 2.12–2.16, p. 19.

¹⁴ ANAO, *Trade measurement report*, paragraphs 10–11, 2.18.

¹⁵ ANAO, *GST fraud risk report*, paragraphs 2.23, 2.45, 2.51, 4.14, 4.15.

¹⁶ ANAO, *Aged care report*, paragraph 4.8.

¹⁷ ANAO, *Migration agents report*, paragraph 10.

¹⁸ ANAO, *Trade measurement report*, paragraphs 3.57–3.59.

¹⁹ Department of Finance (Finance), *Regulatory Policy, Practice & Performance Framework*, 2024, hereafter *Regulatory Framework*, pages 7, 10.

²⁰ Finance, *Regulatory Framework*, p. 10.

²¹ Finance, *Regulatory Framework*, pages 10–11.

²² Finance, *Regulatory Framework*, p. 7.

²³ Finance, *Regulatory Framework*, p. 7.

2.10 The Framework refers regulators to *RMG 128: Regulator performance* (RMG 128) for best-practice advice on taking a risk-based and data-driven approach.²⁴

Resource management guide policy advice

2.11 The best-practice advice contained in RMG 128 characterises risk-based approaches as:

- informed by data, evidence and intelligence to allow regulators to properly assess the risks of non-compliance and respond in a proportionate way to the harm being managed
- providing for the strategic management of risk and improving efficiency by prioritising resources to the areas of highest risk, thereby increasing compliance
- requiring regulators to continually monitor the environment in which they operate to ensure the regulatory approach keeps pace with changes in technology, industry practices and community expectations.²⁵

2.12 In practice, Finance advises adopting a risk-based and data-driven approach means regulators would, amongst other things:

- consider the risks, cost-effectiveness and impact of regulatory action
- focus on risk culture within the entity, including by building staff understanding
- build staff and organisational data capability and digital literacy
- use intelligence and data to inform compliance and enforcement strategies.²⁶

Audit office insights

2.13 The ANAO states that risk-based compliance approaches require a robust process to understand which regulated entities, activities and individuals pose the highest risk of non-compliance with regulatory requirements. This assessment should inform the regulatory plans and the activities subsequently undertaken by the regulator.²⁷

Data collection and management of information

2.14 In its audit insight on administering regulation, the ANAO states that effectively assessing the risk of non-compliance so as to develop targeted compliance and enforcement strategies requires regulators to have accurate, integrated and reliable information on the entities and activities they regulate.²⁸

²⁴ Finance, *Regulatory Framework*, pages 10–11.

²⁵ Finance, *RMG 128: Regulator performance*, July 2023, hereafter *RMG 128*, <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128>, viewed 26 February 2025.

²⁶ Finance, *RMG 128*, July 2023.

²⁷ ANAO, *Insights: Administering regulation*, January 2021, <https://www.anao.gov.au/work/insights/administering-regulation>, viewed 11 February 2025.

²⁸ ANAO, *Insights: Administering Regulation*, January 2021.

- 2.15 The audits uncovered variable approaches to data collection, management, and use. The ANAO found that while the Department of Home Affairs (Home Affairs) collected and stored data in its Migration Agents Regulatory System (MARS) about registered migration agents through the registration process, providers of continuing professional development (CPD), and complaints from a range of sources, it did not subsequently use this to conduct a documented assessment of risk.²⁹
- 2.16 An absence of guidance on recording information collected during trader audits in the Department of Industry Science and Resources' (DISR) Trade Measurement Activity Recording System (TMARS) resulted in errors and inconsistencies in DISR's data. Further, most issues identified in data quality reports were not being resolved, and those reports were not identifying all issues and inconsistencies.³⁰
- 2.17 While the Australian Taxation Office (ATO) made extensive use of data in risk assessment and detection, the audit found it did not collate or aggregate data from its various fraud detection methods in each business line to develop a 'whole of GST' (goods and services tax) product perspective of fraud.³¹
- 2.18 The Department of Health and Aged Care (Health) gathered and analysed intelligence and engaged with other government entities in order to identify non-compliance related to the import and supply of therapeutic goods. In particular Health has an officer to gather and analyse operational information to help identify areas of compliance and enforcement action that will have the largest impact in disrupting non-compliant behaviour related to unapproved therapeutic goods.³²
- 2.19 The advice provided by Health to government on the aged care reforms had been informed by workforce data and modelling, notwithstanding the failure to complete a risk potential assessment tool. While some of the data that informed the modelling had methodological limitations, Health made attempts over time to improve the data. Further, both Health and the Aged Care Quality and Safety Commission (ACQSC) updated their systems to incorporate data on the new requirements into regulatory intelligence production.³³
- 2.20 To identify and address instances of non-compliance with the new aged care obligations, Health used data analytics to identify areas of highest risk, including comparisons of the cost of providing care minutes.³⁴
- 2.21 The ACQSC made use of data to formulate intelligence briefs that provide insights into service and provider risk and a view of sector performance over time. The ACQSC used data for risk profiling to assess the likelihood a provider was managing risks and making efforts to meet workforce-related responsibilities. It has used data

²⁹ ANAO, *Migration agents report*, paragraphs 8, 11, 2.30–2.32.

³⁰ ANAO, *Trade measurement report*, paragraphs 3.73–3.78.

³¹ The ATO has subsequently improved its collection, integration and dissemination of intelligence relating to the GST. ANAO, *ATO report*, paragraph 3.33; ATO, *Submission 7.1*, p. 5. See also the discussion on Contemporising GST Risk Models project in: ANAO, *ATO report*, paragraphs 3.13–3.23.

³² ANAO, *TGA report*, p. 40, paragraph 3.20–3.21.

³³ ANAO, *Aged care report*, paragraphs 9, 13, 14, 21.

³⁴ Department of Health (Health), *Submission 5*, p. [5].

to gain insights into causation and refined its profiling by comparing performance of geographically proximate services, expenditure on direct care, and trend data to target persistent sustained, unexplained poor performing providers.³⁵

Assessment of compliance risk

- 2.22 A compliance approach is a set of plans, policies and procedures that establish how a regulator will manage compliance with regulations. A risk-based compliance approach is characterised by the use of intelligence to target regulatory efforts at the areas of highest risk of non-compliance, and to respond in a proportionate way to the harm being managed. A risk-based compliance approach does not necessarily focus solely on compliance failure, but considers the harm that may result from compliance failure.³⁶
- 2.23 The following examines four cases from the audits and illustrates the different approaches entities have taken to assessing risk and targeting compliance:
- Home Affairs' failure to undertake and document assessment of risk
 - the National Measurement Institute's (NMIs) failure to take a comprehensive risk-based approach to industry and trader selection, and its continuing practice of basing compliance on accuracy and efficiency rather than on harm
 - the ATO's diffused model of risk assessment and its implications for a holistic view of GST fraud risk
 - Health's risk-based compliance approach for unapproved therapeutic goods.

Home Affairs—Regulation of migration agents

- 2.24 The ANAO found that notwithstanding a profusion of data upon which to draw, Home Affairs had simply not undertaken and documented an assessment of risk consistent with the requirement for a risk-based approach to regulation. The ANAO judged that by taking a risk-based approach, Home Affairs would have been in a position to focus on a small proportion of agents where an educative approach would not be appropriate.³⁷
- 2.25 The audit made a recommendation that Home Affairs develops and maintains a documented risk assessment based on data, evidence and intelligence for its regulation of migration agents. Home Affairs agreed to this recommendation.³⁸
- 2.26 Home Affairs advised the Joint Committee of Public Accounts and Audit (Committee) it had subsequently assessed the risks of non-compliance with the legislation for which it was responsible and documented these in the 2024–25 OMARA (Office of

³⁵ Aged Care Quality and Safety Commission (ACQSC), *Submission 4.1*, p. [10].

³⁶ ANAO, *TGA report*, paragraph 2.1.

³⁷ ANAO, *Migration agents report*, paragraphs 2.30–2.32.

³⁸ ANAO, *Migration agents report*, paragraphs 2.35–2.36.

the Migration Agents Registration Authority) Risk Register. Home Affairs stated it was in the process of developing risk treatments for each of the identified risks.³⁹

- 2.27 Home Affairs also advised the Committee in December 2024 it was ‘in the process of procuring a regulatory compliance specialist to assist with maturing OMARA’s regulatory framework’, and through this, a documented risk assessment would be developed.⁴⁰ No timeframe was indicated for the completion of this work.
- 2.28 Home Affairs assured the Committee it understood an assessment of compliance risk enabled it to target regulatory activities to the areas of greatest impact.⁴¹

Department of Industry, Science and Resources—Trade measurement

- 2.29 The ANAO found DISR’s regulatory approach was not fully and appropriately informed by an assessment of compliance risk and audits were not being effectively and demonstrably targeted to market sectors and traders at higher risk of regulatory non-compliance.⁴² This was not a new finding—DISR had been aware of this issue for some time.
- 2.30 In 2015, an internal audit found the risk framework for legal metrology⁴³ was ‘unsophisticated’. The framework did not specify the risks of non-compliance—specifically, the harm or detriment; and was not proportionate to risk. Rather than focussing on minimising harm, the NMI focussed on ensuring accuracy of measurement. Its risk framework was considered ‘ineffectual’ in directing compliance and enforcement activities to areas of high non-compliance. The audit noted ‘introducing a risk-based approach to regulation will require a significant program of change within the Legal Metrology Branch that will impact every facet of its operations and will require a strong change agent to drive these reforms’.⁴⁴
- 2.31 The internal audit made three recommendations and by June 2017, implementation of the recommendations was recorded as ‘complete’ with a delivery confidence of ‘high’. The ANAO found DISR had not in fact implemented any of the recommendations.⁴⁵
- 2.32 A similar approach to closing audit recommendations occurred following an internal audit completed in 2020. The audit found the selection of traders for audits may not have been targeting the areas of highest risk because there was no clearly defined methodology for trader selection. The NMI was advised by Internal Audit that to close the recommendation, the NMI would need to produce a methodology during the development of the 2021/22 Annual Program Plans. The recommendation was

³⁹ Department of Home Affairs (Home Affairs), *Submission 1*, p. 5.

⁴⁰ Home Affairs, *Submission 1.1*, p. [1].

⁴¹ Home Affairs, *Submission 1*, p. 5.

⁴² ANAO, *Trade measurement report*, paragraph 12.

⁴³ Legal metrology refers to the legislative and regulatory framework that underpins measurements and measuring instruments used for trade and legal purposes. Department of Industry, Science and Resources (DISR), *Legal metrology priorities 2023–24*, February 2024, p. 4.

⁴⁴ DISR internal audit findings quoted in, ANAO, *Trade measurement report*, paragraph 2.30.

⁴⁵ ANAO, *Trade measurement report*, paragraphs 2.31–2.38.

closed on the basis of the NMI providing a risk principles document. The document did not contain a methodology.⁴⁶

- 2.33 Notwithstanding the findings of the ANAO audit, DISR continued to maintain its approach to risk was ‘best practice’.⁴⁷ The Committee was told DISR had amended its regulatory risk assessment process to address ANAO concerns.⁴⁸ The ANAO was clear during the inquiry ‘our assessment here wouldn’t be characterised as best practice or even approaching best practice’.⁴⁹
- 2.34 The ANAO added that data it had obtained since the audit showed a continuing failure to focus compliance activities on areas assessed as high-risk. The majority of DISR’s compliance activities focus on low-risk assessments.⁵⁰

Industry level risk assessments

- 2.35 The ANAO found shortcomings in the NMI’s risk-based assessments upon which the targeting of market sectors and selection of individual traders for audit within the sectors being targeted should be based.⁵¹ These included:
- the 43 market sectors included in industry risk assessment calculations (spreadsheets) were only a subset of the 59 market sectors listed in DISR’s database⁵²
 - more trader audits were completed in one excluded market sector than 70 per cent of the sectors contained in the spreadsheets⁵³
 - there were shortcomings in the calculation of the numerical ‘risk factor’ used to rank the 43 market sectors which reduced the reliability of the rankings and the extent to which risk was being measured in terms of the harm of regulatory non-compliance, not just the likelihood.⁵⁴
- 2.36 DISR informed the Committee it had added several new datasets to its risk assessments.⁵⁵ These datasets appear to deal with the size and revenue of an industry. DISR stated larger industries possibly have a reduced likelihood of non-compliance due to greater resources for training (the resources for training was not identified as a dataset); and a high-revenue industry possibly carries greater potential for harm arising from non-compliance (there did not appear to be a dataset indicating whether high-revenue industries had a greater risk of non-compliance).

⁴⁶ ANAO, *Trade measurement report*, paragraphs 2.36–2.38.

⁴⁷ Mr Vasilios Loizides, General Manager, Legal Metrology, National Measurement Institute (NMI), DISR, *Committee Hansard*, Canberra, 22 November 2024, p. 17.

⁴⁸ DISR, *Submission 6.1*, p. [14].

⁴⁹ Mr Michael White, Acting Group Executive Director, ANAO, *Committee Hansard*, 22 November 2024, p. 20.

⁵⁰ Mr Michael White, ANAO, *Committee Hansard*, 22 November 2024, p. 20.

⁵¹ ANAO, *Trade measurement report*, paragraph 12.

⁵² ANAO, *Trade measurement report*, paragraph 2.40.

⁵³ ANAO, *Trade measurement report*, paragraph 2.40.

⁵⁴ ANAO, *Trade measurement report*, paragraph 2.42.

⁵⁵ Domestic demand; industry value-added; business enterprises that may comprise one or more establishments; employment; establishment locations; value of exports; industry revenue; value of imports; wages. DISR, *Submission 6.1*, pages [2]–[3].

DISR stated that since 2023, trade measurement inspectors have been collecting data on trader quality processes, such as the use of a quality management system. In 2026, DISR will review the dataset to determine if there is a relationship between trader quality processes and trader compliance.⁵⁶

- 2.37 Regardless of the quality and sophistication of the risk assessments, these are not the basis upon which the NMI targets its monitoring. DISR stated that when making decisions on target sectors, it ‘supplemented’ its data-driven risk assessment process with other information, including stakeholder feedback, trade measurement inspector feedback, consumer sentiment, consideration of broader government priorities, and operational constraints.⁵⁷ The relative weight given to these factors was not identified.
- 2.38 The NMI’s legal metrology priorities for 2024–25 continues to specify compliance targets are informed by risk assessments for industry sectors and businesses, stakeholder feedback, current cost-of-living pressures, and anecdotal feedback from trade measurement inspectors.⁵⁸
- 2.39 The ANAO found it was not evident from the records it examined how DISR used the risk assessments as a key component when selecting industries for targeting in its ‘concentrated national audit’ and ‘compliance confidence’ programs.⁵⁹
- 2.40 There was ‘weak alignment’ between the assessed risk of a trader type and its selection for targeting under the concentrated national audit program.⁶⁰
- 2.41 The NMI did not use the industry risk assessment spreadsheet to identify target industries under the compliance confidence program, rather target industries were ‘determined with reference to the previous year’s targeted industries’ and industries or trader types previously non-compliant or subject to an enforcement action.⁶¹ ANAO analysis found a moderate alignment between the selection of industries/trader types for targeting and the rate of non-compliance and enforcement actions in the previous years.⁶²

Trader level risk assessments

- 2.42 The ANAO examined trader-level risk assessments for DISR’s 2022–23 ‘Tare It’ program. It found shortcomings in the calculation of trader-level risk assessments, including the risk rating of datasets being offset by other datasets, resulting in a risk assessment at odds with guidance for other compliance programs; and incomplete lists of traders.⁶³

⁵⁶ DISR, *Submission 6.1*, pages [2]–[3].

⁵⁷ ANAO, *Trade measurement report*, paragraph 2.46.

⁵⁸ DISR, *Legal metrology priorities 2024–25*, 2024, p. 10.

⁵⁹ ANAO, *Trade measurement report*, paragraphs 2.47, 2.53–2.55.

⁶⁰ ANAO, *Trade measurement report*, paragraph 2.51.

⁶¹ ANAO, *Trade measurement report*, paragraph 2.47.

⁶² ANAO, *Trade measurement report*, paragraphs 2.56–2.57.

⁶³ ANAO, *Trade measurement report*, paragraphs 2.58–2.60.

‘Getting bang for your buck’ or efficiency

- 2.43 DISR agreed to an ANAO recommendation that it put in place an improved approach to assessing the risk of legal metrology regulatory non-compliance at the industry and trader levels and a transparent process that reflects the assessment of risk for selecting industries for targeting under its annual National Compliance plans.⁶⁴
- 2.44 During the hearings, which were held more than a year after DISR had agreed to the recommendation,⁶⁵ the NMI explained that while small traders, like butchers and individual fruit-and-vegetable manufacturers, were groups at higher risk of non-compliance, it used the principle ‘getting more bang for buck’ to target larger traders that have a national footprint. ‘If we ensure that that cohort is doing appropriate measurement based transactions that are accurate, that outweighs the higher risk category of, for example, the butchers’.⁶⁶ This approach, targeting of large-footprint national retailers was considered, ‘a better outcome for the resources that we have’.⁶⁷
- 2.45 Further, DISR stated that a decision on whether to inspect a high risk trader was made on the basis of “‘Have we visited them before? Have there been issues?’” et cetera. For us, it’s about the best utilisation of the resources that we have to drive maximum compliance’.⁶⁸

Australian Taxation Office—Management of GST fraud risk

- 2.46 The audit into the ATO’s management and oversight of fraud control arrangements for the GST found the ATO did not develop GST-specific fraud risk assessments:
- the GST is administered by business lines structured around taxpayer types and each business line is required to identify, assess and manage GST fraud risks within its area of responsibility
 - there was no collation or aggregation of data from the various fraud detection methods in each business line to develop a whole of GST product perspective of fraud.⁶⁹
 - an internal ATO audit found the ATO’s analysis and assessment of its GST fraud risks was ‘not holistic or based on robust evidence’
 - shortcomings in the conformance process, which provides an ATO-wide view on external fraud risks (including GST fraud risk) and their management, did not provide adequate assurance the ATO was complying with external fraud obligations⁷⁰

⁶⁴ ANAO, *Trade measurement report*, paragraphs 2.61–2.62.

⁶⁵ The Secretary of DISR wrote to the ANAO on 11 August 2023 indicating it agreed with the recommendation. The public hearing was held on 22 November 2024. See, ANAO, *Trade Measurement Report*, pages 62–63.

⁶⁶ Mr Vasilios Loizides, DISR, *Committee Hansard*, Canberra, 22 November 2024, p. 17.

⁶⁷ Mr Vasilios Loizides, DISR, *Committee Hansard*, Canberra, 22 November 2024, p. 17.

⁶⁸ Mr Vasilios Loizides, DISR, *Committee Hansard*, Canberra, 22 November 2024, p. 20.

⁶⁹ ANAO, *ATO report*, paragraphs 3.12, 3.33.

⁷⁰ ANAO, *ATO report*, paragraphs 2.11–2.16.

- at the business line level, there had been no fraud risk assessments relevant to GST fraud since 2020.⁷¹

2.47 While the ATO's existing practice was to consider GST fraud risk as part of its external and internal fraud risk assessments,⁷² it agreed to a recommendation that it conduct and document assessments of its GST fraud risks regularly and ensure it had a contemporary and holistic view of its GST fraud risks.⁷³ The ATO subsequently advised the Committee it had completed a holistic GST fraud risk assessment in 2024.⁷⁴

2.48 The ATO has since redesigned its conformance process and combined this with the external fraud risk assessment process, which it advised 'allows us to obtain a much broader scope of conformance information aligned to 10 external fraud sub risks as well as ATO business lines with specific external fraud accountabilities.'⁷⁵

2.49 The ATO has also developed a holistic GST intelligence strategy to improve the collection, integration, and dissemination of intelligence across the organisation.⁷⁶

Department of Health—Therapeutic Goods Act non-compliance

2.50 The audit found Health took a risk-based strategic approach to the management of non-compliance for unapproved therapeutic goods, and assessed risks to compliance through three key mechanisms: the departmental risk management framework; a Regulatory Compliance Risk Committee to promote consistency in the management of regulatory and compliance risks; and compliance risk assessments.⁷⁷

2.51 Health's risk assessment to set advertising compliance priorities had focussed on advertising for 17 types of therapeutic goods and issues, and assessed the level of risk for each item of the therapeutic goods according to three factors—threat, vulnerability of the target audience, and harm.⁷⁸

2.52 Health's 'strategic threat assessment' underpinning its 2022–23 compliance priorities rated the risk levels of the compliance priorities and emerging priorities; forecast whether the risk levels were stable or increasing; and provided information on key drivers behind each risk area and recommendations for updating compliance priorities.⁷⁹

⁷¹ ANAO, *ATO report*, paragraphs 2.22–2.23, 2.25, 2.47, see also footnote 28.

⁷² ANAO, *ATO report*, paragraph 2.22.

⁷³ ANAO, *ATO report*, paragraphs 2.36–2.37.

⁷⁴ Australian Taxation Office (ATO), *Submission 7.1*, p. 5.

⁷⁵ ATO, *Submission 7.1*, p. 3.

⁷⁶ ATO, *Submission 7.1*, p. 5.

⁷⁷ ANAO, *TGA report*, paragraphs 2.4–2.10.

⁷⁸ ANAO, *TGA report*, paragraph 2.9.

⁷⁹ ANAO, *TGA report*, paragraph 2.10.

Policies, procedures and plans

- 2.53 Contemporary and comprehensive policy, guidance and procedural documents are necessary for the sound governance of regulatory functions and ensure the delivery of regulation is consistent with the intended outcomes.⁸⁰
- 2.54 As discussed below, across the five entities that were subject to audit, the ANAO found shortcomings in the maintenance and updating of policies and procedures including:
- Home Affairs' policy, procedure and planning documents did not reflect changes to legislation or regulatory practices, and some had not been put into effect
 - an absence of policies and procedures at DISR led to concerns about the legality of some compliance activities
 - in the context of a dispersed management approach at the ATO, key policies and procedures were not available, and in some cases there was a lack of alignment within and between some documents
 - guidance materials and standard operating procedures were not completely finalised by Health and the ACQSC prior to implementation of new requirements in the aged care sector
 - there was a lack of maturity in the underpinning procedures and arrangements for Health's risk-based compliance approach for unapproved therapeutic goods.

Home Affairs—Regulation of migration agents

- 2.55 At the time the audit was conducted into the regulation of migration agents, the primary governance document supporting OMARA's activities was a procedural instruction, issued in August 2016, and revised in May 2019. The 2019 document did not reflect significant legislated changes in the regulation of providers of immigration assistance or advice. It did not reflect aspects of the regulatory approach taken by Home Affairs including application of the current complaint risk matrix, implementation of the current early resolution model, and re-registration of agents for whom there were serious integrity concerns.⁸¹
- 2.56 The procedural instruction was a consolidation of a previous procedures advice manual, and policy and procedures manual—108 pages had been consolidated into 35 pages. Significant detail on operationalising aspects of Home Affairs' regulatory responsibilities under the Migration Act had been omitted during consolidation. This included guidance on the operation of section 309, which requires OMARA to provide for procedural fairness when considering decisions on whether to refuse registration

⁸⁰ See general comments to this effect in: ANAO, *Migration agents report*, paragraph 2.1; ANAO, *Trade measurement report*, p. 17, paragraphs 2.1, 2.18.

