



Australian
Competition &
Consumer
Commission

ACCC self-assessment methodology, measures and evidence

Regulator Performance Framework

June 2015

Regulator Performance Framework

The Australian Government has established a Regulator Performance Framework that will apply to all major Commonwealth regulators from 1 July 2015.

The framework establishes a common set of six outcomes-based key performance indicators (KPIs) that will allow for the comprehensive assessment of regulator performance and their engagement with stakeholders, specifically:

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

The Australian Competition and Consumer Commission (ACCC) fully supports the new framework, as it will provide for increased transparency and accountability about how regulators achieve their statutory objectives. It will also help identify ways that the ACCC and the relevant policy agencies can reduce red-tape.

This document explains the self-assessment methodology, measures and output/activity-based evidence that the ACCC will use to assess its performance against the six KPIs annually.

Under the Regulator Performance Framework, regulators must have the results of their self-assessment 'externally validated'. External validation provides an avenue for a representative group of stakeholders to provide feedback on whether the self-assessment results broadly accords with their views of our performance against the KPIs over the assessment period. The ACCC's annual self-assessment performance reports will be considered by the ACCC Performance Consultative Committee (see below).

The ACCC's self-assessment reports will then be provided to the ACCC's responsible Minister, the Minister for Small Business, the Hon Bruce Billson MP, before being published.

The ACCC Performance Consultative Committee (APCC) consists of 15 business, legal and consumer representatives who collectively cover the broad range of stakeholders that the ACCC engage with in undertaking its various functions. The committee is therefore well placed to provide feedback to the ACCC and to the Minister about the ACCC's performance. Details of the membership of the APCC are available on the ACCC website at: <https://www.accc.gov.au/about-us/consultative-committees>.

Further information about the Regulator Performance Framework is at <https://cuttingredtape.gov.au/resources/rpf>.

ACCC self-assessment methodology, measures and evidence

The ACCC will assess its performance across four core functional areas:

- **Enforcement**

The Enforcement function relates to the investigation and resolution, including through litigation, of potential breaches by businesses and individuals of the competition, fair trading and consumer protection provisions of the *Competition and Consumer Act 2010* (the CCA).

- **Merger and Authorisation Review**

The Mergers and Authorisation Review function relates to the review of (proposed) mergers and acquisitions to assess whether they would substantially lessen competition; as well as review applications by businesses that wish to engage in certain anti-competitive arrangements or conduct for exemption from the CCA because those arrangements or conduct results in a net public benefit.

- **Consumer, Small Business and Product Safety**

The Consumer, Small Business and Product Safety function relates to informing businesses and consumers of their rights and obligations under the CCA through engagement, education and the provision of specialised information. This function also includes actions to ensure Australian consumers are not harmed by unsafe products.

- **Infrastructure Regulation**

The Infrastructure Regulation function relates to the economic regulation of communications, transport and rural water sectors and the monitoring of certain industries such as fuel and airports.

Collecting and reporting evidence that relates specifically to each of the ACCC's core functional areas will provide greater transparency and accountability about the ACCC's performance and will help identify specific aspects of our performance where strategies for improvements can be developed.

Based on an assessment of the reported evidence, the ACCC will report using a five point rating scale against each of the six KPIs for each of the four functional areas using the following rating system:

1 Excellent

2 Very good

3 Good, but with some aspects for improvement identified

4 Fair, but some significant improvement required

5 Poor, with numerous significant areas for improvement identified

The APCC will have the opportunity to review and comment on how the ACCC has applied the rating scale prior to the finalisation of our self-assessment report.

For each of the six KPIs, the Regulator Performance Framework requires regulators to identify measures of good regulatory performance and associated output/activity-based evidence that will be used to self-assess performance. The table at the end of this document contains the ACCC's measures and evidence.

The ACCC has identified 19 measures to describe what constitutes good regulatory performance in the context of the ACCC's roles and responsibilities. These measures have guided the types of evidence the ACCC will collect.

The ACCC will collect a mix of quantitative and qualitative evidence related to each of the six KPIs. The evidence will come from different sources to ensure there is adequate assessment of the ACCC's performance.

The types of evidence that the ACCC will collect include:

- results from the ACCC business survey (see below)
- data that measures the timeliness and responsiveness of the ACCC
- records of stakeholder engagement through multiple channels, such as consultative committees, industry forums and cross-agency initiatives
- records of published guidance that assists businesses to comply with regulation, and
- explanatory material regarding ACCC internal and external processes.