⁸¹ ANAO, *Migration agents report*, paragraphs 2.14–2.16.

or sanction agents. Home Affairs stated its practice was not to provide this in every instance.⁸²

2.57 The ANAO found OMARA's most recent compliance strategy and plan were prepared for the 2018–19 year and as such did not deal with several significant changes to the regulatory environment that had occurred since 2018–19, and had not, in any case, been implemented by Home Affairs. A planned evaluation of the impact of the compliance strategy was not undertaken,⁸³ and neither were risk treatment activities that were provided for in the plan, including:

- completing 200 website audits each year to address the risk of misleading advertising by migration agents
- undertaking 35 client file audits each year
- applying risk treatments relating to the regulation of CPD providers.⁸⁴

2.58 The Committee was advised Home Affairs has implemented a Compliance and Monitoring Framework, setting out that OMARA's approach to monitoring would be risk-based, evidence-based, proportionate to risk, collaborative, focussed on outcomes and lawful and fair. Home Affairs has developed a strategy that identifies the harms arising from non-compliance, and a plan that identifies the monitoring activities it will undertake. Proactive monitoring was scheduled to commence in September 2024.⁸⁵

Department of Industry, Science and Resources—Trade measurement

2.59 The audit found there were gaps, overlaps and inconsistencies in the policy and procedural documents produced to support DISR's regulatory function.⁸⁶ Some of the shortcomings identified were:

- the absence of a policy or procedure relating to the appointment of trade measurement inspectors, and an absence of evidence some trade measurement inspectors had been appropriately appointed, impacting DISR's ability to take valid enforcement actions
- a total of 184 documents were listed as being in effect and 263 were listed with the status of 'potential'⁸⁷ but there was nevertheless an absence of specific guidance on how data was to be entered into TMARS, and no policy or guidance on the management of hard copy inspector notebooks and non-compliance notices
- existing policies and procedures were not updated in a timely manner.⁸⁸

⁸² ANAO, *Migration agents report*, paragraphs 2.19–2.21.

⁸³ ANAO, *Migration agents report*, paragraph 2.38–2.39, p. 26.

⁸⁴ ANAO, *Migration agents report*, paragraph 2.38.

⁸⁵ Home Affairs, *Submission 1.1*, pages [2]–[3].

⁸⁶ ANAO, *Trade measurement report*, paragraph 9.

⁸⁷ ANAO, *Trade measurement report*, paragraph 2.15.

⁸⁸ ANAO, *Trade measurement report*, paragraphs 2.9–2.11, 2.15, 2.17–2.18.

- 2.60 The audit recommended that DISR improve its record-keeping processes to ensure information and records were accurate, fit-for-purpose and appropriately stored. DISR agreed to the recommendation and provided information on steps it had taken towards implementation.⁸⁹

Australian Taxation Office—Management of GST fraud risk

- 2.61 The ATO has a dispersed GST fraud risk management approach: the GST is administered by business lines structured around taxpayer types; each business line is required to identify, assess and manage GST fraud risks within its area of responsibility; each business line maintains its own risk register and risk treatment plans; there is no centralised register of controls used to detect potential GST fraud, these are dispersed across business lines.⁹⁰
- 2.62 The ATO explained its decentralised approach allowed it to leverage the expertise and insights of those closest to the risks, ensuring tailored treatments.⁹¹
- 2.63 The audit had found that the ATO's own internal assessments identified key risk 'artefacts' like assessments, reviews, treatment strategies/plans and updates, were not available to demonstrate GST compliance risks were being managed effectively; and that assessment of GST fraud risks was 'not holistic or based on robust evidence'.⁹²
- 2.64 In general, the ANAO found some shortcomings in the alignment between and within documents. For instance, the 2020 external fraud risk assessment included an assessment of the effectiveness of the ATO's controls on 13 external fraud risks. It also listed 13 preventative, detective and corrections controls that required improvement to raise the effectiveness of the ATO's control assessment level. The controls, however, were not attributed in the document to the 13 external fraud risks. Neither was the external fraud risk assessment underpinned by a documented record of specific risks and corresponding controls for each of the 13 external fraud risks.⁹³
- 2.65 The audit also found the ATO's 2023 Fraud and Corruption Control Plan did not clearly deal with all the external fraud risks identified in the 2020 external fraud risk assessment. It was not possible to determine whether controls and strategies for external fraud were commensurate with assessed fraud risks because the risks identified in the two documents could not be reconciled.⁹⁴
- 2.66 The ANAO recommended the ATO ensures its fraud control and corruption plans were based on identified fraud risks documented in risk assessments. The ATO advised the fraud control and corruption plan would be updated to incorporate fraud

⁸⁹ ANAO, *Trade measurement report*, paragraphs 2.25–2.28.

⁹⁰ ANAO, *ATO report*, paragraphs 2.22, 2.46–2.47, 3.33.

⁹¹ ATO, *Submission 7.1*, p. 5.

⁹² ANAO, *ATO report*, paragraphs 2.23, 2.47.

⁹³ ANAO, *ATO report*, paragraph 2.31.

⁹⁴ ANAO, *ATO report*, paragraph 2.45.

risks identified in the external fraud risk assessment and this was on schedule for implementation by the end of 2024.⁹⁵

- 2.67 As part of the redesign of its conformance process, the ATO advised that artefacts and annual external fraud risk assessment process outcomes were now maintained centrally by the External Fraud Risk Owner.⁹⁶ Further, the ATO had now clearly identified the GST Fraud Risk Owner.⁹⁷

Department of Health and ACQSC—Aged Care Reforms

- 2.68 The audit found that while Health and the ACQSC were developing guidance materials and standard operating procedures for monitoring and enforcing compliance with the new aged care requirements, these were mostly not finalised prior to the implementation of the new requirements.⁹⁸
- 2.69 In particular, the ACQSC had not updated its standard operating procedures for preparing and disseminating intelligence briefs to accommodate the aged care changes. The ACQSC agreed to a recommendation that it improve its documentation processes for preparing and disseminating intelligence briefs. There were also delays in the ACQSC's delivery of training materials and other guidance documentation.⁹⁹
- 2.70 The ACQSC confirmed it had improved its documentation of the process for preparing and disseminating intelligence reports and had produced a range of other documents.¹⁰⁰ The standard operating procedures for care minutes had been updated to include technical procedures for the Risk Based Targeting and Information Sharing system; collating data from Health; processing, sanitising and validating data; triage criteria and classification into high, moderate and low risk; longitudinal analysis of provider performance; summary intelligence assessments; and quality control and dissemination of intelligence briefs.¹⁰¹
- 2.71 The ACQSC stated 24/7 Registered Nurse intelligence briefs were produced and disseminated to the Commission's Quality Assessment and Monitoring Group on a monthly basis and were prepared by categorising services on a matrix. The Quality Assessment and Monitoring Group uses the briefs to inform risk profiling for the broader Commission regulatory approach by identifying services where non-compliance and other contextual risks indicate a requirement to validate that safe and appropriate clinical assessment and care is delivered in line with provider obligations.¹⁰²

⁹⁵ ATO, *Submission 7*, p. 5.

⁹⁶ ATO, *Submission 7.1*, p. 3.

⁹⁷ ATO, *Submission 7.1*, p. 5.

⁹⁸ ANAO, *Aged care report*, paragraph 23.

⁹⁹ ANAO, *Aged care report*, paragraphs 4.22–4.26, 4.34–4.39.

¹⁰⁰ Ms Janet Anderson, Commissioner, ACQSC, *Committee Hansard*, Canberra, 22 November 2024, p. 13. See also: ACQSC, *Submission 4*, p. 3.

¹⁰¹ ACQSC, *Submission 4*, pages 3–4.

¹⁰² ACQSC, *Submission 4*, p. 4.

- 2.72 Care minutes intelligence briefs were produced and disseminated to the ACQSC Sector Risk Committee quarterly, and grouped services into risk profiles based on the degree of non-compliance.¹⁰³

Department of Health—Therapeutic Goods Act non-compliance

- 2.73 The ANAO stated that although the audit had found Health’s management of non-compliance for unapproved therapeutic goods was largely effective, there were potential areas for improvement including documentation of standard operating procedures and other daily operational tasks, in addition to improving record keeping.¹⁰⁴
- 2.74 Recognising the need for a ‘one stop shop’ to support its activities, in October 2022 Health commenced a project to develop, review, consolidate and implement a range of governance documents and measures within the Regulatory Compliance Branch. This included reference materials, standard operating procedures and templates. The project found of the 37 standard operating procedures and guides for the Regulatory Compliance Branch, 81 per cent were in draft or overdue for review. It also found there were 11 process documents in use and 10 topics where standard operating procedures could have been developed but had not been.¹⁰⁵
- 2.75 During the hearing, Health acknowledged it had not looked at its standard operating procedures on a regular basis but had taken a number of steps to rectify this.¹⁰⁶ Health stated all required written investigation procedures for compliance investigations had been finalised and implemented.¹⁰⁷

Statements of expectations and intent

- 2.76 While regulators often operate independently of government, as noted by Finance, this does not mean they are independent of expectations of how their statutory roles are fulfilled.¹⁰⁸
- 2.77 RMG 128 states that Executive Government will set out guidance for regulators through a ministerial statement of expectations, issued by the responsible minister to provide greater clarity around government policies and objectives relevant to the regulator’s statutory objectives and how it conducts its operations. The regulator is to respond with a regulator statement of intent that identifies how it will deliver on the government’s expectations.¹⁰⁹

¹⁰³ ACQSC, *Submission 4*, p. 4.

¹⁰⁴ Ms Christine Chalmers, Executive Director, ANAO, *Committee Hansard*, Canberra, 22 November 2024, p. 2.

¹⁰⁵ ANAO, *TGA report*, paragraphs 2.18–2.19.

¹⁰⁶ Ms Tracey Lutton, Assistant Secretary, Regulatory Compliance Branch, Regulatory Practice and Support Division, Health, *Committee Hansard*, Canberra, 22 November 2024, pages 2, 4.

¹⁰⁷ Health, *Submission 5.1*, p. [6].

¹⁰⁸ Finance, *RMG 128*.

¹⁰⁹ Finance, *RMG 128*.

- 2.78 A ministerial statement of expectations should be issued every two years, or earlier if there is a change of minister, regulator leadership, or Commonwealth policy. Regulators should integrate the statements into performance reporting, and they should be made publicly available.¹¹⁰

Department of Industry, Science and Resources—Trade measurement

- 2.79 During the course of the ANAO's audit, DISR did not have in place an appropriate ministerial statement of expectations and regulator statement of intent.¹¹¹ In June 2016, the Secretary of the department issued a statement of expectations for the NMI. The NMI signed a statement of intent in September 2016.¹¹² The Minister for Industry, Science and Technology provided a statement of expectations in September 2021. There was a change in minister before the regulator statement of intent was provided.¹¹³
- 2.80 In February 2022, the Minister for Science and Technology issued a statement of expectations for the NMI. This was the same as the previously issued statement of expectations and included that the NMI 'apply a proportionate and risk-based approach to compliance and enforcement actions' and take a proactive approach to continuously improving regulatory performance by embedding the regulator best practice principles.¹¹⁴
- 2.81 A federal election was called prior to DISR responding with a regulator statement of intent. There was a change in minister on 1 June 2022 and as of 24 May 2023, the ANAO found the ministerial statement of expectations had not been published or referenced, and there had been no regulator statement of intent issued.¹¹⁵
- 2.82 The NMI received a statement of expectations on 26 November 2024 and in December 2024 was drafting its statement of intent.¹¹⁶

Department of Health and ACQSC—Aged Care Reforms

- 2.83 In December 2022, the Aged Care Quality and Safety Commissioner issued a statement of intent establishing its approach to regulating the aged care sector. The Secretary of Health issued a regulator statement of intent in July 2023 that identified six regulatory functions undertaken by the Health. The ANAO found none of the six functions encompassed Health's program of activities to verify aged care provider reporting or any other activities in relation to the aged care sector. The ANAO suggested, as an opportunity for improvement, that Health could update its regulator

¹¹⁰ Finance, *RMG 128*.

¹¹¹ ANAO, *Trade measurement report*, paragraph 17, p. 53.

¹¹² ANAO, *Trade measurement report*, paragraphs 3.57–3.59.

¹¹³ ANAO, *Trade measurement report*, paragraph 3.61.

¹¹⁴ ANAO, *Trade measurement report*, paragraph 3.61.

¹¹⁵ ANAO, *Trade measurement report*, paragraph 3.62.

¹¹⁶ DISR, *Submission 6.1*, p. [11].

statement of intent to address departmental regulatory functions in relation to aged care providers.¹¹⁷

Home Affairs—Regulation of migration agents

- 2.84 The ANAO found with regard to the regulation of migration agents, there was no ministerial statement of expectations or responding regulator statement of intent from Home Affairs.¹¹⁸ The Minister for Home Affairs issued a statement of expectations to Home Affairs in January 2022, but this was not specific to OMARA. Home Affairs did not respond with a statement of intent. Following the election in May 2022 and the change in minister, no statement of expectations had been issued. At the time of the audit, Home Affairs had no statement of intent.¹¹⁹
- 2.85 The ANAO recommended Home Affairs advise the minister of the requirements and prepare for the minister's approval a ministerial statement of expectations that outlined the regulatory functions within Home Affairs and prepare and issue in a timely manner a responding regulator statement of intent. Home Affairs agreed to the recommendation.¹²⁰

¹¹⁷ ANAO, *Aged care report*, paragraphs 4.8–4.9.

¹¹⁸ ANAO, *Migration agents report*, paragraph 10.

¹¹⁹ ANAO, *Migration agents report*, paragraphs 10, 2.5–2.6.

¹²⁰ ANAO, *Migration agents report*, paragraphs 2.7–2.8.



3. Practice

Identifying and addressing non-compliance

Introduction

- 3.1 The previous chapter discussed significant variation in the governance practices of regulators, right across the capabilities of data collection and management, employing a risk-based approach, and having in place appropriate and contemporary policies and procedures, in addition to statements of expectations and intent.
- 3.2 This chapter focusses on the practices of regulators, in particular their monitoring activities and use of regulatory powers, and finds a similar divergence in regulator performance, including poor performance again by regulators who have had well-established and long-running regulatory responsibilities.
- 3.3 Regulators have a responsibility, according to the Australian National Audit Office (ANAO), to provide confidence to the Parliament, the Government and the Australian community that regulated entities are complying with their statutory obligations and that appropriate enforcement action is taken when a regulated entity fails to meet its obligations.¹
- 3.4 This chapter begins by discussing the policy guidance provided by the Department of Finance (Finance) as it relates to the practice of regulation. It then discusses the manner in which regulators have approached monitoring regulated entities for compliance with the law; how regulators have used their regulatory powers; and whether investigations comply with the Australian Government Investigation Standards (AGIS).
- 3.5 A key theme in this chapter is the diversity of approaches to compliance monitoring—from a complete failure to undertake any compliance monitoring to largely effective processes. Similar diversity was found in regulators' use of their regulatory powers—the Department of Health and Aged Care (Health) sought to use powers for which it did not at the time have legislative authority, while the Department of Industry, Science and Resources' (DISR) regulatory action in response to non-compliance was neither timely nor effective. Table 3.1 summarises the audit findings with regard to compliance monitoring, use of regulatory powers, and investigation standards.

¹ Australian National Audit Office (ANAO), *Trade Measurement Compliance Activities*, Auditor-General Report No. 5 2023–24, hereafter *Trade measurement report*, paragraph 3.1.

Table 3.1 Audit findings on regulator performance – Practice

	Therapeutic goods	Aged care reforms	Migration agents	Trade measurement	GST fraud risk
Audit finding	Largely effective	Largely effective	Not effective	Partly effective	Partly effective
Compliance monitoring	Reactive and proactive approaches to monitoring compliance; use of operational intelligence ²	Largely prepared to monitor and enforce compliance; use of data to target monitoring ³	No regulatory action to monitor; registration process deficient ⁴	Appropriate approaches but failing to meet targets for monitoring; non-compliance increasing ⁵	Largely effective processes to detect and deal with suspected GST fraud ⁶
Use of regulatory powers	Completed 10,000 cases; issued fewer than 200 infringement notices ⁷	Health funded for compliance role that exceeded statutory powers ⁸ ; ACQSC began monitoring on time ⁹	Regulatory powers rarely used ¹⁰	Regulatory action in response to non-compliance not timely or effective ¹¹	N/A
Investigation standards	Updating to AGIS 2022; investigation framework not fully fit for purpose; conduct does not fully align with AGIS ¹²	N/A	N/A	N/A	Updating to AGIS 2022 ¹³

Source: Australian National Audit Office, Committee Hansard, National Measurement Institute

- ² ANAO, *Management of Non-Compliance with the Therapeutic Goods Act 1989 for Unapproved Therapeutic Goods*, Auditor-General Report No. 3 2023–24, hereafter *TGA report*, paragraphs 3.8–3.11, 3.21–3.23, p. 34.
- ³ ANAO, *Design and Early Implementation of Residential Aged Care Reforms*, Auditor-General Report No. 8 2023–24, hereafter *Aged care report*, paragraph 11, pages 58, 64–65.
- ⁴ ANAO, *Department of Home Affairs’ Regulation of Migration Agents*, Auditor-General Report No. 26 2023–24, hereafter *Migration agents report*, paragraph 9, p. 29.
- ⁵ ANAO, *Trade measurement report*, paragraphs 3, 13–14, pages 34–35; Department of Industry, Science and Resources (DISR), *Compliance with measurement regulation in 2023–24*, November 2024, p. 12.
- ⁶ ANAO, *Australian Taxation Office’s Management and Oversight of Fraud Control Arrangements for the Goods and Services Tax*, Auditor-General Report No. 15 2023–24, hereafter *ATO report*, p. 38
- ⁷ Department of Health and Aged Care (Health), *Submission 5*, p. 3; Ms Tracey Lutton, Assistant Secretary, Regulatory Compliance Branch, Regulatory Practice and Support Division, Health, *Committee Hansard*, Canberra, 22 November 2024, pages 1, 6.
- ⁸ ANAO, *Aged care report*, pages 58–59.
- ⁹ ANAO, *Aged care report*, paragraphs 4.32–4.33.
- ¹⁰ ANAO, *Migration agents report*, p. 29.
- ¹¹ ANAO, *Trade measurement report*, p. 45, paragraph 3.35.
- ¹² ANAO, *TGA report*, paragraphs 12, 4.24.
- ¹³ ANAO, *ATO report*, paragraph 3.44, p. 70.

Policy guidance—Department of Finance

- 3.6 The *Regulatory Policy, Practice & Performance Framework* (Framework) developed by Finance offers principles to assist entities in their regulatory responsibilities. Finance states regulators should align regulatory management with the six principles: targeted and risk-based (and proportionate); integrated in existing systems; user-centred; evidence-based and data driven; reflective of the digital era; and continuously improved and outcomes-focussed.¹⁴ Two of these principles are most relevant to the discussion in this chapter: targeted and risk-based, and evidence-based and data driven.
- 3.7 A good regulatory system, according to the Framework, enables a targeted, risk-based and proportionate approach to regulation through education, administration, compliance, and enforcement activities. Regulatory intervention should be proportionate to the identified level of risk for an issue, drive compliance, and act as an effective deterrent.¹⁵
- 3.8 The policy advice for putting a targeted, risk-based and proportionate approach to regulation into practice does not deal in any detail with what constitutes proportionate activities or how they might be designed to drive compliance. Rather, it suggests that regulators should:
- establish checks and balances to identify potential issues early and minimise harm occurring
 - work collaboratively with stakeholders to develop solutions with the greatest positive impact to the broader community
 - design a regulatory system that allows the regulator to act in a proportionate and risk-based way to achieve the desired regulatory outcomes.¹⁶
- 3.9 With regard to putting in place an evidence-based and data-driven approach to regulation, when implementing regulatory systems, regulators should establish regulatory postures and fit-for-purpose education, monitoring, compliance, and enforcement strategies that are evidence-based and data-driven.¹⁷
- 3.10 When managing regulation, regulators should:
- consult the regulator performance guide (RMG 128) for best practice advice on taking a risk-based and data-driven approach
 - implement data collection strategies to inform risk-based assessments and evidence-based education, monitoring, compliance, and enforcement decisions.¹⁸

¹⁴ Department of Finance (Finance), *Regulatory Policy, Practice & Performance Framework*, 2024, hereafter *Regulatory Framework*, pages 6–7.

¹⁵ Finance, *Regulatory Framework*, p. 7.

¹⁶ Finance, *Regulatory Framework*, pages 7–8.

¹⁷ Finance, *Regulatory Framework*, pages 10–11.

¹⁸ Finance, *Regulatory Framework*, p. 11.

- 3.11 RMG 128 provides guidance on the three best practice principles of regulation: continuous improvement and building trust; risk-based and data driven; and collaboration and engagement, in addition to an overview of performance reporting, and statements of expectations and intent.¹⁹
- 3.12 The policy guidance is not specifically targeted to the actual practice of an entity's regulatory responsibilities discussed in this chapter, beyond stating 'a risk based approach allows a regulator to properly assess the risks of non-compliance and respond in a proportionate way to the harm being managed', and suggesting 'strategic management of risk can improve efficiency by prioritising resources to the areas of highest risk, and increase compliance by focusing limited resources on the areas of the greatest risk of non-compliance'. Data and digital technology can be leveraged to help regulators better understand and manage risks.²⁰

Insights—Australian National Audit Office

- 3.13 In its Insight publication on administering regulation, the ANAO states the development of a compliance program using the full scope of regulatory powers and responsibilities, which are proportionate to assessed compliance risk, supports the effective targeting of regulatory resources.²¹
- 3.14 The ANAO states a well-planned and strategically targeted compliance program enables an assessment of improvements or deterioration of compliance of regulated entities over time, and possible drivers, which itself can inform such activities as education and awareness raising.²²
- 3.15 A fully implemented compliance program includes regulator action on identified instances of non-compliance. While regulatory responses are usually established in legislation, and should align with the severity and frequency of non-compliance, responses should escalate if non-compliance is not rectified over time.²³

Compliance monitoring

- 3.16 As noted above, regulatory responsibilities include ensuring regulated entities are complying with their statutory obligations, and that when non-compliance is detected, appropriate enforcement action is taken.²⁴
- 3.17 This section discusses the Department of Home Affairs' (Home Affairs) failure to undertake monitoring activities and deficiencies in its registration process; Health's

¹⁹ Finance, *RMG 128: Regulator performance*, July 2023, hereafter *RMG 128*, <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128>, viewed 26 February 2025.

²⁰ Finance, *RMG 128: Principle 2—Risk based and data driven*.

²¹ ANAO, *Insights: Administering regulation*, January 2021, <https://www.anao.gov.au/work/insights/administering-regulation>, viewed 11 February 2025.

²² ANAO, *Insights: Administering Regulation*, January 2021.

²³ ANAO, *Insights: Administering Regulation*, January 2021.

²⁴ ANAO, *Trade measurement report*, paragraph 3.1.

proactive and reactive activities in the regulation of therapeutic goods; the regulatory roles of Health and the Aged Care Quality and Safety Commission (ACQSC) with regard to the aged care reforms; the declining record of trader audits undertaken by DISR; and the Australian Taxation Office's (ATO) fraud detection and prevention models.

Home Affairs—Regulation of migration agents

3.18 The ANAO found, notwithstanding a legislated obligation to do so, Home Affairs did not effectively regulate migration agents. The administration of the registration and re-registration process did not sufficiently address whether registered agents were fit and proper to give immigration assistance and were persons of integrity; and there was no regulatory action undertaken to monitor the activities of registered agents or providers of continuing professional development.²⁵

Registration and re-registration

3.19 Home Affairs is required to be satisfied a registered migration agent is fit and proper to give immigration assistance and is a person of integrity, prior to approving registration. The audit found the registration and re-registration process did not ensure this occurred, in part due to practices such as deeming and automated registration approvals.²⁶

3.20 The audit found that so long as certain conditions are met, re-registering applicants automatically continue to be registered until a decision is made. If a period of 10 months has passed since the applicant's registration has expired and no 'decision' has been made, registrations are 'deemed' (granted). The ANAO found that agents for which there are serious integrity concerns, have had repeat applications to register 'deemed,' sometimes multiple times. Forty per cent of agents identified by Home Affairs itself has suspected of facilitation of criminal enterprise have had their registration applications 'deemed'; twenty per cent have had registration 'auto-granted'.²⁷

3.21 The Migration Agents Regulatory System (MARS), is used to manage migration agent registration, continuing professional development (CPD) providers, complaints against registered migration agents (RMA), and consumer enquiries. In April 2021, Home Affairs implemented an automated decision-making process whereby MARS automatically approved an application for repeat registration based on certain criteria including:

- agent experience—greater than 12 months
- character—agent must have answered 'no' to a set of questions relating to integrity, fitness and propriety

²⁵ ANAO, *Migration agents report*, paragraph 9, p. 29.

²⁶ ANAO, *Migration agents report*, paragraphs 13, 3.15, 3.19.