The ACCC-wide evidence will complement the function-specific evidence.

ACCC business surveys

The ACCC intends to conduct a short survey on a regular basis that is limited to asking respondents to rate the ACCC's performance against each of the six KPIs. Respondents will also have the opportunity to provide comments. The value in this type of survey will be its capacity to provide the APCC and the broader community with regular trend information in relation to the KPIs.

The ACCC is also developing a comprehensive biennial, business-focused survey. The primary objective of the survey is to collect the views of a large representative group of business stakeholders regarding the ACCC's performance and to inform continuous improvement strategies.

The survey will be conducted for the first time during the June quarter of 2016. The results will be published on the ACCC website and incorporated in the ACCC's 2015-16 self-assessment against the six KPIs. These results will provide the APCC with baseline measurements of stakeholders' perceptions of our performance that will assist the APCC in the process of reviewing the ACCC's self-assessment.

The ACCC is proposing to conduct the survey every second year to provide sufficient time between surveys to analyse the results and develop and implement changes to improve performance.

The survey will cover a cross-section of small, medium and large businesses, and various law firms representing businesses, that are likely to have engaged with the ACCC in the previous two years.

The survey is in the development stage, but will contain questions that address the six KPIs and associated measures of good regulatory performance. Survey respondents will be required to identify which functional area(s) of the ACCC they predominantly interact with, which industry they operate in, and the size of the business. This will allow the ACCC to disaggregate the survey results and report them across each of the core functions for the six KPIs.

The ACCC will seek to ask the questions from the shorter survey as a sub-set of the more comprehensive survey every second year to minimise the burden on businesses in completing them both.

The final surveys will be approved by the Statistical Clearing House (SCH), located within the Australian Bureau of Statistics. The SCH is the mandatory central clearance point for Australian Government business surveys. The aim of the SCH is to help minimise the burden of Australian Government surveys on businesses by reducing survey duplication and ensuring that proposed business survey methods and questionnaire designs are fit for purpose.

ACCC Regulator Performance Framework measures and evidence

	KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities	KPI 2- Communication with regulated entities is clear, targeted and effective	KPI 3 - Actions undertaken by regulators are proportionate to the regulatory risk being managed	KPI 4 - Compliance and monitoring approaches are streamlined and coordinated	KPI 5 - Regulators are open and transparent in their dealings with regulated entities	KPI 6 - Regulators actively contribute to the continuous improvement of regulatory frameworks
ACCC measures of good regulatory performance	<ol style="list-style-type: none"> 1. The ACCC demonstrates an understanding of the operating environment of the businesses it regulates and emerging issues that affect the sector. 2. The ACCC takes into consideration the potential for unintended negative impacts of its regulatory activities on regulated businesses and other entities in the supply chain. 3. The ACCC's decisions and actions are undertaken in a timely manner, reflecting the complexity and nature of the matter. 4. The ACCC works with stakeholders to identify opportunities to minimise the compliance burden, whilst not undermining the intent of the primary legislation. 	<ol style="list-style-type: none"> 1. The ACCC provides guidance and information that is up to date, clear, concise and accessible through media appropriate to the target audience. 2. The ACCC provides guidance and advice in a timely manner. 3. The ACCC's guidance and advice is consistent and supports predictable outcomes. 	<ol style="list-style-type: none"> 1. The ACCC applies a risk-based, proportionate approach compliance obligations, enforcement actions and regulatory decisions. 2. The ACCC's strategies, activities and enforcement actions are amended to reflect changing priorities that result from new and evolving risks, without diminishing regulatory certainty or impact. 3. The ACCC recognises the compliance systems and processes of regulated entities. 	<ol style="list-style-type: none"> 1. The ACCC's information requests are tailored and only made when necessary to achieve regulatory objectives. 2. The ACCC utilises existing information to limit the reliance on requests from regulated entities and shares information with other regulators, where possible. 3. The ACCC takes into account the circumstance and operational needs of the regulated entity when undertaking monitoring activities. 	<ol style="list-style-type: none"> 1. The ACCC considers the impact on regulated entities and engages with industry groups and representative of the affected stakeholders before changing policies, practices or service standards. 2. The ACCC's risk-based frameworks, performance measurement results, processes, guides and decision documents are publicly available. 3. The ACCC is open and responsive to feedback from regulated entities regarding the operation of the regulatory framework, and approaches implemented by the ACCC under the framework. 	<ol style="list-style-type: none"> 1. The ACCC establishes cooperative and collaborative relationships with stakeholders to improve the efficiency and effectiveness of the regulatory framework. 2. The ACCC engages stakeholders in the development of options to reduce compliance costs, including changes to the overarching regulatory framework. 3. The ACCC regularly shares feedback from stakeholders and performance information with policy departments to improve the operation of the regulatory framework and administrative processes.
Enforcement	E1.1 Explanation of the process of market scanning the ACCC undertakes to identify its compliance and enforcement priorities annually.	E.2.1 Confirmation the ACCC has set out in a protocol enhanced practices for engagement relating to the status of investigations with complainants (particularly small business and consumer complainants) and in appropriate circumstances with the subjects of investigation. In the first and second quarters of 2016, the Enforcement Division will audit 10 in-depth investigations each quarter to determine the extent of engagement against principles in the protocol.	E3.1 Confirmation that the ACCC Compliance and Enforcement Policy has been reviewed on an annual basis and that this policy sets out how the ACCC prioritises enforcement matters, including the factors it takes into account.	E4.1 Explanation of the internal process for establishing that the Commission, the Chairman or the Deputy Chair has the necessary 'reason to believe' to issue a section 155 notice.	E5.1 The ACCC has published its Compliance and Enforcement Policy on its website.	E6.1 Publication through quarterly reports of the ACCC participation in policy forums; engagement with other regulators (international and domestic) on best practice competition and consumer protection enforcement; and engagement with key stakeholders to be aware of developing issues.

	E1.2 At least 60 per cent of initial competition investigations completed within 3 months.	E2.2. Confirmation that a diagram has been published on the ACCC website outlining the typical stages of competition and consumer investigations and indicative timeframes for these stages.	E3.2 Adherence to the ACCC's published accountability framework for investigations published on the ACCC website.	E4.2 List of MOUs the ACCC maintains with other enforcement agencies and publication of engagement with regulators.	E5.2 All performance measurement information committed to in the ACCC and AER Corporate Plan for this function is published in the ACCC Annual Report from 2015–16 onwards.	
	E1.3 At least 60 per cent of in-depth competition investigations completed within 12 months.	E.2.3 Confirmation that guidance has been published on the ACCC website for small to medium sized businesses to assist in understanding and responding to compulsory notices they may receive.	E3.3 Publication of the ACCC's approach to investigation of complaints, triage of matters and the compliance and enforcement priorities.	E4.3 An explanation of the streamlined approach to industry compliance with section 87B undertakings (reporting by exception reducing the regulatory burden including through amendments to the ACCC's templates).	E5.3 Summary of consultation with industry and other representatives in designing guidelines or ACCC policies (i.e. immunity policy, section 155 guide, Compliance & Enforcement Policy).	
	E1.4 At least 80 per cent of initial ACL investigations completed within three months.	E2.4 Summary of guides published on the ACCC website during the reporting year to assist businesses in complying with the Competition and Consumer Act 2010 and Australian Consumer Law.	E3.4 At least 80 per cent of competition enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy.			
	E1.5 At least 80 per cent of in-depth ACL investigations completed within 12 months.	E2.5 Summary of speeches made by ACCC Commissioners and staff to assist businesses in complying with the Competition and Consumer Act 2010 and Australian Consumer Law.	E3.5 At least 90 per cent of competition enforcement interventions are in the priority areas, or demonstrate the priority factors, outlined in the Compliance and Enforcement Policy.			
			E3.6 At least 60 per cent of ACL enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy.			
			E3.7 At least 90 per cent of ACL enforcement interventions are in the priority areas, or demonstrate the priority factors, outlined in the Compliance and Enforcement Policy.			