²⁷ ANAO, *Migration agents report*, paragraphs 3.14–3.16, footnote 23.

- complaints—no open complaints and two or less closed complaints in less than 5 years
- disciplinary action—cannot have been subject to a caution, suspension, cancellation or barring.²⁸

3.22 The audit found that since April 2021, 59 per cent of repeat registrations had been subject to automated approval. An auto-granted registration means there is no assessment of an application by a departmental officer. Applications for some agents for whom Home Affairs held integrity concerns have been auto-granted.²⁹ The ANAO was told by Home Affairs it was unable to locate ‘any policy or legal document that supports implementation of the auto-grant process’.³⁰

3.23 Home Affairs has subsequently advised it no longer auto-grants applications for re-registration and all registration applications are manually processed.³¹ It also advised that subject to the passage of legislation through the Parliament, it would implement strengthened background checks for all registered migration agents.³² Home Affairs has not commented on whether applications can still be deemed.

Monitoring agent conduct

3.24 Under the *Migration Act 1958* (Migration Act), Home Affairs is required to monitor the conduct of RMAs in their provision of immigration assistance. Home Affairs does not presently report on monitoring activities. The most recent reporting available on the activities was Home Affairs’ 2015–16 Annual Report, which stated a range of monitoring activities had been conducted during that year, including:

- self-audit surveys to ensure agent compliance with various aspects of the code
- review of agent websites to verify adherence to advertising requirements
- checking that new agents held the required elements of a professional library
- office visits to assess business processes in accordance with the code
- review of client files
- review of continuing professional development providers and activities.³³

3.25 The ANAO found the following with regard to monitoring activities:

- the number of monitoring activities recorded in MARS had reduced substantially since 2015–16
- of the 38 quarters in the period examined, just over one third (37 per cent) included any monitoring

²⁸ ANAO, *Migration agents report*, paragraph 3.17.

²⁹ ANAO, *Migration agents report*, paragraphs 3.18–3.20.

³⁰ ANAO, *Migration agents report*, paragraph 2.16.

³¹ Department of Home Affairs (Home Affairs), *Submission 1.1*, p. [5].

³² Home Affairs, *Submission 1.1*, p. [5].

³³ ANAO, *Migration agents report*, paragraph 3.33.

- no monitoring activities had been recorded since the first quarter of 2020–21.³⁴
- 3.26 Home Affairs stated it had developed a Compliance and Monitoring Framework, Strategy and Plan for 2024–25 and monitoring activities had commenced in September 2024, focussed on:
- the use of migration agent registration numbers in advertising and other publications
 - handling of client money obligations.³⁵
- 3.27 This is substantively less than the monitoring activities reported in 2015–16. Home Affairs stated the plan identifies monitoring activities to be conducted using its regulatory powers, but provided no further detail or evidence.³⁶ Home Affairs has not yet decided how it will report on its monitoring activities.³⁷

Monitoring continuing professional development providers

- 3.28 Home Affairs was also found to be not effectively monitoring CPD providers. Registered migration agents are required to maintain requisite knowledge and skills by completing mandatory CPD requirements.³⁸
- 3.29 Home Affairs has not undertaken and documented a risk assessment of the population of approved CPD providers. There are 22 providers approved by Home Affairs, and in 2023, one provider provided more than half of reported continuing professional development. The ANAO noted this meant Home Affairs would need only to focus on a small number of providers to obtain assurance over the significant majority of CPD being undertaken by registered migration agents.³⁹
- 3.30 The ANAO found that in considering whether a CPD provider meets the fit and proper person requirement under the Migration Act Regulations, Home Affairs' consideration of prior complaints against a provider was limited. By way of example, Home Affairs assessed an application in November 2021 from a CPD provider containing the names of 13 employees who were registered migration agents or former registered migration agents.⁴⁰

³⁴ ANAO, *Migration agents report*, paragraph 3.32.

³⁵ Home Affairs, *Submission 1*, p. 3; Home Affairs, *Submission 1.1*, pages [2]–[3], [6].

³⁶ Home Affairs, *Submission 1*, p. 3; Home Affairs, *Submission 1.1*, pages [2]–[3].

³⁷ Home Affairs, *Submission 1.1*, p. [6].

³⁸ ANAO, *Migration agents report*, paragraphs 3.4, 3.73. The ANAO found Home Affairs did not have adequate controls to identify whether only those agents who have met the CPD requirements set out in the Migration Act were registered, and some who had not, were in fact registered. See paragraphs 3.5–3.8.

³⁹ ANAO, *Migration agents report*, paragraphs 3.75–3.77.

⁴⁰ ANAO, *Migration agents report*, paragraphs 3.78–3.82.

- 3.31 Home Affairs considered ‘a few of the agents have some complaints against their names’ but ‘the complaints appear minor in nature and have not affected their ability to register as agents’.⁴¹ In fact:
- ten of the thirteen had been subject to complaints
 - four were the subject of more than five complaints and two more than ten complaints
 - two were found to have breached the Code of Conduct without any disciplinary action being taken
 - of the total 62 complaints against the 13 agents, Home Affairs had no records on the substance of 33 of the complaints, any actions taken, or the outcome. The ANAO found Home Affairs was not able to provide evidence it had properly considered the complaints in arriving at its decision.⁴²
- 3.32 The CPD Provider Standards establish the requirement that CPD activity is to be prepared or presented by persons who are suitably qualified. The audit found Home Affairs had no arrangements in place to assure itself the persons delivering CPD were suitably qualified; and had inadequate controls in place to identify whether approved CPD providers had identified all registered migration agents delivering training, and whether there have been any complaints about those agents.⁴³
- 3.33 The CPD activities developed by providers require no approval from Home Affairs. Rather, providers must accommodate and cooperate with quality assurance processes conducted by Home Affairs. Providers are told Home Affairs will undertake monitoring to ensure compliance with the CPD Provider Standards and CPD Framework. Home Affairs identified, in its 2018–19 Compliance Plan, a risk that providers may deliver poor quality CPD that does not comply with the standards, and proposed to address the risk through strategies it did not subsequently implement. These included failing to undertake a desk audit of all CPD providers (four occurred in 2019–20 and none subsequently), and to attend a selection of mandatory CPD activities for between 40 per cent and 60 per cent of providers.⁴⁴

Department of Health—Therapeutic Goods Act non-compliance

- 3.34 Health was found to have reactive and proactive approaches to monitoring for compliance. The Therapeutic Goods Administration (TGA) website has a page entitled ‘report a breach,’ which includes links to online forms for ‘product and import non-compliance’ and for ‘advertising non-compliance’. The audit found Health had effectively implemented procedures for recording and triaging reports of alleged non-compliance. A clear workflow had been established, although recordkeeping of triage

⁴¹ ANAO, *Migration agents report*, paragraph 3.82.

⁴² ANAO, *Migration agents report*, paragraphs 3.82–3.83.

⁴³ ANAO, *Migration agents report*, paragraphs 3.85–3.87.

⁴⁴ ANAO, *Migration agents report*, paragraph 2.34, 3.91, table 3.3.

outcomes was poor. The triage system allows for a two-pass assessment where required, and results in the escalation of more serious cases.⁴⁵

- 3.35 Health undertakes proactive regulatory activities related to the import and supply of therapeutic goods and the identification of advertising non-compliance. For the import and supply of therapeutic goods, Health has allocated an officer to prepare operational intelligence reports on compliance topics for operational areas, and to respond to specific requests for information. Health has relationships with other government entities for intelligence sharing.⁴⁶
- 3.36 To deter and address the unlawful advertising of unapproved therapeutic goods on digital platforms, Health undertakes a number of activities, including: establishing ongoing relationships with digital platforms; providing digital platforms with information and guidance on advertising requirements to prevent unlawful advertisements; monitoring digital platforms; and establishing processes to report unlawful advertisements to platforms.⁴⁷
- 3.37 The audit found Health's compliance plans were out of date or in draft form. Health advised the Committee it had set compliance priorities for 2024–25 and confirmed there were compliance plans for each compliance priority.⁴⁸

Department of Health and ACQSC—Aged Care Reforms

Regulatory roles

- 3.38 The audit into the aged care reforms examined whether the regulating entities, Health and the ACQSC, were prepared to regulate the implementation of new requirements for mandatory care minutes and 24/7 registered nurse requirements.⁴⁹
- 3.39 Though previous independent reviews of aged care regulation had found a lack of clarity in responsibilities between Health and the ACQSC, in the case of aged care reforms, the ANAO found respective roles and responsibilities for regulating compliance with the new requirements had been clearly defined and communicated to stakeholders. Further, the roles and responsibilities were consistent with statutory powers, almost.⁵⁰
- 3.40 Health had planned to conduct a program of audits of provider compliance reporting—including some forensic on-site audits in higher risk facilities—for which it lacked legislative authority. This power to monitor whether information given by providers is correct had been provided to the ACQSC through legislation that had been intended

⁴⁵ ANAO, *TGA report*, paragraphs 3.4, 3.8–3.11, p. 34.

⁴⁶ ANAO, *TGA report*, 3.21–3.23, p. 40.

⁴⁷ ANAO, *TGA report*, paragraph 3.25.

⁴⁸ Health, *Submission 5.1*, pages [1]–[2].

⁴⁹ ANAO, *Aged care report*, p. 58.

⁵⁰ ANAO, *Aged care report*, paragraphs 4.2, 4.4, p. 58.

to centralise regulatory functions and powers within a single regulator to address previous fragmentation of these functions.⁵¹

- 3.41 Health had separate statutory powers to verify the accuracy or data quality of compliance reports and financial reports. Its regulatory authority in that instance was to issue a notice requiring a provider to provide further information. Legislation at the time did not give Health powers relating to entry and search, monitoring and investigation, or the ability to require persons to attend a place and answer questions, or issue sanctions.⁵² Health was aware it did not have the necessary legal power to undertake the proposed audit function and legislation would be required to provide these powers.⁵³
- 3.42 When asked about its actions to expand its regulatory function to audit activities, Health did not answer the question, referring instead to its assurance activities, of which the Committee was already aware.⁵⁴

Risk-based and randomised targeting

- 3.43 To monitor compliance, Health planned to target 755 facilities for audit each year—90 per cent on the basis of risk, and 10 per cent selected randomly to benchmark the effectiveness of the targeting strategy.⁵⁵
- 3.44 Health developed an audit site development tool to support its compliance monitoring. The purpose of the tool was to assign relative risk levels to residential aged care services to support risk-based targeting and to generate an unbiased sample of services on a randomised basis for audit. The tool was designed to detect anomalies in reported data, for instance, unusually high or low expenses for registered nurses or unusually high reported care minutes. Delays in Health business processes, in particular with regard to measuring the accuracy of the targeting model, meant the proportion of risk-based (90 per cent) and random selection (10 per cent) was not initially met.⁵⁶
- 3.45 The ACQSC has also used risk profiling to develop concepts or hypotheses to test and target its regulatory efforts where there is the greatest potential risk for and impact on older people. The testing occurs through targeted programs of regulatory engagement, including active supervision of poor performers. The ACQSC analyses quantitative and qualitative data, and comparative case studies to evaluate and improve its risk profiling and regulatory response. Validated risk profiles are used to measure regulatory outcomes over time and the ACQSC adjusts its regulatory approach accordingly.⁵⁷

⁵¹ ANAO, *Aged care report*, paragraphs 4.4–4.5.

⁵² ANAO, *Aged care report*, paragraph 4.4.

⁵³ ANAO, *Aged care report*, paragraph 4.5.

⁵⁴ Health, *Submission 5.2*, p. [5].

⁵⁵ ANAO, *Aged care report*, p. 65.

⁵⁶ ANAO, *Aged care report*, p. 65.

⁵⁷ Aged Care Quality and Safety Commission (ACQSC), *Submission 4.1*, pages [6]–[7].

Department of Industry, Science and Resources—Trade measurement

3.46 The ANAO found DISR’s approach to trade measurement compliance had been partly effective. This finding was in part due to the fact that while DISR had appropriate approaches to monitor the level of compliance, it had both reduced its compliance monitoring and had not met its own targets for trader audits, at the same time as compliance rates were remaining largely static (initial audits) or declining (follow-up audits).⁵⁸ Further, DISR was overstating the number of trader audits it undertook, including in the total such activities as online research where no regulatory powers were used.⁵⁹

National Measurement Act 1960 obligations versus contracted responsibilities

3.47 At the same time DISR was failing to reach its own targets to regulate the activities it was obligated to by the *National Measurement Act 1960* (National Measurement Act), it was prioritising and exceeding targets for monitoring and compliance of tobacco plain packaging (TPP) laws, undertaken under contract (memorandum of understanding) for Health. It was similarly prioritising fuel inspection and sampling activities undertaken on behalf of the Department of Climate Change, Energy, the Environment and Water.⁶⁰

3.48 When asked how DISR was of the view it was giving appropriate priority to its responsibilities under the National Measurement Act, DISR responded by talking about its regulatory approach, its use of cooperative agreements, the impact of the COVID pandemic, and the activities of inspectors.⁶¹ DISR told the committee it did appear that it prioritised tobacco plain packaging activities over its legislated responsibilities, but this was because it had trouble recruiting inspectors following the pandemic.⁶²

3.49 The ANAO had found DISR did in fact instruct its inspectors to prioritise tobacco plain packaging visits over trader audit activities in order to meet the terms of the memorandum of understanding with Health.⁶³

3.50 In response to a recommendation that DISR give appropriate priority to its responsibilities under the National Measurement Act, DISR told the ANAO that if it gave appropriate priority to its responsibilities under the National Management Act, it was DISR’s decision as to the scope and extent of activities it undertook for other entities.⁶⁴

⁵⁸ ANAO, *Trade measurement report*, paragraphs 3, 13–14, pages 34–35; DISR, *Compliance with measurement regulation in 2023–24*, November 2024, p. 12.

⁵⁹ ANAO, *Trade measurement report*, paragraph 3.6, page 35.

⁶⁰ ANAO, *Trade measurement report*, paragraphs 3.21–3.22, 3.31–3.32.

⁶¹ DISR, *Submission 6.1*, pages [8]–[9].

⁶² Mr Vasilios Loizides, General Manager, Legal Metrology, National Measurement Institute (NMI), DISR, *Committee Hansard*, Canberra, 22 November 2022, p. 21.

⁶³ ANAO, *Trade measurement audit*, paragraph 3.22.

⁶⁴ ANAO, *Trade measurement audit*, paragraphs 3.27–3.30.

Regulatory activity under *National Measurement Act 1960* obligations

3.51 Until 2022–23, DISR published its annual priorities in a National Compliance Plan, which included its projected national audit activities, that is, the target number of trader audits, instrument tests, pre-packaged article inspections, trial purchases and fuel sample monitoring. Since 2023–24 it has published its annual priorities in the ‘Legal Metrology Priorities’ publication, which does not include numerical targets for trader audits.⁶⁵ The target for trader audits in 2023–24—5,450—was provided in a response to a question on notice. This is more than six thousand audits below DISR’s target in 2017–18, a decrease of almost 53 per cent from the previous target. Of the targeted 5,450 audits, the NMI carried out 5,161.⁶⁶ This is shown in Table 3.2.

Table 3.2 DISR compliance targets and actual performance

Year	Trader audits		Measuring instruments		Pre-packaged lines	
	Target	Actual	Target	Actual	Target	Actual
2017–18	11,500	9,633	13,000	14,906	85,000	71,799
2018–19	8,000	7,586	10,000	15,887	60,000	70,183
2019–20	10,000	7,600	10,000	13,588	70,000	78,290
2020–21	10,000	4,842	10,000	14,049	70,000	25,990
2021–22	8,000	3,131	15,000	7,118	70,000	17,360
2022–23	8,000	4,410	10,000	7,651	60,000	29,966
2023–24	5,450	5,161	N/A	8,526	N/A	61,263

Source: Australian National Audit Office and National Measurement Institute⁶⁷

3.52 Since 2017–18, the actual number of audits has decreased by almost 47 per cent. Though DISR continues to cite the pandemic as a factor in this decline, the decline in performance was occurring well prior to the pandemic.⁶⁸ This was noted by the ANAO.⁶⁹

3.53 One reason for the decline in trader audits, according to DISR, is that it has adjusted its regulatory approach to focus greater attention on harm, rather than solely focussing on measurement accuracy.⁷⁰ Previously, the Committee was told, an inspector ‘might just go in, do an instrument and leave.’ Now, inspectors undertake

⁶⁵ See: DISR, ‘Legal metrology priorities’, <https://www.industry.gov.au/publications/legal-metrology-priorities>, viewed 13 February 2025.

⁶⁶ DISR, *Submission 6.1*, p. [7].

⁶⁷ DISR, *National Compliance Plan 2020–2021: Legal Metrology Branch*, June 2020, p. 6; DISR, *National Compliance Plan 2021–2022: Legal Metrology Branch*, June 2021, p. 6; DISR, *National Compliance Plan 2022–2023: Legal Metrology Branch*, July 2022, p. 6; DISR, *Compliance with measurement regulation in 2023–24*, November 2024, p. 11; ANAO, *Trade measurement report*, paragraphs 13–14, 3.4, 3.7, 3.8, figure 3.1, figure 3.2, figure 3.3.

⁶⁸ DISR, *Submission 6.1*, p. [7].

⁶⁹ Ms Carla Jago, Acting Deputy Auditor-General, ANAO, *Committee Hansard*, Canberra 22 November 2024, p. 20.

⁷⁰ DISR, *Submission 6.1*, p. [6].

multiple investigations—check multiple instruments, check the trading practices, check pre-packaged goods, check if there is a quality assurance system, and check who the suppliers, manufacturers and importers are, amongst other things.⁷¹ It is not clear how this reflects a change in focus from accuracy to harm, which elsewhere DISR suggested may be related to the size of an entity.⁷²

- 3.54 This change in focus, DISR says, means inspectors now discuss a range of topics with a trader to assess compliance, including assessing trader practices and viewing quality systems and training records.⁷³ It states, the approach seeks to improve compliance outcomes by ensuring appropriate systems are in place to achieve ongoing compliance. No detail has been provided on when this new approach was introduced.⁷⁴ It is not clear what the outcome of this change in approach has been.

Table 3.3 Trader audits and non-compliance rates

Year	Initial audits	Non-compliance		Follow-up audits	Non-compliance	
		#	%		#	%
2019–20	5,736	1,932	33.7%	1,864	470	25.2%
2020–21	3,587	1,222	34.1%	1,255	337	26.9%
2021–22	2,529	791	31.3%	602	121	20.1%
2022–23	3,183	1,059	33.3%	1,227	282	23.0%
2023–24	3,634	1,197	32.9%	1,527	433	28.4%

Source: National Measurement Institute⁷⁵

- 3.55 Data shows the level of non-compliance detected in follow-up audits is increasing; non-compliance was detected in 28.4% of follow-up audits in 2023–24.⁷⁶ The ANAO found DISR’s monitoring and reporting arrangements did not extend to the effectiveness of its regulatory approach.⁷⁷
- 3.56 The Committee was told that the level of non-compliance may be affected by shortcomings in DISR’s database whereby a follow-up audit might confirm the initial non-compliance had been rectified, but further non-compliance was detected. This was recorded as non-compliance. DISR stated it had modified its database—Trade Measurement Activity Recording System (TMARS)—to ensure further non-compliance issues were treated as a new metric, and as a consequence, expected compliance rates on follow-up audits to improve.⁷⁸

⁷¹ Mr Vasilios Loizides, DISR, *Committee Hansard*, Canberra, 22 November 2024, p. 20.

⁷² DISR, *Submission 6.1*, p. [10].

⁷³ DISR, *Submission 6.1*, p. [6].

⁷⁴ DISR, *Submission 6.1*, p. [6].

⁷⁵ DISR, *Compliance with measurement regulation in 2023–24*, November 2024, p. 12.

⁷⁶ DISR, *Compliance with measurement regulation in 2023–24*, November 2024, p. 12.

⁷⁷ ANAO, *Trade measurement report*, p. 34.

⁷⁸ Mr Vasilios Loizides, DISR, *Committee Hansard*, Canberra, 22 November 2024, pages 16–19.

- 3.57 However, notwithstanding the improvement to its database, DISR did not provide any statistics on what percentage of non-compliance at follow-up was existing or new. During the audit, the ANAO had found inconsistencies in record keeping and limited information in the TMARS system meant it was difficult to assess whether non-compliance identified in initial audits had actually been addressed at the time of the follow-up audits.⁷⁹

Australian Taxation Office—Management of GST fraud risk

- 3.58 The ATO uses risk assessment tools and models to detect potentially incorrect goods and services tax (GST) refunds in a 'real time environment' at the time of the business activity statement (BAS) lodgement and prior to the issue of any refund. All BAS refunds are risk assessed as part of the refund processing system.⁸⁰
- 3.59 Under the Contemporising GST Risk Models (CGRM) project, the ATO has been redesigning risk models to detect BAS refunds that are incorrect. The ATO had deployed a number of risk models under the program since 2021, and at the time of the audit, was assessing the effectiveness of two risk models through a random audit program. The CGRM project has a history of schedule overruns.⁸¹
- 3.60 When a tax refund has been identified by a model as requiring review based on a likelihood score, the ATO undertakes risk treatments. The number of cases actioned by the ATO is determined by the number of risk treatments planned to be undertaken by each business line, not the model outputs. In 2022–23 the ATO undertook 43,103 pre-issue refund checks and 26,796 post-issue refund checks—a significant increase from previous years as a consequence of additional risk treatments imposed during Operation Protego.⁸² The ATO's accuracy in detecting fraudulent claims has generally been improving over time.⁸³
- 3.61 The ATO also detects potential GST fraud through: referrals from financial institutions; data-matching for property transactions with GST implications; data collection and exchange of information with other tax jurisdictions to detect potential non-compliance of off-shore suppliers of low value important goods; and direct contact with taxpayers who are registered but have not met lodgement obligations. It also uses the justified trust regime to obtain assurance large businesses are paying the correct amount of GST.⁸⁴
- 3.62 As discussed in chapter two, the audit found that the ATO did not collate or aggregate data from the various fraud detection methods in each ATO business line to develop a whole of GST product perspective of fraud, relying instead on reporting to internal committees.⁸⁵

⁷⁹ ANAO, *Trade measurement report*, paragraph 3.42.

⁸⁰ ANAO, *ATO report*, paragraph 3.13.

⁸¹ ANAO, *ATO report*, p. 40, paragraphs 3.13–3.18.

⁸² ANAO, *ATO report*, paragraphs 3.19–3.20, table 3.3.

⁸³ ANAO, *ATO report*, paragraph 3.21, table 3.4.

⁸⁴ ANAO, *ATO report*, paragraphs 3.24–3.32.

⁸⁵ ANAO, *ATO report*, paragraph 3.33.

- 3.63 The ATO advised the Committee a holistic GST fraud risk assessment was completed in 2024, and future assessments would be undertaken every two years.⁸⁶

Use of regulatory powers

- 3.64 The ANAO has found, over a number of audits, that regulators are not using their full suite of regulatory responses. Where regulatory powers are used, it is more often the regulatory powers at the lower end which are used, than the higher end.⁸⁷

Action in response to non-compliance

- 3.65 Regulators, upon detecting non-compliance, should assess the extent of the non-compliance and the potential for harm and initiate proportionate action to address the risk posed by the non-compliance.⁸⁸

Department of Health—Therapeutic Goods Act non-compliance

- 3.66 Health advised during the 2023–24 financial year, it issued almost 8,000 warning letters, seized over 8,000,000 goods for unlawful import, sent over 4,800 content removal requests for unlawful advertising of therapeutic goods on digital platforms, and finalised 10,000 cases. However, it had issued only 190 (or possibly only 150) infringement notices.⁸⁹
- 3.67 When asked to explain the fact 10,000 cases were completed but less than 200 infringement notices had been issued, Health responded its approach was to work with an entity in ‘coming into compliance. We may be saying, “We believe this aspect on your website could be a breach of the advertising. Could you reconsider?”⁹⁰ If there were repeated warnings, actions might proceed ‘up that compliance triangle to more serious aspects, such as infringement notices or civil or criminal action’.⁹¹
- 3.68 Health stated it takes an educative approach to compliance enforcement, with Health’s regulatory compliance framework for therapeutic goods including the key principle ‘we promote high levels of voluntary compliance by effectively engaging with and educating the regulated community, with clear guidance on how to comply’.⁹² Health further stated, ‘we recognise education and guidance are key to encouraging and assisting with compliance with Australian regulation’.⁹³

⁸⁶ Australian Taxation Office (ATO), *Submission 7.1*, p. 5.

⁸⁷ Ms Carla Jago, ANAO, *Committee Hansard*, Canberra, 22 November 2024, p. 21.

⁸⁸ ANAO, *Trade measurement report*, paragraph 3.33.

⁸⁹ Different figures were given in Health’s submission and during the public hearing for the number of infringement notices issued. Health, *Submission 5*, p. 3; Ms Tracey Lutton, Health, *Committee Hansard*, Canberra, 22 November 2024, p. 1.

⁹⁰ Ms Tracey Lutton, Health, *Committee Hansard*, Canberra, 22 November 2024, p. 6.

⁹¹ Ms Tracey Lutton, Health, *Committee Hansard*, Canberra, 22 November 2024, p. 6.

⁹² ANAO, *TGA report*, paragraph 4.3.

⁹³ ANAO, *TGA report*, paragraph 4.10.

3.69 Health had produced an advertising compliance education strategy and an advertising compliance education plan and in 2021–22, undertook a range of education activities with regard to advertising, including public education campaigns; developed guidance documents and fact sheets; held webinars and workshops; made media statements; engaged with stakeholders through a range of consultative arrangements; and operated an advertising inquiry management function.⁹⁴ However, it still issued almost 8,000 warning letters in 2023–24.

Department of Industry, Science and Resources—Trade measurement

3.70 The ANAO found DISR’s regulatory action in response to identified non-compliance was not timely or effective. During the audit period, DISR had been conducting fewer follow-up audits, and when they were undertaken, they were delayed. Increasing rates of non-compliance were being found in follow-up audits, and this was not consistently followed by enforcement action. Even where escalated enforcement action was taken, it was most commonly through warning letters and infringement notices, neither of which had been issued in a timely manner.⁹⁵

Table 3.4 National Measurement Institute enforcement actions

Year	Non-compliance		NC Notices	Warning letters	Infringe notices	EU	CDPP	Convict
	Initial	F/U						
2019–20	1,932	470	2,234	188	100	2	1	1
2020–21	1,222	337	1,787	40	12	2	1	0
2021–22	791	121	926	35	18	0	0	0
2022–23	1,059	282	1,687	47	18	1	1	0
2023–24	1,197	433	1,971	59	24	1	0	0

Source: National Measurement Institute⁹⁶

NC Notices – Non-compliance notices; Infringe notices – Infringement notices; EU – Enforceable undertakings; CDPP – Referrals to the CDPP; Convict – Convictions

An enforcement action, including a warning letter or infringement notice, may cover more than one breach of the law.

3.71 Following identification of non-compliance, DISR’s enforcement and compliance policies specify the issuance of a non-compliance notice (containing information relating to the alleged non-compliance and the relevant legislative provision breached, and information on the obligations to undertake corrective action).⁹⁷

3.72 A follow-up audit is to be scheduled to check the non-compliance has been corrected. If the inspector detects continued non-compliance, or the level of non-compliance initially detected results in more significant harm, the inspector may

⁹⁴ ANAO, *TGA report*, paragraphs 4.4–4.12, table 4.2.

⁹⁵ ANAO, *Trade measurement report*, p. 45, paragraph 3.35.

⁹⁶ DISR, *Compliance with measurement regulation in 2023–24*, November 2024, p. 17.

⁹⁷ ANAO, *Trade measurement report*, paragraph 3.34.

recommend an escalated regulatory response to the investigations and compliance team for review and decision.⁹⁸

- 3.73 The ANAO observed instances where non-compliance notices were not issued despite non-compliance being identified—contrary to DISR’s internal procedures and public-facing documents.⁹⁹ The ANAO also found instances where non-compliance was found in a follow-up audit and no further enforcement action was taken.¹⁰⁰
- 3.74 The ANAO examined the timeliness of the issuance of warning letters and infringement notices over a three year period and found 43 per cent of warning letters were not issued within the required 43 days following recommendation by an investigating officer. On average it took 53 days, with the maximum being 395 days. Of the infringement notices examined, 84 per cent were not issued within the 34 calendar days from recommendation, as required by DISR’s procedures. The average was 84 days, with the time taken to issue an infringement notice between 12 and 316 days.¹⁰¹
- 3.75 The ANAO examined a sample of 20 enforcement actions (where a breach of the law had been identified) between 1 July 2019 and 30 June 2022:
- 45 per cent resulted in a warning letter, issued on average 74 days after the action was recommended
 - 20 per cent resulted in an infringement notice, issued between 78 days and 4.6 months following recommendation
 - 25 per cent resulted in no further action being taken
 - 10 per cent were in progress at the time of the audit.¹⁰²
- 3.76 In 2023–24, DISR failed to meet its inspector guidance that specified follow-up audits should be scheduled 28 days after the initial non-compliance was identified—on average it was taking 71 days to complete a follow-up audit in 2023–24.¹⁰³ This has been a long-running issue; the ANAO found a downward trend in the total number of follow-up audits conducted.¹⁰⁴ This trend, in 2023–24, however, may be reversing.
- 3.77 The Committee was told DISR responded to recommendation 5 of the audit to strengthen its approach to conducting follow-up audits, and to conduct follow-up audits in a timely manner, by introducing expectations for timeliness of follow-up audits.¹⁰⁵

⁹⁸ ANAO, *Trade measurement report*, paragraph 3.34.

⁹⁹ ANAO, *Trade measurement report*, footnote 55.

¹⁰⁰ ANAO, *Trade measurement report*, paragraph 3.40; footnote 53.

¹⁰¹ ANAO, *Trade measurement report*, paragraph 3.48.

¹⁰² ANAO, *Trade measurement report*, paragraph 3.50.

¹⁰³ ANAO, *Trade measurement report*, paragraph 3.35; DISR, *Compliance with measurement regulation in 2023–24*, November 2024, p. 9.

¹⁰⁴ ANAO, *Trade measurement report*, paragraphs 3.35–3.38.

¹⁰⁵ DISR, *Submission 6.1*, p. 15.

- 3.78 What DISR did in October 2023, was extend its timeframes for follow-up audits. The 28 day target was more than doubled to 60 days for non-compliance with consumer detriment, and more than quadrupled to 120 days for non-compliance with no consumer detriment.¹⁰⁶ The Committee was advised that in the first six months of 2024–25, the average number of days taken to complete a follow-up audit was 44 days.¹⁰⁷
- 3.79 The effectiveness of DISR’s regulatory responses is also not clear. The NMI provided the Committee with evidence of the effectiveness of its regulatory tools. Almost 40 per cent of businesses receiving an infringement notice remained non-compliant at the following inspection.¹⁰⁸ Records show that despite this figure, DISR has entered into only six enforceable undertakings since 2019–20—this is the next level of response available under the NMI’s escalatory model.¹⁰⁹

Table 3.5 Effectiveness of NMI regulatory tools 2020–2024

Regulatory tool following identification of non-compliance	% of businesses remaining non-compliant at next inspection
Education and non-compliance notice	25%
Warning letter	29%
Infringement notice	39%

Source: Department of Industry, Science and Resources¹¹⁰

- 3.80 The NMI was unable to explain the reasons repeatedly non-compliant retailers may not receive more substantial responses, beyond:
- repeated non-compliance may not lead to escalation in every instance, for instance if the non-compliance was related to low impact or low harm
 - a single enforcement action may deal with multiple instances of failed compliance as enforcement actions are aggregated against entities not individual locations
 - there may be a time delay between identifying a failed trader and issuing an infringement notice such that it crosses a year boundary.¹¹¹
- 3.81 When asked for DISR’s accountability framework for strengthening its approach to follow-up audits and regulatory responses, DISR stated its *Inspectors Manual* contained expectations and key performance indicators; under its *Trade Measurement Services Accountable Leadership Procedure* it undertook supervisory checks to ensure expectations and key performance indicators were met; and internal auditing would commence in early 2025.

¹⁰⁶ DISR, *Compliance with measurement regulation in 2023–24*, November 2024, p. 9.

¹⁰⁷ DISR, *Submission 6.1*, p. [5].

¹⁰⁸ DISR, *Submission 6*, p. [7].

¹⁰⁹ DISR, *Compliance with measurement regulation in 2023–24*, November 2024, p. 17.

¹¹⁰ DISR, *Submission 6*, p. [7].

¹¹¹ DISR, *Submission 6.1*, p. [5].

- 3.82 When asked how the *Inspectors Manual* and *Trade Measurement Services Accountable Leadership Procedure* improved the timeliness of follow-up audits and the use of enforcement actions where non-compliance was detected, DISR responded:
- the *Inspectors Manual* set out mandatory requirements and best-practice for regulatory activities, and specified key performance indicators for follow-up inspections and details of expected activities at those inspection
 - the *Trade Measurement Services Accountable Leadership Procedure* established a governance structure to ensure accountability of staff, including specifying the content and frequency of supervisory checks.¹¹²
- 3.83 Both these documents had been produced in response to recommendation 5 of the audit.¹¹³ The internal audit procedure to commence in early 2025 would confirm processes and procedures introduced following the audit were being followed.¹¹⁴

Department of Health and ACQSC—Aged Care Reforms

- 3.84 As noted above, Health was funded for, and began work to develop, an audit function for the care minutes and 24/7 RN provider reporting that exceeded its statutory powers. Through a procurement process, Health contracted EY to develop and deliver the audit methodology, a pilot activity to test the methodology, and training for staff. Health also planned to recruit staff so the audit activity could commence in July and August 2023, and planned to deploy an IT solution to support the audit function.¹¹⁵
- 3.85 However, the ANAO found the EY deliverables were delayed, mainly due to the absence of legal authority for Health’s proposed program of audits. Recruitment of staff for the audit function was also delayed, as was the IT solution. Health revised the final methodology to be delivered by EY to omit activities that would require new powers, and limited its role to verifying the accuracy of provider data using existing statutory powers. Health began verification activities, using its existing powers in September 2023. At the time of the audit, no verification activities had been completed.¹¹⁶
- 3.86 The ACQSC received additional funding to resource its regulatory activities for the new aged care requirements. It developed a regulatory approach that contained a three-phase plan—phase three of which was regulatory action, which was planned to commence in July 2023. The ACQSC divided services into three tranches depending on their risk profile. It planned to conduct 495 desk-based monitoring contacts and 198 one-day site visits to, amongst other things, monitor alternative clinical care arrangements in place at services that received an exemption from the 24/7 RN requirement and determine whether there was any non-compliance with the

¹¹² DISR, *Submission 6.1*, p. [5].

¹¹³ DISR, *Submission 6*, p. [7].

¹¹⁴ DISR, *Submission 6.1*, p. [5].

¹¹⁵ ANAO, *Aged care report*, paragraphs 4.27–4.29.

¹¹⁶ ANAO, *Aged care report*, paragraphs 4.29–4.31.

standards. The ACQSC assumed approximately 30 or 40 services would require escalation to a full on-site review against the standards. The ACQSC recognised it had overestimated the need for some monitoring and would seek to redeploy excess resources to support the desk-base monitoring and one-day site visits. At the time of the audit, the ACQSC had conducted 17 desk-based and 20 on-site monitoring activities.¹¹⁷

Home Affairs—Regulation of migration agents

- 3.87 The role of the Office of the Migration Agents Registration Authority (OMARA), under the Migration Act is to protect consumers of migration assistance and the integrity of the Australian visa system through its regulation of registered migration agents and former registered migration agents.¹¹⁸
- 3.88 The ANAO found Home Affairs did not take timely or effective regulatory action when it received complaints about the activities of individual agents; and it rarely used its regulatory powers.¹¹⁹ In 2022–23, 299 complaints about 244 migration agents were received. Only 9 per cent of complaints were actioned via a substantive regulatory response indicated by the use of powers available to Home Affairs under the Migration Act. Some complaints were dismissed because there was ‘insufficient evidence’ when Home Affairs had not actually used its regulatory powers to investigate.¹²⁰
- 3.89 This is not a recent issue. For nine months between 2016 and 2017, there were no delegations in place for officials to exercise regulatory powers, but this had not affected monitoring of agent activities, investigations or sanctions because it had undertaken no such activities during the nine month period.¹²¹

Registration decisions

- 3.90 Home Affairs, under the Migration Act (section 305C), has the power to require an agent to provide prescribed information or documents in circumstances where Home Affairs is considering refusing a registration application or making a decision to cancel or suspend an agent’s registration, or cautioning an agent.¹²²
- 3.91 Home Affairs stated there ‘may be very clear reasons’ it did not use its section 305C powers to obtain evidence, including because it was of the view the available evidence did not support the allegations. Other reasons were where evidence had been obtained under a different section of the Migration Act (section 308), and where evidence was already available to support the allegations.¹²³

¹¹⁷ ANAO, *Aged care report*, paragraphs 4.32–4.33.

¹¹⁸ ANAO, *Migration agents report*, paragraphs 1.2, 3.38.

¹¹⁹ ANAO, *Migration agents report*, p. 29.

¹²⁰ ANAO, *Migration agents report*, paragraph 3.51, footnote 40.

¹²¹ ANAO, *Migration agents report*, paragraph 3.2.

¹²² ANAO, *Migration agents report*, paragraph 3.21.

¹²³ ANAO, *Migration agents report*, paragraph 3.21.

- 3.92 The ANAO examined whether this account of the non-use of regulatory powers accorded with practice and found with regard to one case:
- one agent's applications for registration and re-registration had been approved annually between 2005 and 2022 (including four times by deeming)
 - between 2006 and 2019, 15 complaints had been made against the agent
 - Home Affairs told the Minister in a brief that all 16 [sic] complaints had been investigated and dismissed, 'due mainly to insufficient evidence'
 - in relation to the matters in the brief, Home Affairs had not: issued any notices under sections 305C or 308 of the Migration Act to require the agent to provide information, or considered whether it should reopen prior complaints relevant to the allegations at hand
 - Home Affairs did not advise the Minister it had not used its powers under the Migration Act
 - the agent's registration was cancelled, 15 months after a complaint was submitted by another area of Home Affairs and one month after media reporting that Home Affairs identified as alleging the agent was engaged in conduct that undermined the migration law.¹²⁴
- 3.93 Of 50 examples and case studies of completed or closed cases raised by the ANAO with Home Affairs during the audit, there was only one where Home Affairs was considering whether further action might have been, or was, warranted. Home Affairs advised the ANAO in February 2024 it accepted it needed to 'uplift its capabilities' to use Migration Act powers. However, it has not specified the regulatory actions it plans to undertake.¹²⁵

Complaints

- 3.94 Home Affairs uses a matrix to assess the severity and impact of migration agent conduct and inform treatment strategies, including decisions on which complaints to action. The matrix contains nine unweighted criteria that are used to arrive at a severity rating. Five criteria deal with the nature of the alleged conduct, four deal with whether there is awareness of the alleged conduct outside Home Affairs and whether there is political and/or media interest. Being unweighted, the nature of the conduct is treated with the same importance as political sensitivities or Home Affairs priorities. The ANAO found that given the nature of the criteria and the fact they are unweighted, the matrix could not ensure that when deciding which complaints to action, Home Affairs gave priority to the protection of consumers or integrity of the visa system—which is its legislated responsibility.¹²⁶
- 3.95 The ANAO found the majority of complaints were dismissed by Home Affairs, rather than being investigated, and there was a risk this would be exacerbated by

¹²⁴ ANAO, *Migration agents report*, paragraphs 3.21–3.24.

¹²⁵ ANAO, *Migration agents report*, paragraph 3.25.

¹²⁶ ANAO, *Migration agents report*, paragraphs 3.38–3.40.

Home Affairs' new performance measures (discussed in the next chapter).¹²⁷ In its submission to the inquiry, Home Affairs stated it was recruiting and training new staff so as to resolve complaints more rapidly.¹²⁸

- 3.96 The ANAO found departmental records did not provide an accurate reflection of the extent to which complaints were investigated and regulatory action taken. The audit found:
- complaints were reported as 'finalised' with an outcome of 'close and hold' when Home Affairs had taken no action to investigate using its powers under the Migration Act
 - complaints were reported as 'finalised' with an outcome of 'already sanctioned' when Home Affairs had not investigated or taken any regulatory action to resolve the particular complaint
 - no sanction had been applied in cases where complaints are found to have involved a breach of the Code of Conduct
 - complaints were reported as resulting in an outcome of 'addressed with the agent,' which is not a disciplinary action prescribed in the Migration Act
 - complaints were reported as resulting in a 'suspected breach notice,' which is not an action prescribed in the Migration Act¹²⁹
 - complaints previously identified for investigation were closed without investigation activity using powers under the Migration Act being used.¹³⁰
- 3.97 The ANAO also found that of the 89 complaints recorded as finalised in May 2022:
- 83 per cent were dismissed by Home Affairs
 - 71 per cent were over 12 months old
 - four complaints resulted in sanction decisions against two agents—caution and registration suspension.¹³¹

Information gathering powers

- 3.98 Under section 308 of the Migration Act, Home Affairs has the power to require an agent to: make a statutory declaration in answer to a question in writing; appear before individuals specified by OMARA to answer questions; and provide OMARA with specified documents or records relevant to an agent's continuing registration. Home Affairs told the ANAO its use of section 308 was discretionary and based in part on the evidence available to support the allegation.¹³²

¹²⁷ ANAO, *Migration agents report*, paragraph 3.44.

¹²⁸ Home Affairs, *Submission 1*, p. 3.

¹²⁹ Home Affairs commenced the practice of finalising complaints with a 'suspected breach notice' in January 2023. ANAO, *Migration agents report*, p. 59.

¹³⁰ ANAO, *Migration agents report*, paragraph 3.45.

¹³¹ ANAO, *Migration agents report*, paragraph 3.46.

¹³² ANAO, *Migration agents report*, paragraphs 3.49–3.50.

3.99 The audit found that even in cases where migration agents were suspected of facilitating criminal enterprise or involvement of cash-for-visa schemes, Home Affairs had not always exercised its available regulatory powers under the Migration Act to investigate.¹³³

Response to ANAO recommendations

3.100 The ANAO made two recommendations with regard to Home Affairs' use of its regulatory powers to investigate complaints. The first recommended Home Affairs strengthen its regulation of migration agent registration requirements by making greater use of the powers provided under the Migration Act to inform its assessment of whether applications for registration should be granted.¹³⁴

3.101 Home Affairs did not agree in the detail of its response to do so; instead it agreed it was important to use its regulatory powers where it was relevant, appropriate and lawful. It would 'continue to enhance its ability to appropriately assess whether an application for registration should be granted having regard to available evidence before the Authority including through the exercise of relevant powers under the Migration Act.'¹³⁵

3.102 The ANAO made a further recommendation that Home Affairs strengthen its regulation of migration agent registration requirements by making greater use of its regulatory powers to investigate complaints. Though Home Affairs agreed, it qualified its agreement by stating it was important to make use of the powers 'where it is relevant, appropriate and lawful to do so,' and it would continue to enhance its abilities to ensure it appropriately addressed inappropriate contact in a timely manner through the exercise of relevant powers.¹³⁶

3.103 In its response to the audit, Home Affairs disagreed with the finding OMARA did not take effective action on complaints it received about the activities of registered migration agents. Home Affairs stated while it was important to make use of its regulatory powers, the exercise of such powers and the imposition of disciplinary decision were not the only appropriate actions Home Affairs could take in response to complaints. It undertook to address compliance risk in a timely manner, including through the exercise of 'relevant' powers 'as appropriate'.¹³⁷

3.104 The audit contained evidence that the use of regulatory powers was in fact an appropriate benchmark, and Home Affairs had admitted this in its response to the audit. Specifically, Home Affairs recognised it must have supporting evidence obtained using the powers under the Migration Act to pursue disciplinary action; and that recording a breach without imposing a sanction on an agent was a practice

¹³³ ANAO, *Migration agents report*, paragraph 3.57–3.64.

¹³⁴ ANAO, *Migration agents report*, paragraph 3.26.

¹³⁵ ANAO, *Migration agents report*, paragraphs 3.27–3.28.

¹³⁶ ANAO, *Migration agents report*, paragraphs 3.65–3.68.

¹³⁷ ANAO, *Migration agents report*, paragraph 16.

Home Affairs would cease. Home Affairs also acknowledged the need to implement a quality assurance process of its sanction decisions.¹³⁸

- 3.105 In its submissions to the inquiry, Home Affairs stated it has undertaken a number of activities to expand and uplift OMARA’s regulatory capabilities including an early resolution model for complaints (which was actually in existence at the time of the audit),¹³⁹ changing procedures to raise own-motion complaints where appropriate, improving peer review and case management practices, and establishing a small intelligence team for complex investigations. Home Affairs stated results were improving with OMARA sanctioning 10 registered migration agents in 2023–24,¹⁴⁰ and refusing the registration of 11. It reported 27 prospective agents withdrew their registration applications in anticipation of OMARA making a decision to refuse.¹⁴¹ Home Affairs stated agents found to have breached the Code of Conduct were sanctioned.¹⁴²
- 3.106 Whether any of this amounts to effective regulatory oversight, or improvement in its performance is not clear to the Committee. In the absence of any context, all that can be said is that OMARA has increased some metrics. Home Affairs stated it had no comparative data on the exercise of its statutory powers.¹⁴³
- 3.107 Home Affairs states it is ‘investigating’ options for more effective reporting on complaints including identifying when statutory powers are used. It provided no further detail on whether this work would result in comprehensive performance reporting or timeframes.¹⁴⁴
- 3.108 At some future stage and subject to the passage of legislation, Home Affairs advised ‘strengthened’ background checks would be implemented for registered migration agents involving stronger identify verification, criminal history check, and security assessment. It is not clear how this addresses the broad concerns raised by the audit as to migration agent regulation.¹⁴⁵
- 3.109 Home Affairs, in uplifting its capabilities, has recruited and trained additional staff with a target of average staffing of 60 by 30 June 2025.¹⁴⁶

Investigation functions

- 3.110 The AGIS establishes the standards for the conduct of investigations including standards for: arrangements that support investigations (investigation policies and

¹³⁸ ANAO, *Migration agents report*, paragraph 17.

¹³⁹ ANAO, *Migration agents report*, paragraph 2.15, footnote 12.

¹⁴⁰ Home Affairs states sanctioning an agent requires the use of its powers under section 309 of the *Migration Act 1958*. It stated in December 2024 that since 1 February 2024, it had sanctioned 12 registered migration agents or former registered migration agents. Home Affairs, *Submission 1.1*, p. [8].

¹⁴¹ Home Affairs, *Submission 1*, pages 3–4.

¹⁴² Home Affairs, *Submission 1.1*, p. [8].

¹⁴³ Home Affairs, *Submission 1.1*, p. [9].

¹⁴⁴ Home Affairs, *Submission 1.1*, p. [8].

¹⁴⁵ Home Affairs, *Submission 1*, p. 4; Home Affairs, *Submission 1.1*, pages [4]–[5].

¹⁴⁶ Home Affairs, *Submission 1.1*, p. [7].

procedures); case management (how reports of alleged non-compliance are received, recorded, assessed and accepted for investigation); ethical conduct; and quality assurance.¹⁴⁷

- 3.111 The AGIS was updated in October 2022, and entities are required to proactively transfer their approaches from the requirements of the previous standard (AGIS 2011) to the requirements of AGIS 2022 ‘within a reasonable timeframe’.¹⁴⁸

Department of Health—Therapeutic Goods Act non-compliance

- 3.112 The audit into Health’s regulation of therapeutic goods contained an assessment of Health’s regulatory investigations. The ANAO found that while the conduct of investigations was undertaken largely effectively, the investigation framework was not fully fit for purpose and the conduct of investigations did not fully align with the relevant standards in the AGIS.¹⁴⁹ Health’s investigation policies and procedures for the regulation of therapeutic goods were not mature and did not fully comply with the AGIS; investigator qualifications were not sufficiently monitored; the process for declaring conflicts of interest and complaints handling was not fit-for-purpose; and a quality assurance process had not been established.¹⁵⁰ In June 2023, Health remained in the process of updating its Investigation Policy to align with the October 2022 AGIS.¹⁵¹

Conduct of investigations

- 3.113 Health did have investigation procedures, but the majority of these procedures were in draft. Health agreed to an ANAO recommendation that it finalise its investigation procedures and establish an internal control for their regular review and update.¹⁵²

Investigator qualifications

- 3.114 The Audit found only 73 per cent of investigators who conducted investigations sampled by the ANAO had a minimum level of investigator qualifications as required under the AGIS. Further, at the time Health did not maintain records of investigator qualifications.¹⁵³ Health agreed to a recommendation that it ensure investigators maintained a minimum level of investigator qualification and keep appropriate records.¹⁵⁴

Complaints

- 3.115 The AGIS requirements for the ethical conduct of investigations include requirements for declarations of interest and procedures for dealing with complaints. Despite

¹⁴⁷ ANAO, *TGA report*, paragraphs 4.20, 4.34, 4.48.

¹⁴⁸ ANAO, *ATO report*, paragraph 3.44.

¹⁴⁹ ANAO, *TGA report*, paragraph 12.

¹⁵⁰ ANAO, *TGA report*, paragraph 18.

¹⁵¹ ANAO, *TGA report*, paragraph 4.24.

¹⁵² ANAO, *TGA report*, paragraphs 4.25, 4.27–4.28.

¹⁵³ ANAO, *TGA report*, paragraph 4.30.

¹⁵⁴ ANAO, *TGA report*, paragraphs 4.32–4.33.

relevant specifications in the APS Code of Conduct, Health's Accountable Authority Instructions, the departmental Conflict of Interests Policy, and the Regulatory Compliance Branch's draft Integrity Policy, annual declarations of conflicts of interest had not been completed. Health accepted a recommendation with regard to establishing internal controls to ensure officials involved in investigations and compliance activities made and managed declarations of interest and appropriate records were kept.¹⁵⁵

- 3.116 A 2022 internal audit into complaints handling had found Health's management of complaints should be improved, including through the establishment of an overarching complaints management framework; an updated complaints management policy; communication and training to raise awareness of the policy; and a central reporting mechanism to understand the types, volume, frequency and response timeframe to complaints received. Health agreed to a recommendation to establish a clear complaint handling channel and a system for end-to-end complaint management. Health stated it was investigating a 'single front door' for all complaints and an enterprise-wide client relationship management system to provide for the triage and distribution of complaints.¹⁵⁶

Quality assurance

- 3.117 The purpose of a quality review is to establish whether an investigation was conducted in a way that complied with the AGIS. Under the 2022 AGIS, entities are required to have an Investigations Quality Assurance Policy that includes quality assurance activities, and to conduct a formal external quality assurance activity every two years. Health did not have a quality assurance program for its investigations related to therapeutic goods in place and agreed to an ANAO recommendation to develop an investigations quality assurance policy.¹⁵⁷
- 3.118 A number of offences related to the import, export, manufacture or supply of therapeutic goods are established in the *Therapeutic Goods Act 1989*, which also provides Health with compliance and enforcement powers, ranging from enforceable undertakings and infringement notices to criminal and civil penalty proceedings. Additionally, Health may conduct non-statutory activities prior to using compliance powers, including warning letters and informal engagement, which predominantly serve an educative purpose and provide for voluntary compliance. Health's compliance investigations and activities for the import and supply of unapproved therapeutic goods, and for advertising of therapeutic goods were consistent with the AGIS and undertaken effectively, aside from a lack of investigation planning for serious non-compliance cases and supervisor review.¹⁵⁸
- 3.119 In 2021–22, Health closed 8,625 compliance cases in relation to the import, supply, export or manufacturing of unapproved therapeutic goods and 2,376 cases related to the advertising of therapeutic goods. The ANAO examined, against the then AGIS

¹⁵⁵ ANAO, *TGA report*, paragraphs 4.34–4.39.

¹⁵⁶ ANAO, *TGA report*, paragraphs 4.45–4.47.

¹⁵⁷ ANAO, *TGA report*, paragraphs 4.48–4.50.

¹⁵⁸ ANAO, *TGA report*, paragraphs 19, 4.52–4.53, p. 58.

requirements for case management and the conduct of investigations, a random sample of cases to determine whether Health had effectively undertaken investigations and compliance actions, with a targeted sample examined for cases of serious non-compliance.¹⁵⁹

- 3.120 For investigations of serious non-compliance, the ANAO found planning documentation was not consistently completed, and where it was undertaken, none used the investigation plan template and none fully complied with AGIS requirements. For instance, there were failures to outline the objective and scope of the investigation, as well as the team structure and management of risks.¹⁶⁰ In the absence of investigation plans, the ANAO wrote supervisors were not well placed to monitor the performance of investigations or to ensure risks were being managed appropriately.¹⁶¹
- 3.121 The AGIS in force at the time stated supervisors should review investigations at appropriate intervals to ensure adherence with the AGIS and investigation plans. In its audited sample, the ANAO found shortcomings in the process of supervisor review, including failures in record keeping, a lack of evidence of appropriate supervisor review, and where there was evidence of appropriate supervisor review, the review did not include adhering to the AGIS or investigation plans. The audit suggested opportunities for improvement in this area.¹⁶²
- 3.122 Health advised the Committee it was requesting closure from the Audit and Risk Committee on the finalisation of aligning investigation procedures with AGIS 2022, and establishing internal controls for regulator review and update.¹⁶³

Australian Taxation Office—Management of GST fraud risk

- 3.123 The ATO told the ANAO it was in the process of updating the investigation procedures for external fraud to align with AGIS 2022 and expected this to be completed by February 2024.¹⁶⁴

¹⁵⁹ ANAO, *TGA report*, paragraphs 4.54–4.55.

¹⁶⁰ ANAO, *TGA report*, paragraph 4.59.

¹⁶¹ ANAO, *TGA report*, paragraph 4.60.

¹⁶² ANAO, *TGA report*, paragraphs 4.74–4.79.

¹⁶³ Health, *Submission 5*, p. 9.

¹⁶⁴ ANAO, *ATO report*, paragraph 3.44.



4. Performance

Frameworks and metrics

Introduction

- 4.1 This chapter discusses the frameworks in place for the measurement and reporting of performance, and how audited entities have approached establishing and developing performance measures that are meaningful to their regulatory responsibilities; setting appropriate targets for performance measures; and reporting their performance based on performance measures and targets according to requirements and advice.
- 4.2 The Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) contains requirements for the performance measures of Commonwealth entities.¹ These requirements are that performance measures must:
- directly relate to one or more of an entity's purposes or key activities
 - use sources of information and methodologies that are reliable and verifiable
 - provide an unbiased basis for the measurement and assessment of an entity's performance
 - where reasonably practicable, comprise a mix of qualitative and quantitative measures
 - where appropriate, include measures of the entity's outputs, efficiency and effectiveness
 - provide a basis for assessment of an entity's performance over time.
- 4.3 The PGPA Rule is administered by the Department of Finance (Finance), which also provides advice for implementing the requirements in resource management guides. The Australian National Audit Office (ANAO) has developed a product through its insight series that provides advice to entities on developing and reporting on meaningful performance measures.
- 4.4 Table 4.1 summarises the audit findings with regard to each of issues discussed in this chapter.

¹ Public Governance, Performance and Accountability Rule 2014, section 16EA.

Table 4.1 Audit findings on regulator performance – Performance

	Therapeutic goods	Aged care reforms	Migration agents	Trade measurement	GST fraud risk
Overall audit conclusion	Largely effective	Largely effective	Not effective	Partly effective	Partly effective
External performance reporting	Corporate plan contains four relevant key activities. ²	N/A – Not reported at publication of audit.	Performance recorded against one outcome. ³	Performance not reported externally following 2019–20. ⁴	N/A – Not covered by audit.
Established performance measures	No measures established for compliance management. ⁵	One measure on care minutes and 24/7 nursing rates. ⁶	One relevant measure included. ⁷	Relevant measures not in corporate plans following 2019–20. ⁸	N/A – Not covered by audit.
Established targets for performance measures	No targets set for compliance management. ⁹	Target set for the performance measure. ¹⁰	Targets set for the measure in 2022–23 and 2023–24. ¹¹	External targets not set following 2019–20. ¹²	N/A – Not covered by audit.
Performance measures and targets are meaningful, relevant and appropriate	N/A – No measures or targets for compliance management. ¹³	N/A – Not covered by audit.	Two areas of regulatory activity did not have measures. ¹⁴	N/A – Not covered by audit.	N/A – Not covered by audit.

Source: Australian National Audit Office

² Australian National Audit Office (ANAO), *Management of Non-Compliance with the Therapeutic Goods Act 1989 for Unapproved Therapeutic Goods*, Auditor-General Report No. 3 2023–24, hereafter *TGA Report*, paragraph 2.34.

³ ANAO, *Department of Home Affairs’ Regulation of Migration Agents*, Auditor-General Report No. 26 2023–24, hereafter *Migration agents report*, paragraph 1.3.

⁴ ANAO, *Trade Measurement Compliance Activities*, Auditor-General Report No. 5, 2023–24, hereafter *Trade measurement report*, paragraphs 3.54–3.55.

⁵ ANAO, *TGA report*, table 2.7

⁶ ANAO, *Design and Early Implementation of Residential Aged Care Reforms*, Auditor-General Report No. 8 2023–24, hereafter *Aged care report*, paragraph 4.43.

⁷ ANAO, *Migration agents report*, paragraph 1.3.

⁸ ANAO, *Trade measurement report*, paragraphs 3.54–3.55.

⁹ ANAO, *TGA report*, table 2.7.

¹⁰ ANAO, *Aged care report*, paragraph 4.44.

¹¹ ANAO, *Migration agents report*, paragraph 1.3.

¹² ANAO, *Trade measurement report*, paragraphs 3.54–3.55.

¹³ ANAO, *TGA report*, table 2.7.

¹⁴ ANAO, *Migration agents report*, paragraph 1.4.

Policy guidance—Resource management guide

- 4.5 The advice contained in *RMG 128: Regulator performance* (RMG 128) provides information on performance expectations and sets out the three principles of best practice that regulators are required to report against:
- continuous improvement and building trust
 - risk based and data driven
 - collaboration and engagement.
- 4.6 RMG 128 also outlines the requirements for performance reporting under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the PGPA Rule. Finance advises that regulator performance reporting should be reported through the corporate plan and annual report to support the transparency and accountability of regulator performance.¹⁵
- 4.7 *RMG 131: Developing performance measures* (RMG 131) contains information on the concepts for developing performance measures and the specific requirements under the PGPA Rule. Information is presented under the following categories:
- performance measures, purposes and/or key activities
 - reliable and verifiable
 - unbiased measurement and assessment
 - qualitative and quantitative performance measures
 - measures of outputs, efficiency and effectiveness
 - basis for assessment over time
 - tools, techniques and considerations for developing performance measures.¹⁶
- 4.8 The guide states that it does not offer ‘definitive technical advice on how to design performance measures’ or list generic, standard performance measures.¹⁷
- 4.9 In its submission to this inquiry, Finance stated that it ‘will also continue to review and update RMGs to feature contemporary examples for entities and regulators to refer to, ensuring our guidance remains fit-for-purpose’.¹⁸ RMG 131 contains only examples from the 2022–23 corporate plans of various entities.¹⁹

¹⁵ Department of Finance (Finance), *RMG 128: Regulator Performance*, July 2023, hereafter *RMG 128*, <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128>, viewed 27 February 2025.

¹⁶ Finance, *RMG 131: Developing performance measures*, May 2024, hereafter *RMG 131*, <https://www.finance.gov.au/government/managing-commonwealth-resources/developing-performance-measures-rmg-131>, viewed 5 March 2025.

¹⁷ Finance, *RMG 131*, viewed 5 March 2025.

¹⁸ Finance, *Submission 2.1*, p. 5.

¹⁹ For example, see Finance, *RMG 131 – Measures of outputs, efficiency & effectiveness*, <https://www.finance.gov.au/government/managing-commonwealth-resources/developing-performance-measures-rmg-131/measures-outputs-efficiency-effectiveness>, viewed 11 March 2025.

Audit Office insights

- 4.10 In its Insights product, *Using performance information to drive effectiveness*, the ANAO focuses on the role of accountable authorities, stating that cultural change within entities to embed performance information requires leadership from the top. The observation is made that 'what gets measured gets done'.²⁰
- 4.11 In its Insights product *Reporting meaningful performance information*, the ANAO identifies six areas of focus within the Commonwealth Performance Framework:
- build a performance focus
 - define purposes and key activities
 - design meaningful performance measures and targets
 - maintain proper records
 - report clearly
 - improve governance.²¹
- 4.12 During the inquiry, the ANAO further commented on the need for entities to establish meaningful performance measures, stating:
- ... there's a real challenge for regulators to report on what they're doing and make it meaningful, rather than, 'We did 20 phone calls and 60 letters,' and that kind of thing. It's, 'What impact does the regulation have in meeting the intent of the regulation that they're implementing?' ... there's a real challenge here and it's a link between the planning, the activity and the reporting, and what we're seeing is people counting what they do, not taking it towards the regulated impact.²²

Performance reporting

- 4.13 As outlined in Table 4.1, four of the five ANAO audits under consideration in this inquiry discussed performance measures under the Commonwealth Performance Framework for the regulatory activities examined. The audit of the ATO's management and oversight of fraud control arrangements for the goods and services tax did not cover performance reporting against the Commonwealth Performance Framework.

²⁰ ANAO, *Insights: Using Performance Information to Drive Effectiveness*, November 2023, hereafter *Using Performance Information to Drive Effectiveness*, www.anao.gov.au/work/insights/using-performance-information-to-drive-effectiveness, viewed 25 February 2025.

²¹ ANAO, *Insights: Reporting Meaningful Performance Information*, June 2023, hereafter *Reporting meaningful performance information*, www.anao.gov.au/work/insights/reporting-meaningful-performance-information, viewed 26 February 2025.

²² Ms Rona Mellor PSM, Deputy Auditor-General, ANAO, *Committee Hansard*, Canberra, 22 November 2024, p. 41.

Department of Health—Therapeutic Goods Act non-compliance

External performance reporting

4.14 The audit report states that the Department of Health and Aged Care's (Health) corporate plans for 2021–22 and 2022–23 contained four key activities under Program 1.8 (Health Protection, Emergency Response and Regulation) relating to the regulation of therapeutic goods:

- 2021–22:
 - regulating therapeutic goods, including vaccines, to ensure safety, efficacy, performance, and quality; promote best practice, monitor compliance, and take appropriate action to address non-compliance
 - improving access to therapeutic goods for consumers and streamlining regulatory processes for industry
 - delivering efficient, best practice therapeutic goods regulatory outcomes through regulatory science excellence, international collaboration and reform in accordance with the Regulatory Science Strategy 2020–2025
 - undertaking a range of education activities to inform the public and health professionals on reforms to the regulation of prescription opioid medicines
- 2022–23:
 - regulating therapeutic goods, including vaccines, to ensure safety, efficacy, performance, and quality; promote best practice, monitor compliance, and take appropriate action to address non-compliance
 - improving access to therapeutic goods for consumers and streamlining regulatory processes for industry
 - delivering efficient, best practice therapeutic goods regulatory outcomes through regulatory science excellence, international collaboration and reform in accordance with the Regulatory Science Strategy 2020–2025
 - regulating nicotine liquid (vaping) products, including education, compliance, and a 2022 review of this regulation.²³

Established performance measures

4.15 The ANAO stated in its audit report that the following key activities from 2021–22 and 2022–23 were relevant to managing compliance:

- 2021–22
 - regulating therapeutic goods, including vaccines, to ensure safety, efficacy, performance, and quality; promote best practice, monitor compliance, and take appropriate action to address non-compliance
- 2022–23

²³ ANAO, *TGA report*, table 2.7.

- regulating therapeutic goods, including vaccines, to ensure safety, efficacy, performance, and quality; promote best practice, monitor compliance, and take appropriate action to address non-compliance
- regulating nicotine liquid (vaping) products, including education, compliance, and a 2022 review of this regulation.²⁴

4.16 Of these activities, none had associated performance measures.²⁵

Established targets for performance measures

4.17 The ANAO found that of the key activities for 2021–22 and 2022–23 covering compliance management listed in the previous section, none had targets in place.²⁶

Performance measures and targets are meaningful, relevant and appropriate

4.18 The ANAO found that ‘there is little external information on the performance of the department in achieving the expected outcomes of its compliance approach for therapeutic goods’²⁷ and made the following recommendation to Health:

The Department of Health and Aged Care review its annually reported performance information for its regulation of therapeutic goods to ensure the information is appropriate and covers the significant components of its key activities.²⁸

4.19 Health agreed to the recommendation. In its submission to the inquiry, Health advised that it is taking the following action in response to the ANAO’s findings:

The department is currently reviewing its external performance reporting in response to the ANAO 2023/24 performance statements audit. This response will also reflect the related recommendation in the Auditor-General Report No.3 2023–24. To support this, the TGA [Therapeutic Goods Administration] is examining how current data is captured and reported, and ways to improve this to enhance insights and measure performance.²⁹

Department of Health and ACQSC—Aged Care Reforms

External performance reporting

4.20 The ANAO audit report stated that Health mapped care minutes and 24/7 nursing to Program 3.2 (Aged Care Services) of its 2023–24 Portfolio Budget Statements.³⁰ The

²⁴ ANAO, *TGA report*, table 2.7.

²⁵ ANAO, *TGA report*, paragraph 2.34, table 2.7.

²⁶ ANAO, *TGA report*, paragraph 2.34, table 2.7.

²⁷ ANAO, *TGA report*, paragraph 14.

²⁸ ANAO, *TGA report*, paragraph 2.35.

²⁹ Department of Health and Aged Care (Health), *Submission 5*, p. 5.

³⁰ ANAO, *Aged care report*, paragraph 4.43.

relevant key activity is 'Respect, Care and Dignity for older Australians'.³¹ Health reported a result of 'not achieved' in its 2023–24 Annual Report.³²

Established performance measures

- 4.21 Under the key activity outlined above, the ANAO identified that Health had developed one relevant performance measure: 'Older Australians receive residential care services that contributes to their quality of life as measured through: a. provider metrics b. care minutes c. 24/7 nursing'.³³

Established targets for performance measures

- 4.22 The ANAO audit report noted that the target for Health's performance measure for aged care reforms was as follows:
- a. Establish measurement baseline for 'Quality of Life' indicator
 - b. Maintain average of 200 care minutes per resident per day, including a minimum of 40 minutes of registered nurse (RN) time per day
 - c. All non-exempt residential aged care facilities have an RN onsite and on duty 100% of the time.³⁴

Performance measures and targets are meaningful, relevant and appropriate

- 4.23 The audit did not include an assessment of the appropriateness of the performance measures or targets.
- 4.24 In its submission to the inquiry, Health outlined how it is responding to the audit's recommendations and stated that:

The department is currently reviewing its external performance reporting in response to the ANAO 2023/24 performance statements audit. This is anticipated to include performance reporting for residential aged care.³⁵

Home Affairs—Regulation of migration agents

External performance reporting

- 4.25 In the audit report, the ANAO stated that the Department of Home Affairs (Home Affairs) had included the Office of the Migration Agents Registration Authority (OMARA) in Outcome 2, Activity 2.1 (immigration and humanitarian programs) and had reported on performance in Home Affairs' annual report.³⁶

³¹ Health, *Corporate Plan 2023–24*, p. 92.

³² Health, *Annual Report 2023–24*, p. 77.

³³ ANAO, *Aged care report*, paragraph 4.43.

³⁴ ANAO, *Aged care report*, paragraph 4.44.

³⁵ Health, *Submission 5*, p. 7.

³⁶ ANAO, *Migration agents report*, paragraph 1.3; Department of Home Affairs (Home Affairs), *Corporate Plan 2023–24*, p. 46.

Established performance measures

- 4.26 As described below, the ANAO stated in its report that Home Affairs had established targets under Outcome 2, Activity 2.1. These targets are linked to Measure 2.1.1: Effective design, delivery and assurance of immigration programs.³⁷

Established targets for performance measures

- 4.27 The ANAO noted in its report that targets were set for regulatory performance for the regulation of migration agents in 2022–23 and 2023–24 as follows:
- 2022–23: ‘100 per cent of proven instances of non-compliance results in disciplinary action taken’³⁸
 - 2023–24: ‘75 per cent of less serious complaints received are resolved within 90 days and 50 per cent of serious complaints received are resolved within 180 days’.³⁹

Performance measures and targets are meaningful, relevant and appropriate

- 4.28 The ANAO stated that the departmental performance measure for 2022–23, ‘100 per cent of proven instances of non-compliance results in disciplinary action taken’, was reported as having been met ‘on the basis that “appropriate” action was taken with the registration of three agents cancelled and one former agent barred for two years from re-registering’. The ANAO further stated that ‘the reporting did not include instances where agents had been found to be in breach of the Code of Conduct but sanction actions were not taken’.⁴⁰
- 4.29 In its report, the ANAO made the following comments on the quality of Home Affairs’ performance measures:
- ‘there is a risk that the department’s new performance measure for 2023–24 will result in complaints being dismissed more quickly rather than greater investigation of complaints that are received’⁴¹
 - ‘there was no performance measure in any year relating to the administration of the registration process for agents or the regulation of [continuing professional development]’.⁴²
- 4.30 In its submission to the inquiry, Home Affairs advised that it was reviewing its performance reporting framework in response to the audit.⁴³ This was supplemented by comments at the public hearing where Home Affairs stated that ‘one of the primary comments in the report was that we could have been better, in terms of

³⁷ Home Affairs, *Corporate Plan 2023–24*, pages 46–47. Refer to target 18.

³⁸ ANAO, *Migration agents report*, paragraph 1.3.

³⁹ ANAO, *Migration agents report*, paragraph 1.3.

⁴⁰ ANAO, *Migration agents report*, paragraph 1.3.

⁴¹ ANAO, *Migration agents report*, paragraph 3.44.

⁴² ANAO, *Migration agents report*, paragraph 1.4.

⁴³ Home Affairs, Submission 1, p. 7.

reflecting our performance through our regulatory outcomes, so we've implemented four new performance measures for this year'.⁴⁴

4.31 Home Affairs further advised in response to questions on notice from the Committee that the four new performance measures for OMARA in Home Affairs' 2024–25 Corporate Plan are:

- 50% of all investigations (commenced after 1 July 2024) will be finalised within 180 days.
- Reduce the legacy caseload of investigations into Registered Migration Agents by 50%.
- 75% of all early resolution matters will be finalised in 90 days.
- 95% of all initial and repeat applications to become a Registered Migration Agent are assessed within eight weeks of lodgment.⁴⁵

4.32 In addition to the content presented on performance reporting against the Commonwealth Performance Framework, the ANAO found that OMARA did not have internal performance measures in place enabling it to measure its performance in processing and managing complaints.⁴⁶

Department of Industry, Science and Resources—Trade measurement

External performance reporting

4.33 The ANAO noted in its report that the Department of Industry, Science and Resources (DISR) specified three performance criteria in its 2019–20 Corporate Plan that were linked to the strategic objective 'Provide a trusted national system of measurement'.⁴⁷ The ANAO found that performance under this objective against trader audit targets was not reported in subsequent annual reports, though DISR continued to report internally on this measure.⁴⁸

Established performance measures

4.34 The audit report stated that DISR established three performance criteria against the strategic objective 'Provide a trusted national system of measurement' in its 2019–20 Corporate Plan.⁴⁹ One of the criteria, 'Percentage of (trade measurement) trader audit target met', related to DISR's trade measurement compliance activities.⁵⁰

⁴⁴ Ms Emily Winch, Senior Director, Home Affairs, *Committee Hansard*, Canberra, 22 November 2024, p. 35.

⁴⁵ Home Affairs, *Submission 1.1*, p. [10].

⁴⁶ ANAO, *Migration agents report*, paragraph 3.69.

⁴⁷ ANAO, *Trade measurement report*, paragraph 3.54.

⁴⁸ ANAO, *Trade measurement report*, paragraphs 3.54–3.56.

⁴⁹ ANAO, *Trade measurement report*, paragraph 3.54.

⁵⁰ ANAO, *Trade measurement report*, paragraph 3.54.

Established targets for performance measures

- 4.35 The ANAO stated in its report that the target for the performance measure 'Percentage of (trade measurement) trader audit target met' was '≥90%' for 2019–20.⁵¹

Performance measures and targets are meaningful, relevant and appropriate

- 4.36 In addition to its findings on DISR's reporting against the Commonwealth Performance Framework, the ANAO found that DISR had not established targets and reporting arrangements covering its effectiveness as a regulator or progress towards achieving desired regulatory outcomes.⁵²
- 4.37 The ANAO also commented on the quality of performance measures listed in DISR's *Regulator Performance Framework Self-Assessment Report* for 2019–20, finding that some measures were not meaningful and benchmarks were not established for one measure.⁵³
- 4.38 In its submission to the inquiry, DISR advised that it had responded to the audit's findings by introducing a new performance measure in its 2024–25 Portfolio Budget Statement: 'National Measurement Institute engagement with traders increases compliance with fair measure regulations'.⁵⁴

2023–24 performance statements audits

- 4.39 The ANAO was funded in the 2021–22 Budget to establish an ongoing program of performance statements audits.⁵⁵ This complements the ANAO's existing assurance function for financial reporting. The ANAO highlights the importance of performance statements auditing, stating that 'improving links between financial and non-financial performance information is necessary for measuring and assessing public sector productivity'.⁵⁶
- 4.40 In its report on the outcomes of the 2023–24 performance statements audits, the ANAO observed that 'entities continue to improve their strategic planning and performance reporting processes and practices' and that there was 'broad improvement across each of the five categories the ANAO considers when assessing the performance reporting maturity of entities'.⁵⁷ The five categories the ANAO considers are: leadership and culture, governance, data and systems, capability, and

⁵¹ ANAO, *Trade measurement report*, paragraph 3.54.

⁵² ANAO, *Trade measurement report*, paragraph 3.79–3.80.

⁵³ ANAO, *Trade measurement report*, table 3.8.

⁵⁴ Department of Industry, Science and Resources (DISR), *Submission 6*, pages 9–10.

⁵⁵ ANAO, *Performance Statements Auditing in the Commonwealth — Outcomes from the 2023–24 Audit Program*, Auditor-General Report No. 25 2024–25, hereafter *2023–24 Performance Statements report*, paragraph 1.14.

⁵⁶ ANAO, *2023–24 Performance Statements report*, paragraph 29.

⁵⁷ ANAO, *2023–24 Performance Statements report*, paragraphs 1.18–1.19.

reporting and records.⁵⁸ Nevertheless, the ANAO found that the results from the performance statements audits were ‘mixed’.⁵⁹

4.41 All entities that were the subject of audits considered by this inquiry were audited during the ANAO’s 2023–24 performance statements audit program. Overall results for each entity are included in Table 4.2. The ANAO assesses the maturity level of entities using a ‘maturity dial’ with five levels: establishing, developing, baseline, embedded, and advanced.⁶⁰ ‘Establishing’ is the lowest level and ‘Advanced’ is the highest level. Definitions of the types of findings made by the ANAO are included as footnotes against the relevant terms.

Table 4.2 Summary of 2023–24 performance statements audits

Entity	Maturity	Types of findings made
Health	Developing ⁶¹	4 qualifications; ⁶² 1 emphasis of matter; ⁶³ 3 A findings; ⁶⁴ 2 B findings ⁶⁵
Home Affairs	Baseline ⁶⁶	2 qualifications; 2 emphases of matter; 6 A findings; 3 B findings ⁶⁷
DISR	Embedded ⁶⁸	4 B findings ⁶⁹
ATO	Baseline ⁷⁰	2 qualifications; 1 emphasis of matter; 2 A findings; 3 B findings ⁷¹

Source: Australian National Audit Office

4.42 Of the findings made by the ANAO, several could be considered relevant to discussion in this chapter and the entities’ performance reporting in general and are listed below.

⁵⁸ ANAO, *2023–24 Performance Statements report*, paragraph 1.19.

⁵⁹ ANAO, *2023–24 Performance Statements report*, paragraph 2.7.

⁶⁰ ANAO, *2023–24 Performance Statements report*, paragraph 3.3, figure 3.1.

⁶¹ ANAO, *2023–24 Performance Statements report*, p. 83.

⁶² According to the ANAO, ‘A qualified audit conclusion is the most common type of modified audit conclusion and means that the performance statements met the ANAO’s audit criteria, except for one or more areas where the performance statements either did not materially comply with the audit criteria or, due to a lack of evidence available from the auditee, the ANAO was unable to determine if the information presented was materially correct’. See ANAO, *2023–24 Performance Statements report*, paragraph 2.9.

⁶³ According to the ANAO, ‘an Emphasis of Matter paragraph draws a reader’s attention to a matter in the performance statements that, in the auditor’s judgement, is important for readers to consider when interpreting the performance statements’. See ANAO, *2023–24 Performance Statements report*, paragraph 13.

⁶⁴ According to the ANAO, significant (A) findings are ‘findings that pose a significant risk to the entity’s performance statements preparation; these include findings that could result in material misstatement of the entity’s performance statements’. See ANAO, *2023–24 Performance Statements report*, Appendix 4.

⁶⁵ According to the ANAO, moderate (B) findings are ‘findings that pose moderate risk to the entity’s performance statements preparation; these may include prior year findings that have not been satisfactorily addressed’. See ANAO, *2023–24 Performance Statements report*, Appendix 4; ANAO, *2023–24 Performance Statements report*, pages 82–85.

⁶⁶ ANAO, *2023–24 Performance Statements report*, p. 87.

⁶⁷ ANAO, *2023–24 Performance Statements report*, pages 86–88.

⁶⁸ ANAO, *2023–24 Performance Statements report*, p. 90.

⁶⁹ ANAO, *2023–24 Performance Statements report*, pages 89–91.

⁷⁰ ANAO, *2023–24 Performance Statements report*, p. 71.

⁷¹ ANAO, *2023–24 Performance Statements report*, pages 70–72.

Department of Health and Aged Care

- 4.43 As noted earlier in this chapter, Health reports on aged care minutes and 24/7 nursing against Program 3.2. The ANAO found that ‘the performance information reported against programs 3.2 and 3.3 was not considered a complete representation of all key functions of the programs. In addition, the ANAO was unable to determine if the results of a number of performance measures were accurately reported as the data was provided by external parties and had not been assured by [Health]’.⁷²
- 4.44 The ANAO assessed that 26 of Health’s 34 performance measures were not reliable or verifiable in the annual performance statements.⁷³

Home Affairs

- 4.45 The ANAO found:
- Home Affairs lacked appropriate processes to ensure that the data it generated and used for performance reporting was accurate and complete⁷⁴
 - when designing targets, Home Affairs should consider the scope and limits of its roles and responsibilities and ensure that reporting accurately states outcomes [that] can be attributed to it⁷⁵
 - Home Affairs needed to explain any changes to its targets, methods or the intended presentation of prior year results.⁷⁶

Department of Industry, Science and Resources

- 4.46 The ANAO made a specific moderate finding in relation to performance measure 17 on the National Measurement Institute (NMI). The finding was on ineffective implementation and data quality issues, with the comment that ‘the NMI, within DISR, needed to use adequate risk assessments in selecting initial trader audits and that any data quality issues identified in [sic] are monitored, actioned and followed up’.⁷⁷

Australian Taxation Office

- 4.47 The ANAO found significant responsibilities of the Australian Taxation Office with no performance measure or key activity defined.⁷⁸

⁷² ANAO, *2023–24 Performance Statements report*, p. 84.

⁷³ ANAO, *2023–24 Performance Statements report*, p. 84.

⁷⁴ ANAO, *2023–24 Performance Statements report*, p. 88.

⁷⁵ ANAO, *2023–24 Performance Statements report*, p. 88.

⁷⁶ ANAO, *2023–24 Performance Statements report*, p. 88.

⁷⁷ ANAO, *2023–24 Performance Statements report*, p. 91.

⁷⁸ ANAO, *2023–24 Performance Statements report*, p. 72.



5. Policy guidance

Stewardship by the Department of Finance

Introduction

- 5.1 On a daily basis, Australians interact with regulatory systems in multiple ways. The Australian Government regulator stocktake, through which the Department of Finance (Finance) supports greater transparency, lists 104 regulatory functions across government.¹
- 5.2 Chapter five examines the policy advice provided by Finance in the context of the shortcomings found in regulator performance during the inquiry. It examines how Finance defines the scope of its role, its understanding of stewardship, and whether principles-based guidance is sufficient to ensure regulators are fit for purpose.

Role of the Department of Finance

- 5.3 Finance is the lead agency on regulatory policy, practice and performance and in its own words, ‘provides a holistic and coordinated approach to regulatory systems’.² As the lead agency, Finance provides ‘principles-based advice and guidance ... to ensure regulatory systems remain fit-for-purpose’.³
- 5.4 Finance describes itself as a steward.⁴

Stewardship

- 5.5 The Australian Public Service Commission (APSC) has released guidance on ‘stewardship’ as an Australian Public Service (APS) Value. According to this guidance, Finance, as the lead agency, is responsible for the care of regulatory policy, practice and performance; it is to accept responsibility for that care, and work to ensure its long term integrity and sustainability.⁵

¹ Department of Finance (Finance), ‘Australian Government regulator stocktake’, www.regulatoryreform.gov.au/priorities/regulator-best-practice-and-performance/regulator-stocktake, viewed 11 March 2025.

² Finance, *Submission 2*, p. 2.

³ Finance, *Submission 2*, p. 2.

⁴ Finance, *Submission 2*, p. 2.

⁵ Australian Public Service Commission (APSC), *Stewardship guidance*, 17 October 2024, hereafter, *Stewardship guidance*, www.apsc.gov.au/working-aps/information-aps-employment/aps-values/stewardship-guidance, viewed 7 March 2024.

- 5.6 Stewardship matters, according to the APSC, because the APS needs to be trusted as a source of deep knowledge and expertise; it must be deliberate in cultivating that knowledge and expertise, and drawing on it to meet current and emerging needs.⁶
- 5.7 Under the Australian Public Service Commissioner's Directions 2022, demonstrating stewardship requires a number of actions, including:
- having proper regard to known and reasonably foreseeable implications of advice, decisions, and other actions
 - reflecting on and learning from past experience and institutional knowledge, including through robust evaluation, to inform operations, advice, and decisions.⁷
- 5.8 In compliance with these directions, as an effective steward, Finance would:
- have regard to the known and reasonably foreseeable implications of how regulatory entities operationalise its guidance on regulatory policy, practice and performance
 - as lead on regulatory policy, practice and performance, conduct robust evaluations and reflect on the outcomes of these evaluations to inform its activities, its advice and its decisions.

Scope of Finance's role

- 5.9 Though Finance describes itself as the lead agency on regulatory policy, practice and performance, it draws its role tightly. From the evidence in Hansard, in addition to providing principles-based policy guidance, Finance stated it was bringing to the table a forum for discussion of various issues such as what a proportionate regulatory intervention or response might look like, or how to deal with the challenges that come with collecting, holding and managing an evidence base. Finance stated:

We in the Department of Finance are doing our best to bring together the various perspectives, the policy underpinning these things and, of course, our understanding of budget and constraints around how much we can do within the envelope we have, and to bring that to the table to support those regulators in their consideration of these challenges.⁸

- 5.10 Finance defended the generality of its role by pointing to the diversity of regulation across the public sector. It stated, 'in every context, the reality of the best way to regulate will look slightly different' because 'we are operating within a broader tapestry' comprising such things as enabling legislation, the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), other frameworks, principles, and guidance.⁹

⁶ APSC, *Stewardship guidance*.

⁷ APSC, *Stewardship guidance*.

⁸ Ms Rachel Antone, First Assistant Secretary, Risk, Claims and Regulatory Reform Division, Commercial, Finance, *Committee Hansard*, Canberra, 22 November 2024, p. 39.

⁹ Ms Rachel Antone, Finance, *Committee Hansard*, Canberra, 22 November 2024, p. 40.

Finance principles-based guidance

- 5.11 Two documents produced by Finance, in particular, are central to the role of regulatory agencies.
- 5.12 The *Regulatory Policy, Practice & Performance Framework* (Framework), which applies to policymakers and regulators, is a 'better practice approach to regulation' that aims to drive modern, fit-for-purpose regulation. As discussed in chapter one, it contains six principles for regulation:
- targeted and risk-based
 - integrated in existing systems
 - user-centred
 - evidence-based and data-driven
 - reflective of the digital era
 - continuously improved and outcomes-focused.¹⁰
- 5.13 The Framework underpins the best practice approach and principles of regulator performance in *Resource Management Guide 128: Regulator performance* (RMG 128).¹¹
- 5.14 RMG 128 establishes the three principles of regulator best practice against which regulators are required to report in their corporate plans and annual reports:
- continuous improvement and building trust
 - risk-based and data driven
 - collaboration and engagement.¹²
- 5.15 RMG 128 also outlines the purpose of ministerial statements of expectations and regulator statements of intent, and provides general information on regulator performance reporting.¹³
- 5.16 As principles-based guidance, these key guidance documents do not contain information on regulatory practice, that is, actually performing regulation. The principles based-guidance details a regulatory posture, a mindset for approaching legislated responsibilities; the guidance does not contain information on how an entity would go about the practice of regulating, or provide details on minimum requirements of regulators. For instance, there is no instruction on how a regulator would:

¹⁰ Finance, *Regulatory Policy, Practice & Performance Framework*, August 2024, hereafter *Regulatory Framework*, pages 4–13.

¹¹ See: Finance, *Regulatory Framework*, p. 6.

¹² Finance, *RMG 128: Regulator performance*, July 2023, hereafter *RMG 128*, www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128, viewed 26 February 2025.

¹³ Finance, *RMG 128*.

- distil its legislated regulatory obligations into actual regulatory activities
- make effective use of data
- formulate an appropriate risk-based approach, including detail on how data would be incorporated into such calculations
- produce necessary policy and guidance documents, including what they should contain
- undertake effective compliance monitoring
- use regulatory powers to address non-compliance.

Findings of the inquiry on regulator performance

5.17 The following table summarises some of the findings in the audit reports that were the subject of this inquiry, and information provided in evidence to the Committee.

Table 5.1 Selected findings on regulator performance

Category	Finding
Data collection & management	Home Affairs—Data not used to inform regulatory approach ¹⁴
	DISR—Shortcomings in accuracy and consistency of data ¹⁵
	ATO—Extensive collection and use of data; no aggregation of data across business lines for GST ¹⁶
Risk-based approach	Home Affairs—No risk-based regulatory approach ¹⁷
	DISR—Compliance activities not demonstrably risk-based ¹⁸
	ATO—No business line GST fraud risk assessments since 2020 ¹⁹

¹⁴ Australian National Audit Office (ANAO), *Department of Home Affairs' Regulation of Migration Agents*, Auditor-General Report No. 26 2023–24, hereafter *Migration agents report*, p. 19.

¹⁵ ANAO, *Trade Measurement Compliance Activities*, Auditor-General Report No. 5 2023–24, hereafter *Trade measurement report*, paragraphs 3.73–3.77.

¹⁶ ANAO, *Australian Taxation Office's Management and Oversight of Fraud Control Arrangements for the Goods and Services Tax*, Auditor-General Report No. 15 2023–24, hereafter *ATO report*, paragraphs 3.33.

¹⁷ ANAO, *Migration agents report*, paragraph 8.

¹⁸ ANAO, *Trade measurement report*, paragraph 9.

¹⁹ ANAO, *ATO report*, paragraph 12. The ATO was found to have largely appropriate methods to detect potential GST fraud (see paragraphs 16, 3.10–3.33).

Category	Finding
Policies and procedures	Health—(TGA) Most compliance plans and procedures out of date or in draft form ²⁰ Home Affairs—Policies and procedures out of date ²¹ DISR—Gaps, overlays, and inconsistencies in policies and procedures; not updated in a timely manner ²² ATO—Key artefacts not available ²³
Statements of expectations and intent	Health—(Aged care) Statement of intent did not address aged care regulation ²⁴ Home Affairs—No statement of expectations or intent ²⁵ DISR—No appropriate statement of expectations or intent ²⁶
Compliance monitoring	Home Affairs—No regulatory action to monitor entities; registration process deficient ²⁷ DISR—Failing to meet targets for monitoring; non-compliance increasing ²⁸
Use of regulatory powers	Health—(TGA) Completed 10,000 cases; issued fewer than 200 infringement notices ²⁹ Home Affairs—Regulatory powers rarely used ³⁰ DISR—Regulatory action in response to non-compliance not timely or effective ³¹
External performance reporting	Home Affairs—Performance recorded against one outcome ³² DISR—Performance not reported externally following 2019–20 ³³

²⁰ ANAO, *Management of Non-Compliance with the Therapeutic Goods Act 1989 for Unapproved Therapeutic Goods*, Auditor-General Report No. 3 2023–24, hereafter TGA report, paragraph 13.

²¹ ANAO, *Migration agents report*, p. 19, paragraphs 2.12–2.16.

²² ANAO, *Trade measurement report*, paragraphs 11, 2.18.

²³ ANAO, *ATO report*, paragraphs 2.23, 4.14–4.15.

²⁴ ANAO, *Design and Early Implementation of Residential Aged Care Reforms*, Auditor-General Report No. 8 2023–24, hereafter *Aged care report*, paragraph 4.8.

²⁵ ANAO, *Migration agents report*, paragraph 10.

²⁶ ANAO, *Trade measurement report*, paragraphs 3.57–3.62.

²⁷ ANAO, *Migration agents report*, paragraph 9, p. 29.

²⁸ ANAO, *Trade measurement report*, paragraphs 3, 13–14, pages 34–35; Department of Industry, Science and Resources (DISR), *Compliance with measurement regulation in 2023–24*, November 2024, p. 12.

²⁹ Department of Health and Aged Care (Health), *Submission 5*, p. 3; Ms Tracey Lutton, Assistant Secretary, Regulatory Compliance Branch, Regulatory Practice and Support Division, Health, *Committee Hansard*, Canberra, 22 November 2024, pages 1, 6.

³⁰ ANAO, *Migration agents report*, p. 29.

³¹ ANAO, *Trade measurement report*, p. 45, paragraph 3.35.

³² ANAO, *Migration agents report*, paragraph 1.3.

³³ ANAO, *Trade measurement report*, paragraphs 3.54–3.55.

Category	Finding
Established performance measures	Health—(TGA) No measures established for compliance management ³⁴
	Health—(Aged care) One measure on care minutes and 24/7 nursing rates ³⁵
	Home Affairs—One relevant measure included ³⁶
	DISR—Relevant measures not in corporate plans following 2019–20; no indicators against which to review or demonstrate effectiveness of regulatory approach ³⁷
Established targets for performance measures	Health—(TGA) No targets set for compliance management ³⁸
	Home Affairs—Targets set for the measure in 2022–23 and 2023–24 ³⁹
	DISR—External targets not set following 2019–20 ⁴⁰
Measures and targets meaningful	Health—(TGA) No measures or targets for compliance management ⁴¹
	Home Affairs—Two areas of regulatory activity did not have measures ⁴²

Source: Australian National Audit Office

5.18 The audits found the Department of Home Affairs (Home Affairs) ‘not effective’ in its regulation of registered migration agents; the Department of Industry, Science and Resources (DISR) ‘partly effective’ in its regulation of trade measurement; and the Australian Taxation Office (ATO) ‘partly effective’ in its management of goods and services tax (GST) fraud risks. Notwithstanding the ‘largely effective’ findings from the audits into the management of compliance with the *Therapeutic Goods Act 1989* and the early implementation of the aged care reforms, shortcomings were found in the performance of the Department of Health and Aged Care (Health) and the Aged Care Quality and Safety Commission (ACQSC). These have been discussed in previous chapters.

Appropriateness of principles-based guidance

5.19 During the inquiry, the Committee asked whether a principles-based approach to policy guidance was appropriate. If a principles-based approach was sufficient, the Committee was interested to understand, why were there continuing shortcomings in regulator procedures, practices and processes that are only uncovered through Australian National Audit Office (ANAO) audits. Finance responded:

I can't help but think of what the alternative could be because, in a sense, someone is checking. And that is the ANAO. Indeed, to the extent that we are constantly engaging with our colleagues, we are also, in a sense, receiving that feedback in order to provide the support we need. The checks and balances that

³⁴ ANAO, *TGA report*, table 2.7.

³⁵ ANAO, *Aged care report*, paragraph 4.43.

³⁶ ANAO, *Migration agents report*, paragraph 1.3.

³⁷ ANAO, *Trade measurement report*, paragraphs 17, 3.54–3.55.

³⁸ ANAO, *TGA report*, table 2.7.

³⁹ ANAO, *Migration agents report*, paragraph 1.3.

⁴⁰ ANAO, *Trade measurement report*, paragraphs 3.54–3.55.

⁴¹ ANAO, *TGA report*, table 2.7.

⁴² ANAO, *Migration agents report*, paragraph 1.4.

fall upon each accountable authority are also there. They do not guarantee that we will always surface issues on day one but those checks and balances are there to ensure that we are all accountable for the practices and the compliance of each entity.⁴³

5.20 During the course of the Committee's inquiry into probity and ethics in the Australian public sector, the Committee did recommend an alternative—policy owners taking accountability for the policy frameworks they administer, in particular by developing reasonable assurance mechanisms that the policy frameworks are effective.⁴⁴

5.21 During that inquiry, the then Auditor-General suggested policy owners were not well informed about how their frameworks were used:

The problem that we see with the system is that those responsible for establishing the frameworks rarely undertake any action to assess whether the frameworks are successful or not. They don't collect data. They don't look at whether the system needs to be changed in order to drive improvement, or it's not transparent to the Parliament that action is taken on systemic noncompliance and transparency, which I think is an important role in accountability.⁴⁵

5.22 When considering the lack of formal mechanisms in frameworks to provide assurance on compliance, the Auditor-General at that time was of the view:

It is currently difficult to see how most framework owners are able to provide assurance to government or the Parliament on the effectiveness of the frameworks they, largely, advised should be implemented and which they administer.⁴⁶

5.23 As the policy lead of regulatory policy, practice and performance, Finance specifies it does not perform compliance or evaluation functions for regulatory systems.⁴⁷

5.24 Finance stated many of the recommendations across the audit reports in this inquiry were aligned with the Government's existing and ongoing regulatory reform agenda, in particular the need to continuously monitor and improve systems, make transparent and accountable regulatory decisions, and evaluate the effectiveness of regulatory systems.⁴⁸

5.25 As noted above, what the audits in this inquiry show is some regulators are failing to:

- use data
- take a risk-based approach to assessing compliance risk

⁴³ Ms Rachel Antone, Finance, *Committee Hansard*, Canberra, 22 November 2024, p. 40.

⁴⁴ Joint Committee of Public Accounts and Audit, *Report 502: The never-ending quest for the golden thread – Probity and ethics in the Australian public sector*, June 2024, paragraph 6.59.

⁴⁵ Mr Grant Hehir, Auditor-General, ANAO, *Committee Hansard*, Inquiry into Probity and Ethics in the Australian Public Sector, Canberra, 20 November 2023, p. 10.

⁴⁶ ANAO, *Submission 5*, Inquiry into Probity and Ethics in the Australian Public Sector, p. 7.

⁴⁷ Finance, *Submission 2*, p. 3.

⁴⁸ Finance, *Submission 2*, p. 3.

- maintain contemporary and appropriate policies, procedures and plans
 - effectively monitor the entities they are responsible for regulating
 - use their regulatory powers
 - carry out regulatory responsibilities in a timely manner
 - prepare meaningful performance measures.
- 5.26 Finance told the Committee that the Regulator Maturity Model, expected in March 2025, would provide ‘a road map for Commonwealth regulators to take steps towards best practice by supporting them to evaluate and improve their capability at the entity level, with reference to all 6 principles, and measure changes to their capability over time’.⁴⁹
- 5.27 Finance was asked how its road map would address consistent regulatory flaws found in the audits, including: a failure to undertake a risk based assessment of compliance risk; inappropriate compliance plans not underpinned by robust risk assessments; a failure to undertake appropriate monitoring of the regulated industry and to use regulatory powers effectively to address instances of non-compliance; and the absence of robust performance measures or evaluation frameworks.⁵⁰
- 5.28 In its response, Finance indicated each of those four areas was dealt with in existing guidance and it was supporting regulatory entities by highlighting relevant regulatory principles and providing best-practice advice:
- risk-based assessment of compliance risk and compliance plans—Framework principles, Commonwealth Risk Management Policy
 - compliance monitoring and addressing non-compliance—Framework principles
 - performance measures or evaluation frameworks—Framework, RMG 128; RMG 132, RMG 131, RMG 134.⁵¹
- 5.29 When asked about the guidance Finance provides to entities on the actual use of statutory regulatory powers, which some audits had found regulators were reticent to exercise, Finance stated it did not have a direct role in monitoring or assisting regulators use their statutory powers.⁵²
- 5.30 Finance stated it would evaluate the effectiveness of the Framework and supporting tools. Planned evaluation measures included seeking feedback from Commonwealth officials on the Framework, measures of use through website data, assessing the impact to regulation and regulatory systems through ‘various data sources, such as ANAO performance audits’. It also stated it would undertake a review of progress of the regulatory reform agenda by the end of 2025, including consideration of whether

⁴⁹ Finance, *Submission 2.1*, p. 2.

⁵⁰ Finance, *Submission 2.1*, p. 1.

⁵¹ Finance, *Submission 2.1*, pages 3-5.

⁵² Finance, *Submission 2.1*, p. [8].

its frameworks were meeting intended outcomes, and their impact on regulatory systems.⁵³

⁵³ Finance, *Submission 2.1*, pages [7], [9].

6. Committee comment

Introduction

6.1 Regulation touches the lives of all Australians in a myriad of ways; when administered effectively, it protects the public interest, ensures the efficient delivery of services, promotes trust, and improves community safety and wellbeing.¹ The five audits that formed the basis of this inquiry demonstrated some regulators were deficient in carrying out aspects of their regulatory responsibilities and need to improve so as to appropriately regulate the entities they are legally obligated to regulate. Other entities were found to be largely effective. The overall audit findings are summarised below.

Table 6.1 Audit findings

Agency	Regulatory responsibility	Audit finding
Department of Health and Aged Care	Management of non-compliance with the <i>Therapeutic Goods Act 1989</i> for unapproved therapeutic goods	Largely effective
Department of Health and Aged Care; Aged Care Quality and Safety Commission	Design and early implementation of aged care reforms [care minutes, 24/7 registered nurse]	Largely effective
Department of Home Affairs	Regulation of migration agents	Not effective
Department of Industry, Science and Resources	Trade measurement compliance activities	Partly effective
Australian Taxation Office	Management and oversight of fraud control arrangements for the goods and services tax	Partly effective

Source: Australian National Audit Office²

¹ Department of Finance (Finance), *Regulatory Policy, Practice & Performance Framework*, 2024, hereafter *Regulatory Framework*, p. 4.

² Australian National Audit Office (ANAO), *Management of Non-Compliance with the Therapeutic Goods Act 1989 for Unapproved Therapeutic Goods*, Auditor-General Report No. 3 2023–24, hereafter *TGA report*, paragraph 9; ANAO, *Design and Early Implementation of Residential Aged Care Reforms*, Auditor-General Report No. 8 2023–24, hereafter *Aged care report*, paragraph 8; ANAO, *Department of Home Affairs' Regulation of Migration Agents*, Auditor-General Report No. 26 2023–24, hereafter *Migration agents report*, paragraph 7; ANAO, *Trade Measurement Compliance Activities*, Auditor-General Report No. 5 2023–24, hereafter *Trade measurement report*, paragraph 8; ANAO, *Australian Taxation Office's Management and Oversight of Fraud Control Arrangements for the Goods and Services Tax*, Auditor-General Report No. 15 2023–24, hereafter *ATO report*, paragraph 7.

- 6.2 Though the breadth of activities undertaken by regulators can be divided or categorised in many ways, in this inquiry, the Joint Committee of Public Accounts and Audit (Committee) examined regulator activities according to: governance, practice, and performance. The Committee also examined the nature and role of policy guidance.

Governance

- 6.3 In chapter two, the Committee examined how entities collected, managed and used data; whether they took a risk-based approach to compliance; the status of underpinning policies and procedures; and the requirements for ministerial statements of expectations and regulator statements of intent.
- 6.4 The Committee is of the view the requirements that regulation be evidence-based and data-driven, and risk-based, targeted and proportionate, are well established in policy advice, even if what exactly that would look like is not.³ That policy, guidance and procedural documents be contemporary and comprehensive is sound regulatory practice, necessary for the governance of regulatory functions and to ensure the delivery of regulation is consistent with the intended outcomes.⁴ While often independent from the government, regulators are not independent of the government's expectations about how they fulfill their statutory roles.⁵

Data

- 6.5 It is not possible for regulation to be risk-based in the absence of data upon which to make assessments of risk.⁶ Being data driven is part of principle two of the three principles of regulator best practice. The policy guidance provided by the Department of Finance (Finance) states generally that best practice regulators are informed by data; that data can be leveraged to assist regulators better understand and manage risks; that regulators should build staff and organisational data capability; and regulators should use data.⁷ Despite the centrality of data to regulation, the audits uncovered variable approaches to the collection, management and use of data.
- 6.6 The Department of Home Affairs (Home Affairs) did collect some data, through the registration process, from providers of continuing professional development (CPD), and from complaints. It stored this information in its Migration Agents Regulatory System (MARS), but did not subsequently use the information to conduct or document an assessment of risk.⁸

³ Finance, *Regulatory Framework*, pages 7–8, 10–11.

⁴ See general comments to this effect in: ANAO, *Migration agents report*, paragraph 2.1; ANAO, *Trade measurement report*, p. 17, paragraphs 2.1, 2.18.

⁵ Finance, *Resource Management Guide 128: Regulator Performance*, July 2023, hereafter *RMG 128*, www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128, viewed 26 February 2025.

⁶ See advice under 'Principle 2: risk based and data drive' in: Finance, *RMG 128*.

⁷ Finance, *RMG 128*.

⁸ ANAO, *Migration agents report*, paragraphs 11, 2.30–2.32.

- 6.7 The Australian National Audit Office (ANAO) found there was an absence of guidance on the processes to transpose and record information collected during trader audits, and data stored in the Department of Industry, Science and Resources' (DISR) Trade Measurement Activity Recording System (TMARS) was found to contain errors and inconsistencies.⁹
- 6.8 While the Australian Taxation Office (ATO) made extensive use of data in risk assessment and detection, it did not collate or aggregate data from its various fraud detection methods in each business line to gain a whole of GST (goods and services tax) product perspective of fraud.¹⁰
- 6.9 The advice provided by the Department of Health and Aged Care (Health) to the government on the aged care reforms was informed by workforce data and modelling; and both Health and the Aged Care Quality and Safety Commission (ACQSC) had updated their systems to incorporate data on the new requirements so as to carry out their regulatory functions.¹¹
- 6.10 Similarly, through its regulation of therapeutic goods, Health gathered intelligence and allocated an officer to analyse operational information so as to improve the targeting of compliance and enforcement action.¹²
- 6.11 The audits demonstrate to the Committee there are a range of practices with regard to regulatory entities' collection and use of data—some worthy of emulation and others not. *Resource Management Guide 128: Regulator performance* (RMG 128) suggests entities build staff and organisational capability and digital literacy, and while some regulators appear to have solid approaches to the collection and use of data, this is not universal. Much like having the ability to use a computer, data capability and literacy are not new or novel as requirements for government entities.
- 6.12 Being on a journey to maturity in the collection and use of data can no longer be a rationale for accepting deficient capability. The Committee is of the view there is no excuse for entities lacking capability in this area and makes a recommendation for minimum requirements for data capability.

Recommendation 1

- 6.13 The Committee recommends that the Department of Finance develops for entities with regulatory responsibilities, minimum requirements for data capability. This would include minimum requirements for the collection, analysis and practical application of data with regard to regulatory responsibilities, and minimum requirements for data expertise within regulatory entities.**

⁹ ANAO, *Trade measurement report*, paragraphs 3.73–3.76.

¹⁰ ANAO, *ATO report*, paragraph 3.33; ATO, *Submission 7.1*, p. 5.

¹¹ ANAO, *Aged care report*, paragraphs 9, 14, 21.

¹² ANAO, *TGA report*, p. 40, paragraph 3.20–3.21.

Risk-based compliance

- 6.14 Risk-based approaches to regulation are not new. Taking a risk-based approach to regulation is required under the *Regulatory Policy, Practice & Performance Framework* (Framework) and RMG 128. It was also required under the previous *Regulator Performance Framework* that was published in 2014.¹³
- 6.15 Despite this long-standing requirement, Home Affairs had no risk-based regulatory approach for the regulation of migration agents;¹⁴ DISR's compliance activities were not demonstrably risk-based;¹⁵ and ATO business lines had undertaken no GST fraud risk assessments since 2020, though the ATO was found to have largely appropriate methods to detect potential GST fraud.¹⁶
- 6.16 During the course of the inquiry, Home Affairs advised the Committee it had assessed the risks of non-compliance with legislation and developed a risk register, however, it was yet to produce a documented risk assessment and was waiting on the recruitment of a regulatory compliance specialist.¹⁷ Given its long-standing regulatory responsibilities, the Committee questions why Home Affairs does not already employ regulatory compliance specialists.
- 6.17 As to the performance of DISR's National Measurement Institute (NMI), the Committee is mindful that labelling something 'risk-based' and using words to the effect that 'we measure risk in terms of the harm and likelihood of regulatory non-compliance', and 'we are at best practice', as was suggested by DISR, does not, in actual fact, make these things so.¹⁸
- 6.18 The audit found DISR's regulatory approach was not fully and appropriately informed by an assessment of compliance risk; and audits were not being effectively and demonstrably targeted to market sectors and traders at higher risk of regulatory non-compliance.¹⁹ During the hearing, the ANAO confirmed 'our assessment here wouldn't be characterised as best practice or even approaching best practice'.²⁰ Problems with DISR's 'unsophisticated' risk-based approach were identified as far back as 2015.²¹

¹³ See: Australian Government, *Regulator Performance Framework*, 2014, p. 2.

¹⁴ ANAO, *Migration agents report*, p. 19.

¹⁵ ANAO, *Trade measurement report*, paragraph 9.

¹⁶ ANAO, *ATO report*, paragraphs 12, 16.

¹⁷ Department of Home Affairs (Home Affairs), *Submission 1*, p. 5; Home Affairs, *Submission 1.1*, p. [1].

¹⁸ See: ANAO, *Trade measurement report*, paragraph 2.29; Mr Vasilios Loizides, General Manager, Legal Metrology, National Measurement Institute, Department of Industry, Science and Resources (DISR), *Committee Hansard*, Canberra, 22 November 2024, p. 17.

¹⁹ ANAO, *Trade measurement report*, paragraph 12, p. 25.

²⁰ Mr Michael White, Acting Group Executive Director, ANAO, *Committee Hansard*, Canberra, 22 November 2024, p. 20.

²¹ DISR internal audit findings quoted in, ANAO, *Trade measurement report*, paragraph 2.30.

- 6.19 During the course of the inquiry, DISR confirmed it would continue practices that the ANAO found problematic, including targeting its compliance activities in part on the basis of efficiency or ‘getting more bang for buck’, rather than risk of harm.²²
- 6.20 The Committee is concerned DISR has not demonstrated a genuine intent to fulsomely implement the recommendations in the audit report and makes a recommendation for a follow-up audit.

Recommendation 2

- 6.21 The Committee recommends that the Australian National Audit Office undertakes a follow-up performance audit of the Department of Industry, Science and Resources’ implementation of the recommendations of Auditor-General Report No. 5 2023–24 *Trade Measurement Compliance Activities*, to assess the extent to which those recommendations have been implemented.**
- 6.22 Even where regulators are able to undertake sophisticated risk-based approaches to compliance, there can be shortcomings. Though the ATO makes extensive use of data and complex fraud detection models, the ANAO found it did not develop GST-specific fraud risk assessments and the fact it did not collate or aggregate data from fraud detection methods across business lines meant it had no whole of GST product perspective of fraud. The ATO agreed to the recommendations made by the ANAO and completed a holistic GST fraud risk assessment, redesigned its conformance process to obtain a broader scope of information aligned to fraud sub-risks, and developed a holistic GST intelligence strategy.²³

Policy, procedure and plans

- 6.23 As noted by the ANAO, procedure and guidance documents help ensure the delivery of regulation is consistent with achieving intended outcomes. To be of value, however, these documents must be current and regularly reviewed.²⁴
- 6.24 Surprisingly, given protocols can be easily enacted to ensure policies, procedures and plans are regularly reviewed and up-to-date, the Committee found entities did not always perform well. Home Affairs’ procedural instruction was partial, out of date, and did not reflect current legislated obligations.²⁵ Its most recent compliance strategy and plan were also out of date, and Home Affairs had not fully implemented the plan.²⁶ Home Affairs advised that subsequent to the audit, it has implemented a compliance and monitoring framework, developed a strategy that identifies the harms

²² DISR, *Legal metrology priorities 2024–25*, 2024, p. 10; Mr Vasilios Loizides, DISR, *Committee Hansard*, Canberra, 22 November 2024, pages 17–18.

²³ ANAO, *ATO report*, paragraphs 2.22, 3.33; ATO, *Submission 7.1*, pages 3, 5.

²⁴ See: ANAO, *Trade measurement report*, paragraphs 2.1, 2.18.

²⁵ ANAO, *Migration agents report*, paragraphs 2.14–2.15.

²⁶ ANAO, *Migration agents report*, p. 26, paragraphs 2.38–2.39.

arising from non-compliance, and a plan that identifies monitoring activities.²⁷ As noted above, Home Affairs stated it is yet to produce a risk assessment.²⁸

- 6.25 The Committee also saw that there were gaps, overlaps and inconsistencies in policy and procedural documents produced to support DISR's regulatory function and existing policies and procedures were not updated in a timely manner. The ANAO found instances where DISR's policies and procedures were confusing and incomplete.²⁹ Key risk artefacts at the ATO were not available, and there were instances of misalignment between key documents.³⁰ All guidance materials and standard operating procedures for monitoring and enforcing compliance with the new aged care requirements were not finalised by Health and the ACQSC prior to implementation of the new requirements.³¹ And, standard operating procedures pertaining to the regulation of therapeutic goods were not reviewed on a regular basis.³²
- 6.26 The Committee is of the view that ensuring policy, procedure and guidance documents not only exist but are comprehensive, accurate and current is a core competency for regulators, and not a terribly difficult one to achieve. Processes must be in place in all agencies with regulatory responsibilities to ensure this is the case.

Ministerial statements of expectations and regulator statements of intent

- 6.27 Statements of expectations and intent are important to ensure regulators are undertaking their statutory roles in a manner that fulfills the expectations of the relevant minister. The shortcomings in the audits differed—DISR did not have an appropriate ministerial statement of expectations and regulator statement of intent for some time,³³ Health's regulator statement of intent did not encompass its activities in relation to the aged care sector,³⁴ and with regard to the regulation of migration agents, there was no ministerial statement of expectations or responding regulator statement of intent.³⁵
- 6.28 Not having a ministerial statement of expectations or a regulator statement of intent in place is clearly not acceptable and goes to the rigour with which an entity performs its regulatory functions and the seriousness with which it takes them.

²⁷ Home Affairs, *Submission 1.1*, pages [2]–[3].

²⁸ Home Affairs, *Submission 1.1*, p. [1].

²⁹ ANAO, *Trade measurement report*, paragraphs 9, 2.9, 2.15, 2.17–2.18.

³⁰ ANAO, *ATO report*, paragraphs 2.23, 2.31, 2.47, 4.14–4.15.

³¹ ANAO, *Aged care report*, paragraph 23.

³² Ms Tracey Lutton, Assistant Secretary, Regulatory Compliance Branch, Regulatory Practice and Support Division, Department of Health and Aged Care (Health), *Committee Hansard*, Canberra, 22 November 2024, pages 2, 4.

³³ ANAO, *Trade measurement report*, paragraphs 3.57–3.62.

³⁴ ANAO, *Aged care report*, paragraph 4.8.

³⁵ ANAO, *Migration agents report*, paragraph 10.

Practice

- 6.29 The Committee agrees with the ANAO that regulators are responsible for providing confidence to the broader Australian public that regulated entities like migration agents or goods traders are complying with their statutory obligations and that appropriate enforcement action is taken when a regulated entity fails to meet its obligations.³⁶
- 6.30 In its examination of the practices of regulatory authorities, the Committee again found a diversity of capabilities when it came to compliance monitoring and the use of regulatory powers—from a complete failure to undertake any compliance monitoring to largely effective performance; and of regulatory responses to non-compliance being neither timely nor effective, and one entity being funded for a compliance role that exceeded its statutory powers at the time.
- 6.31 The principles-based policy guidance from Finance advises that regulatory action should be proportionate, drive compliance and act as an effective deterrent. A good regulatory system, according to Finance, enables a targeted, risk-based and proportionate approach to regulation, through, amongst other things, compliance and enforcement activities.³⁷ Guidance in the Framework and RMG 128 from Finance does not provide any substantive information on what an appropriate compliance approach might look like, other than being risk-based, or on the use of regulatory powers.
- 6.32 The ANAO does, however, highlight the importance of a compliance program using the full scope of an entity's regulatory powers and responsibilities, proportionate to the assessed compliance risk.³⁸

Compliance monitoring

- 6.33 Regulators are responsible for ensuring regulated entities comply with their statutory obligations. The Committee found the following:
- Home Affairs had failed to undertake monitoring activities and there were significant deficiencies in its registration process³⁹
 - Health, in its regulation of non-compliance with the Therapeutic Goods Act, undertook both proactive and reactive compliance activities⁴⁰
 - Health and the ACQSC had established their respective monitoring roles in advance of the implementation of the aged care reforms⁴¹

³⁶ See: ANAO, *Trade measurement report*, paragraph 3.1.

³⁷ Finance, *Regulatory Framework*, p. 7.

³⁸ ANAO, *Insights: Administering Regulation*, January 2021, hereafter *Administering regulation*, www.anao.gov.au/work/insights/administering-regulation, viewed 12 March 2025.

³⁹ ANAO, *Migration agents report*, paragraph 9, p. 29.

⁴⁰ ANAO, *TGA report*, paragraphs 3.8–3.11, 3.21–3.23, p. 34.

⁴¹ ANAO, *Aged care report*, paragraph 11.

- DISR was not able to meet its own targets for trader audits, but exceeded those undertaken on behalf of another entity⁴²
 - the ATO had sophisticated fraud detection and prevention models but its decentralised approach to fraud risk detection and treatment meant it did not have a whole of GST view of compliance risk.⁴³
- 6.34 In these comments, the Committee focuses on the performance of Home Affairs and DISR.
- 6.35 The findings of the audit into Home Affairs were serious, across all areas of regulatory practice. Through its regulatory practices, Home Affairs could not always be satisfied a registered migration agent was fit and proper to give immigration assistance and was a person of integrity, prior to approving registration. In fact, the audit found agents for which Home Affairs itself held serious integrity concerns had their renewal applications approved, whether through deeming or an automated granting system.⁴⁴
- 6.36 Home Affairs was, at the time of the audit, using an automated approval process, for which there did not appear to be any legal authority. Following the audit, Home Affairs ceased using this process and did not respond to the Committee's question as to legal basis for the automated approval process. The Committee received no information from Home Affairs as to whether the practice of deeming has continued.⁴⁵
- 6.37 Home Affairs was also failing to undertake any monitoring activities. When Home Affairs did produce a Compliance and Monitoring Framework, Strategy and Plan for 2024–25, following the findings of the audit, the areas of focus were significantly more tightly drawn than the monitoring activities it had reported on in 2015–16.⁴⁶
- 6.38 As to the use of its regulatory powers, the audit found Home Affairs was not taking timely or effective regulatory action when it received complaints about the activities of individual agents, and that it rarely used its regulatory powers.⁴⁷ While the full details are contained in the audit report, the Committee expresses its concern at the response from Home Affairs with regard to its use of regulatory powers.⁴⁸
- 6.39 While Home Affairs agreed to the audit's recommendations, Home Affairs' subsequent qualifications suggested it was not agreeing to the substance of all the recommendations or relevant findings with regard to its use of its regulatory powers.

⁴² ANAO, *Trade measurement report*, paragraph 15.

⁴³ ANAO, *ATO report*, paragraphs 3.13, 3.33.

⁴⁴ ANAO, *Migration agents report*, paragraphs 13, 3.14–3.16, footnote 23.

⁴⁵ ANAO, *Migration agents report*, paragraphs 2.16, 3.18–3.20; Home Affairs, *Submission 1.1*, p. [5].

⁴⁶ ANAO, *Migration agents report*, paragraph 3.33; Home Affairs, *Submission 1*, p. 3; Home Affairs, *Submission 1.1*, pages [2]–[3], [6].

⁴⁷ ANAO, *Migration agents report*, p. 29.

⁴⁸ ANAO, *Migration agents report*, pages 11–12.

This is despite Home Affairs recognising it could not actually pursue disciplinary action without using its statutory powers to obtain information.⁴⁹

- 6.40 Home Affairs stated it was investigating system enhancements to enable more effective reporting on caseload management, including identifying when statutory powers were used.⁵⁰ The Committee is concerned about Home Affairs' willingness to use its regulatory powers in the context of its obligations to regulate registered migration agents, and makes a recommendation to promote greater transparency in this regard.

Recommendation 3

- 6.41 The Committee recommends the Department of Home Affairs provides an update every six months on its material progress towards reporting on whether it has used its regulatory powers. The update should identify which powers were used, for each complaint received against a registered migration agent, whether or not the complaint results in a sanction. The Committee expects the Department of Home Affairs will continue to provide this update until the end of 2025–26.**
- 6.42 The Committee examined in some detail the performance of DISR's compliance monitoring and use of regulatory powers. The audit found that DISR had reduced its compliance monitoring and had not met its own targets for trader audits, while compliance rates were remaining largely static for initial audits and declining for follow-up audits.⁵¹ At the same time it was failing to meet its own targets, it was prioritising and exceeding targets for monitoring and compliance of tobacco plain packaging laws.⁵²
- 6.43 The Committee is of the view that regulators are obligated to prioritise their own regulatory responsibilities and was not satisfied by the response provided by DISR as to how it was confident it was giving appropriate priority to its responsibilities under the *National Measurement Act 1960*.⁵³ The Committee makes a recommendation that further information is provided.

Recommendation 4

- 6.44 The Committee recommends the Department of Industry, Science and Resources provides to the Committee the detailed analysis it relies upon to be certain it is comprehensively regulating its target population, as required under the *National Measurement Act 1960*, prior to undertaking contracted regulatory activities on behalf of other entities.**

⁴⁹ ANAO, *Migration agents report*, paragraphs 16–17; see also: paragraphs 3.26–3.28, 3.65–3.68.

⁵⁰ ANAO, *Migration agents report*, paragraph 3.29; Home Affairs, *Submission 1.1*, pages [8]–[9].

⁵¹ ANAO, *Trade measurement report*, paragraphs 3, 13–14, pages 34–35; DISR, *Compliance with measurement regulation in 2023–24*, November 2024, p. 12.

⁵² ANAO, *Trade measurement report*, p. 35, paragraph 3.22.

⁵³ DISR, *Submission 6.1*, p. [7].

- 6.45 The Committee notes that since 2017–18, the actual number of trader audits undertaken by DISR has decreased by almost 47 per cent. DISR has also revised down its target for trader audits from 11,500 in 2017–18 to 5,450 in 2023–24—a decrease of almost 53 per cent.⁵⁴ DISR claims inspectors are conducting more thorough investigations and this significantly accounts for the decline in trader audits.⁵⁵ DISR has not provided any evidence that this is the case. The Committee therefore recommends that DISR provides supporting evidence.

Recommendation 5

- 6.46 The Committee recommends the Department of Industry, Science and Resources provides to the Committee data on the actual scope of activities undertaken by inspectors during trader audits in each of the years from 2017–18 to the present, to support its evidence to the Committee that the number of trader audits has declined because inspectors are conducting more comprehensive audits.**
- 6.47 The Committee has concerns as to DISR’s approach to non-compliance, noting that DISR’s evidence was that 39 per cent of businesses that receive an infringement notice remain non-compliant at the next inspection.⁵⁶ Records show that despite this figure, DISR has entered into only six enforceable undertakings since 2019–20—this is the next level of response available under the NMI’s escalatory model according to its publication, *Compliance with measurement regulation*.⁵⁷
- 6.48 Accordingly, the Committee recommends DISR provides further detail on its regulatory actions.

Recommendation 6

- 6.49 The Committee recommends the Department of Industry, Science and Resources provides to the Committee in deidentified format, a report detailing the regulatory action it has taken when an infringement notice has been issued but non-compliance is detected during a follow-up audit. This report is to be provided each six months, commencing from the 2022–23 year. This report is to be provided to the Committee to the conclusion of 2025–26.**

Performance

- 6.50 The Committee considers it essential that regulators monitor and report on their performance. Following the introduction of the *Regulator Performance Guide* on 1 July 2021, regulators are no longer required to produce annually a standalone self-assessment report and instead are required to report on performance through

⁵⁴ See Chapter 3, paragraphs 3.51–3.52, table 3.2.

⁵⁵ Mr Vasilios Loizides, DISR, *Committee Hansard*, Canberra, 22 November 2024, p. 20.

⁵⁶ DISR, *Submission 6*, p. [7].

⁵⁷ DISR, *Compliance with measurement regulation in 2023–24*, November 2024, p. 17.

corporate plans and annual reports as per the Commonwealth Performance Framework.⁵⁸

- 6.51 The quality of performance measures and associated reporting is more important than ever. Because of this, it was disappointing that some entities in the audits under consideration did not appear to have robust performance measurement frameworks in place. The Committee particularly notes that Health had not established measures or targets for compliance management relating to therapeutic goods and DISR had not reported its performance externally following 2019–20.⁵⁹
- 6.52 The Committee notes with concern that the performance measures established by Home Affairs in its 2024–25 Corporate Plan with regard to resolving matters, finalising investigations and reducing the legacy caseload should not be achieved in the absence of Home Affairs making use of its information gathering powers as necessary to complete and/or resolve matters.⁶⁰
- 6.53 In their submissions to this inquiry, the audited entities advised that they had reconsidered or were in the process of reconsidering their performance measures, which was encouraging to see. The Committee notes the ANAO's observations on shortcomings in regulator performance reporting. Reporting that excessively focuses on quantifying activities is less likely to be meaningful than reporting that measures regulatory impact and the achievement of regulatory intent.
- 6.54 The Committee considers that the ANAO's performance statements function, which is growing and becoming a core part of the ANAO's program of work, will be vital in ensuring that performance is consistently and meaningfully reported across the public service. The Committee will take particular notice of findings from the ANAO's performance statements audits in future years.
- 6.55 An ideal scenario would be one where, by incrementally improving the quality of measures and reporting each year, all Commonwealth regulators are reporting on their performance in a meaningful way, based on best practice. To support this, it is essential that Finance plays an active role in ensuring guidance materials are kept up to date and relevant. To that end, it is important that Finance reconsiders the examples it provides in *Resource Management Guide 131: Developing performance measures* (RMG 131) following the annual publication of outcomes from the ANAO's performance statements audits.

Recommendation 7

- 6.56 The Committee recommends Finance updates *Resource Management Guide 131: Developing performance measures*, following the publication annually of the Australian National Audit Office's performance statements audits, to**

⁵⁸ Finance, *RMG 128*, viewed 12 March 2025.

⁵⁹ ANAO, *TGA report*, paragraph 2.34, table 2.7; ANAO, *Trade measurement report*, paragraphs 3.54–3.55.

⁶⁰ Home Affairs, *Submission 1.1*, pages [10]–[11].

include contemporary examples and provide clear instruction to entities as to what constitutes best practice performance measures.

Policy advice

- 6.57 The Committee examined the nature and extent of policy advice provided to regulators to assist them in carrying out their regulatory functions. Finance identified itself as the lead agency on regulatory policy, practice and performance, providing a holistic and coordinated approach to regulatory systems to 'ensure regulatory systems remain fit-for-purpose'.⁶¹
- 6.58 Audits of regulators by the ANAO have demonstrated some regulatory systems are not fit-for-purpose. Though it is not the case that all regulators perform poorly, a brief examination of recent performance audits undertaken by the ANAO of regulators shows there are consistent shortcomings in regulator performance. For instance:
- 2020 – the Australian Energy Regulator was found to be partially effective in regulating energy markets, with partially appropriate governance arrangements, partially effective regulatory activities, partially effective identification of compliance risks, and partially effective identification and resolution of non-compliance⁶²
 - 2020 – the effectiveness of the Tertiary Education Quality and Standards Agency's regulation of higher education was mixed, its compliance and enforcement processes were partially effective⁶³
 - 2021 – in a follow-up audit, the Great Barrier Reef Marine Park Authority's regulation of permits and approvals was found to be partially effective, with partially appropriate arrangements for managing and monitoring permissions⁶⁴
 - 2022 – Home Affairs' administration and regulation of critical infrastructure protection policy was partly effective, with partly effective governance arrangements, and partly effective administration of compliance activities⁶⁵
 - 2024 – the Australian Skills Quality Authority had established partly effective fraud control arrangements, it had not established appropriate arrangements to manage fraud risk⁶⁶
 - 2024 – Health's and Services Australia's administration of the Pharmaceutical Benefits Scheme was party effective, governance and oversight arrangements

⁶¹ Finance, *Submission 2*, p. 2.

⁶² ANAO, *Regulation of the National Energy Market*, Auditor-General Report No. 5 2020–21, p. 10.

⁶³ ANAO, *Tertiary Education Quality and Standards Agency's Regulation of Higher Education*, Auditor-General Report No. 33 2019–20, p. 8.

⁶⁴ ANAO, *Regulation of Great Barrier Reef Marine Park Permits and Approvals—Follow-up*, Auditor-General Report No. 44, 2020–21, p. 8.

⁶⁵ ANAO, *Administration of Critical Infrastructure Protection Policy*, Auditor-General Report No. 38 2021–22, p. 8.

⁶⁶ ANAO, *Fraud Control Arrangements in the Australian Skills Quality Authority*, Auditor-General Report No. 10, 2024–25, p. 8.

were partly appropriate, arrangements to manage the delivery of services and payments were partly effective⁶⁷

- 2025 – Sport Integrity Australia’s management of the National Anti-Doping Scheme was partly effective, its governance arrangements were partly fit for purpose, its arrangements to investigate and respond to anti-doping rule violations were partly effective.⁶⁸

- 6.59 As discussed throughout this report, some regulators are failing to use data, take a risk-based approach to compliance, maintain policies and procedures, effectively monitor compliance, and use their regulatory powers. The principles-based policy advice provided by Finance does not contain information on regulatory practice. As noted in chapter five, the principles-based guidance is predominantly concerned with regulatory posture or an appropriate regulatory mindset.
- 6.60 It is not clear, for instance, how, by ‘applying the Framework principles of “evidence-based and data-driven” and “continuously improved and outcomes-focussed”’ as suggested by Finance, ‘regulators are supported to establish appropriate monitoring activities and use their powers effectively to address non-compliance in a targeted and proportionate way’.⁶⁹ The Framework may note that ‘regulators should establish regulatory postures and fit-for-purpose education, monitoring, compliance, and enforcement strategies that are evidence-based and data-driven’,⁷⁰ but this does not actually provide regulators information on how to go about achieving such things.
- 6.61 Finance stated it would be producing a road map to support regulators to evaluate and improve their capability in achieving the six principles in the Framework. When asked how a road map would address consistent regulatory flaws—specifically, a failure to undertake a risk based assessment of compliance risk; inappropriate compliance plans not underpinned by robust risk assessments; a failure to undertake appropriate monitoring of the regulated industry and to use regulatory powers effectively to address instances of non-compliance; and the absence of robust performance measures or evaluation frameworks—Finance indicated these areas were dealt with in existing guidance.⁷¹
- 6.62 As a steward, Finance is to have regard to the known and reasonably foreseeable implications of how regulatory entities operationalise its guidance on regulatory policy, practice and performance.⁷² Evidence as to the shortcomings in the performance of regulators, whose activities are guided by Finance’s principles-based guidance, is readily available in ANAO audits.

⁶⁷ ANAO, *Administration of the Pharmaceutical Benefits Scheme*, Auditor-General Report No. 19, 2024–25, pages 7–8.

⁶⁸ ANAO, *Sport Integrity Australia’s Management of the National Anti-Doping Scheme*, Auditor-General Report No. 27, 2024–25, p. 8.

⁶⁹ Finance, *Submission 2.1*, p. 3.

⁷⁰ Finance, *Submission 2.1*, p. 4.

⁷¹ Finance, *Submission 2.1*, pages 3–5.

⁷² See: Australian Public Service Commission (APSC), *Stewardship guidance*, 17 October 2024, www.apsc.gov.au/working-aps/information-aps-employment/aps-values/stewardship-guidance, viewed 7 March 2025.

- 6.63 As a steward, Finance should be conducting robust evaluations as to the effectiveness of its activities and reflecting on these evaluations to inform future activities, advice and decisions. The ANAO is not the assurance agency for Finance's principles-based policy guidance. By Finance's own account, there are 104 regulatory functions across the Australian Government and the ANAO has the capacity to conduct only a small number of audits each year into regulators.
- 6.64 In *Report 502: The never-ending quest for the golden thread – Probity and ethics in the Australian public sector*, the Committee recommended Finance develops an approach, including robust metrics, to provide reasonable assurance the policy frameworks it administers are effective.⁷³ Finance did not agree, stating it would rely on an existing annual survey with regard to the implementation and application of the Public Governance, Performance and Accountability Framework, and cited a response to a survey question about entities being satisfied the PGPA Act was providing a flexible framework.⁷⁴ The response did not address the letter or the intent of the recommendation.
- 6.65 In defence of its principles-based framework, Finance points out the obligations that fall on accountable authorities under the *Public Governance, Performance and Accountability Act 2013* and Public Governance, Performance and Accountability Rule 2014 including planning, performance, managing risk, compliance, assurance and reporting.⁷⁵
- 6.66 A response such as this attempts to redefine the discussion. The suggestion is not that accountable authorities are not responsible; it is that as the policy owner, Finance should understand where principles-based guidance is not effective and respond. It is not a suggestion that Finance becomes responsible for noncompliance; it is responsible for the effectiveness of its policy advice.
- 6.67 Finance has stated it plans to undertake some evaluation of its Framework and the regulatory reform agenda, however, limited detail was provided as to whether this would contain robust metrics or provide robust assurance its policy guidance is effective. Accordingly, the Committee again recommends that Finance develops a robust assurance approach for its policy guidance.

Recommendation 8

- 6.68 The Committee recommends the Department of Finance develops an approach, including robust metrics, to provide reasonable assurance that the policy framework it administers with regard to regulatory policy, practice and performance is effective in ensuring regulatory systems remain fit-for-purpose.**

⁷³ Joint Committee of Public Accounts and Audit, *Report 502: The never-ending quest for the golden thread – Probity and ethics in the Australian public sector*, June 2024, paragraph 6.59.

⁷⁴ Finance, *Executive Minute: Department of Finance – Report 502 – Recommendations 1, 5, 6 & 11, 18 December 2024*, www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Accounts_and_Audit/AustralianPublicSector/Government_Response, viewed 12 March 2025, p. 4.

⁷⁵ Finance, *Submission 2.1*, p. [6].

An update is to be provided to the Committee within six months, including timelines to complete this work.

- 6.69 As to the accountability of regulators, the Committee is of the view principles-based guidance that goes primarily to regulatory posture is not a sufficient basis to ensure regulator accountability for the actual practice of regulation.
- 6.70 Regulator accountability can only come through transparency. The Committee recommends that Finance updates the requirements for the Regulator Stocktake to provide greater transparency.

Recommendation 9

6.71 The Committee recommends the Department of Finance updates the requirements for the Regulator Stocktake to require each entity with regulatory functions to publish a Regulator Statement, on a common template and reviewed annually, that would provide, at a minimum, the following:

- **itemised regulatory obligations with reference to legislation**
- **detail of the regulated population**
- **the risk-based approach to compliance, including information on how risk is calculated**
- **the compliance and enforcement process**
- **the regulatory powers available to the regulator**
- **offences and penalties under legislation**
- **regulator measures of impact, and appropriate and robust performance measures.**

6.72 In closing on this matter, the Committee notes that while the Framework was published in August 2024, its central principles are not fundamentally new—the previous *Regulator Performance Framework*, published in 2014, similarly contained requirements for considering the impact of regulation on regulated entities; communication with the regulated population; proportionate and risk-based approaches to compliance; open and transparent decisions and interactions with regulated entities; and continuous improvement.⁷⁶

Approach to the Committee

6.73 The Committee observed during the course of the inquiry, a number of issues that impact on its ability to fulfil its statutory responsibility to examine the reports of the Auditor-General.⁷⁷ In particular, the Committee requires entities to provide fulsome

⁷⁶ Australian Government, *Regulator Performance Framework*, October 2014.

⁷⁷ *Public Accounts and Audit Committee Act 1951*, section 8.

and informative responses to the questions asked of them so the Committee can examine the issues raised in audit reports.

Incomplete statements with the potential to mislead

- 6.74 The Committee has noted incomplete statements in submissions that could have the potential to mislead. For instance, the audit into Home Affairs' regulation of migration agents found shortcomings with regard to Home Affairs' risk assessment framework for triaging, assessing and investigating complaints about registered migration agents. Home Affairs, in its submission to the Committee, stated it had developed an 'improved' risk-based framework. The improvements included an early resolution model.⁷⁸
- 6.75 When further information was requested in a written question on notice, Home Affairs indicated the extent of the 'enhanced' framework was the addition of the early resolution model for minor matters.⁷⁹ The 'enhanced' framework had not in fact dealt with the concerns raised in the ANAO report. The report discussed that the nine criteria in the matrix/framework were not weighted and only five dealt with the nature of the alleged misconduct; the remaining four were concerned with whether there was awareness of the alleged misconduct outside of Home Affairs and whether there was political and/or media interest. The ANAO found the matrix could not ensure Home Affairs, when it decided which complaints to action, was giving priority to the protection of consumers or integrity of the visa system.⁸⁰
- 6.76 Home Affairs, again, in its submission of August 2024, stated it had assessed the risk of non-compliance and commenced 'efforts to shape and implement related risk treatments'.⁸¹ In responses to written questions on notice of December 2024, it stated it remained in the process of 'procuring a regulatory compliance specialist' who would be involved in the development of a documented risk assessment.⁸²

Statement of principles without supporting evidence

- 6.77 The Committee also noticed the tendency in some submissions to state the importance of matters but not to demonstrate how this is operationalised by the entity.
- 6.78 For instance, the Home Affairs submission attests to its regulation being evidence based and intelligence led, necessary and proportionate, collaborative, focused on outcomes, lawful and fair.⁸³
- 6.79 These are fine attributes for a regulator, and comport with the Framework. However, without evidence of their operationalisation within the activities of an entity, they are

⁷⁸ Home Affairs, *Submission 1*, p. 3.

⁷⁹ Home Affairs, *Submission 1.1*, p. [12].

⁸⁰ ANAO, *Migration agents report*, paragraphs 3.38–3.40.

⁸¹ Home Affairs, *Submission 1*, p. 5.

⁸² Home Affairs, *Submission 1.1*, p. [1].

⁸³ Home Affairs, *Submission 1*, pages 5–6.

mere words. Focussed on outcomes, for instance, has no specific meaning absent the context that would be provided by actual evidence of the activities Home Affairs is undertaking. The Home Affairs audit, in particular, found Home Affairs was not effective in its regulation of migration agents.⁸⁴

Not answering the question asked

- 6.80 In some instances, entities did not answer the question asked. For instance, Health was asked why it planned an expanded regulatory function to conduct audits that it had no statutory powers at the time to undertake. It responded with detail of the assurance program it did have powers to undertake.⁸⁵
- 6.81 The NMI was asked how it had improved the calculation of risk ratings in relation to the very specific shortcomings identified on specific pages of the ANAO report. It did not.⁸⁶ It was also asked how it could be certain it had an appropriate level of compliance monitoring. It responded by reference to performance measures in *Legal metrology priorities*, the ability of which to provide confidence the level of compliance monitoring was appropriate remained unclear.⁸⁷
- 6.82 When asked how Home Affairs had updated its performance measures to incorporate its responsibilities for the administration of the migration agent registration process and regulation of continuing professional development, Home Affairs stated 'yes' then proceeded to provide performance measures for the resolution of complaints and timeliness of application assessments.⁸⁸ No clear response was provided on the question actually asked by the Committee.
- 6.83 The Committee suggests a thoroughgoing understanding of the issues raised in an audit may assist in the preparation of relevant and informative responses.

Approach of entities to the Committee

- 6.84 The Committee notes variation in the seriousness with which entities treat its inquiries. In particular, the Committee thanks the ATO for the representation it sent to the public hearing, and its proactive and transparent approach to implementing the recommendations of the audit.
- 6.85 The manner in which the ATO approached the committee stands in stark contrast to that in which DISR engaged—sending only one witness to the public hearing whose message was predominantly that there was nothing substantively at issue with its regulation, notwithstanding significant findings in the audit report. By way of example, DISR continued to maintain its approach to risk was 'best practice' despite the ANAO

⁸⁴ ANAO, *Migration agents report*, paragraph 9, p. 29.

⁸⁵ Health, *Submission 5.2*, pages [5]–[6].

⁸⁶ DISR, *Submission 6.1*, pages [2]–[3].

⁸⁷ DISR, *Submission 6.1*, pages [10]–[11].

⁸⁸ Home Affairs, *Submission 1.1*, p. [10].

finding no evidence this was the case, during the audit or since.⁸⁹ Further, the responses DISR provided to written questions on notice reinforced this impression. Almost identical responses were provided to three written questions on notice, despite each of the questions asking for different information. DISR was asked to reconsider its response to one question and provided an updated response.

- 6.86 The Committee would also emphasise to entities that witnesses before the Committee should be able to speak knowledgeably to the full scope of the audit in question. The witnesses the Department of Health and Aged Care provided to the Committee were not able to speak to the recommendation in the audit dealing with performance reporting. This was an important recommendation, and sat outside the remit of the witnesses appearing before the Committee.⁹⁰
- 6.87 The Committee will be monitoring the responses of agencies in its upcoming inquiries and will make specific recommendations to individual entities where required to improve the quality of the engagement.

Hon Linda Burney MP
Chair
20 March 2025

⁸⁹ See: Mr Vasilios Loizides, DISR, *Committee Hansard*, Canberra 22 November 2024, p. 19; Mr Michael White, ANAO, *Committee Hansard*, Canberra, 22 November 2024, p. 20.

⁹⁰ See discussion at: *Committee Hansard*, Canberra, 22 November 2024, p. 7.



A. Submissions

- 1** Department of Home Affairs
 - 1.1 Supplementary to submission 1
 - 1.2 Supplementary to submission 1
- 2** Department of Finance
 - 2.1 Supplementary to submission 2
 - 2.2 Supplementary to submission 2
- 3** Tax Practitioners Board
- 4** Aged Care Quality and Safety Commission
 - 4.1 Supplementary to submission 4
- 5** Department of Health and Aged Care
 - 5.1 Supplementary to submission 5
 - 5.2 Supplementary to submission 5
- 6** Department of Industry, Science and Resources
 - 6.1 Supplementary to submission 6
- 7** Australian Taxation Office
 - 7.1 Supplementary to submission 7



B. Public hearing

Friday 22 November 2024

Committee Room 2R1 – Parliament House

Auditor-General Report No.3 of 2023–24 Management of Non-Compliance with the Therapeutic Goods Act 1989 for Unapproved Therapeutic Goods

Department of Health and Aged Care

- Ms Tracey Lutton, Assistant Secretary, Regulatory Compliance Branch, Regulatory Practice and Support Division
- Ms Jennifer Sellars, Director, Regulatory Compliance Branch, Regulatory Practice and Support Division

Australian National Audit Office

- Dr Caralee McLiesh PSM, Auditor-General
- Ms Rona Mellor PSM, Deputy Auditor-General
- Ms Carla Jago, Acting Deputy Auditor-General
- Mr Michael White, Acting Group Executive Director, Performance Audit Services Group
- Ms Christine Chalmers, Executive Director, Performance Audit Services Group

Auditor-General Report No.8 of 2023–24 Design and Early Implementation of Residential Aged Care Reforms

Department of Health and Aged Care

- Ms Thea Connolly, First Assistant Secretary, Home and Residential Division
- Mr Mark Richardson, Assistant Secretary, Home and Residential Division

Aged Care Quality and Safety Commission

- Ms Janet Anderson, Commissioner
- Ms Emma Jobson, Acting Deputy Commissioner, Sector Capability and Regulatory Strategy

Australian National Audit Office

- Dr Caralee McLiesh PSM, Auditor-General
- Ms Rona Mellor PSM, Deputy Auditor-General
- Ms Carla Jago, Acting Deputy Auditor-General
- Mr Michael White, Acting Group Executive Director, Performance Audit Services Group
- Ms Christine Chalmers, Executive Director, Performance Audit Services Group

Auditor-General Report No.5 of 2023–24 Trade Measurement Compliance Activities

Department of Industry, Science and Resources

- Mr Vasilios (Bill) Loizides, General Manager, Legal Metrology, National Measurement Institute

Australian National Audit Office

- Dr Caralee McLiesh PSM, Auditor-General
- Ms Rona Mellor PSM, Deputy Auditor-General
- Ms Carla Jago, Acting Deputy Auditor-General
- Mr Michael White, Acting Group Executive Director, Performance Audit Services Group
- Ms Tiffany Tang, Director, Performance Audit Services Group

Auditor-General Report No. 15 of 2023–24 Australian Taxation Office’s Management and Oversight of Fraud Control Arrangements for the Goods and Services Tax

Australian Taxation Office

- Mr Hector Thompson, Deputy Commissioner, International Support and Programs
- Mr Will Day, Deputy Commissioner, Small Business
- Ms Rebecca Fealy, Assistant Commissioner, Fraud and Criminal Behaviours
- Mr Darryl McCarthy, Assistant Commissioner, GST Program
- Mr Nicholas Shizas, Assistant Commissioner, ATO General Counsel
- Mr Ian Ayrton, Director, Small Business

Australian National Audit Office

- Dr Caralee McLiesh PSM, Auditor-General
- Ms Rona Mellor PSM, Deputy Auditor-General
- Ms Carla Jago, Acting Deputy Auditor-General

- Mr Michael White, Acting Group Executive Director, Performance Audit Services Group
- Mr David Tellis, Executive Director, Performance Audit Services Group

Auditor-General Report No.26 of 2023–24 Department of Home Affairs' Regulation of Migration Agents

Department of Home Affairs

- Mr Michael Willard, Group Manager, Immigration Operations, Immigration Group
- Ms Emily Winch, Senior Director, Office of the Migration Agents Registration Authority, Immigration Operations, Immigration Group

Australian National Audit Office

- Dr Caralee McLiesh PSM, Auditor-General
- Ms Rona Mellor PSM, Deputy Auditor-General
- Ms Carla Jago, Acting Deputy Auditor-General
- Ms Michelle Page, Acting Group Executive Director, Performance Audit Services Group

Regulation policy

Department of Finance

- Ms Rachel Antone, First Assistant Secretary, Risk, Claims and Regulatory Reform Division, Commercial

Australian National Audit Office

- Dr Caralee McLiesh PSM, Auditor-General
- Ms Rona Mellor PSM, Deputy Auditor-General
- Ms Carla Jago, Acting Deputy Auditor-General