Mergers and Authorisation Review	M1.1 Clear guidance on Mergers' processes and expected timelines available on ACCC website.	M2.1 Confirmation that diagrams, outlining typical stages and indicative timeframes, have been published on the ACCC website for the following processes: <ul style="list-style-type: none"> • Informal merger reviews • Authorisations • Exclusive dealing notifications • Collective bargaining notification 	M3.1 Confirmation that mergers pre-assessment decisions are initially considered by a General Manager, then by the Mergers Commissioner.	M4.1 Confirmation that information only requested on an as-needed and matter-specific basis. There are no standing information requests.	M5.1 All performance measurement information committed to in the ACCC and AER Corporate Plan for this function is published in the ACCC Annual Report from 2015-16 onwards.	M6.1 Explanation of how participation with International Competition Network Mergers Working Group and Organisation for Economic Co-operation and Development has contributed to the improvement of the regulatory framework.
	M1.2 At least 80 per cent of merger matters considered that were finalised by pre-assessment (i.e. no public review required).	M2.2 Confirmation that all Public Register Entries detailing reasons for decision are published within five business days of decision for reviews where no Public Competition Assessment is published.	M3.2 Confirmation that the Mergers Guidelines, which set out policy and approach to merger assessment, are available on the ACCC website.	M4.2 Confirmation that information requests undergo a scaled approach, as set out in the Informal Merger Review Process Guidelines.	M5.2 Demonstrated responsiveness to issues raised by the Law Council of Australia and other stakeholders regarding the implementation of the mergers framework, as outlined in the Informal Merger Review Process Guidelines.	M6.2 Number of Law Council meetings attended.
	M1.3 At least 50 per cent of merger matters subject to Phase 1 only of public review that were finalised within 8 weeks (excluding time periods where information is outstanding).	M2.3 At least 70 per cent of Public Competition Assessments published within 30 business days of decision.		M4.3 Percentage of public reviews that had a section 155 notice issued.	M5.3 Public register contains details of all public merger reviews (including timeliness, ultimate decision, market definition and reason for decision).	M6.3 Explanation of objectives and content of addresses made by MARD senior staff to relevant fora.
	M1.4 At least 90 per cent of merger matters subject to Phase 2 of public review that were finalised within 20 weeks (excluding time periods where information is outstanding).	M2.4 Market concern letters detailing market feedback and preliminary ACCC analysis sent to merger parties for all merger matters that raise competition issues.		M4.4 Percentage of Authorisation Determinations with conditions including reporting or auditing obligations.	M5.4 Percentage of non-confidential section 87B undertakings published after being accepted.	
	M1.5 100 per cent of authorisation applications are assessed within statutory timeframe(s) (excluding time periods where information is outstanding).	M2.5 At least 70 per cent of market inquiries letters published within five business days of matter commencing for public merger reviews.			M5.5 Confirmation of consultation with industry stakeholders on development of guidelines, where relevant.	
	M1.6 100 per cent of notifications are assessed within statutory timeframes.	M2.6 At least 70 per cent of merger public review decisions accompanied by media release.				

	M1.7 Regular attendance by Adjudication staff at Franchising Consultative Committee and Small Business Consultative Committee to give stakeholders an opportunity to provide feedback on performance and processes.					
Consumer, Small Business and Product Safety	C1.1 Explanation of the process of market scanning the ACCC undertakes to identify its compliance priorities annually.	C2.1 Confirmation that diagrams for ACCC consumer, small business and product safety processes are published on the ACCC website, which include indicative timeframes for key stages of these processes.	C3.1 Product safety risk management policies and procedures are accessible to businesses.	C4.1 Percentage of surveillance and monitoring activity coordinated with ACL regulators.	C5.1 All performance measurement information committed to in the ACCC and AER Corporate Plan for this function is published in the ACCC Annual Report from 2015-16 onwards.	C6.1 Documented Small Business Engagement Strategy for use by ACCC staff.
	C1.2 Number of emerging Competition and Consumer Act market issues affecting consumers and small business that are identified, considered and advice developed.	C2.2 The ACCC has a published Compliance and Enforcement Policy on its website.	C3.2 Risk-based monitoring and surveillance priorities for CCA requirements, including product safety regulations, are published.	C4.2 Existence of MoUs with regulators with common stakeholders or regulated entities, including information sharing provisions where relevant, supported by regular liaison and discussion of matters of common interest to minimise regulatory duplication and gaps and to maximise consistency between regulators.	C5.2 Summary of how information has been exchanged between the ACCC and stakeholders through the Small Business Consultative Committee and Franchising Consultative Committee.	C6.2 Consultation protocols are published. Consultation papers include questions about costs to business of regulatory changes. Methods of consultation are continuously reviewed against best practice.
	C1.3 Documented program of review of the currency of business compliance resources.	C2.3 Percentage of business guidance resources tested with a representative sample of affected businesses before publication.	C3.3 Documented approach to compliance monitoring of undertakings is risk-based and adopts an exception reporting model.		C5.3 Public submissions from affected stakeholders and summary consultation surveys results about new or amended safety standards are published.	C6.3 High-level outcomes of meetings with Australasian Consumer Fraud Taskforce Private Partners - banks, insurance companies, money remitters, Neighbourhood Watch, ASIC, ACL regulators, police fraud squads.
	C1.4 Number of published reports on priority sectors about emerging issues affecting consumers.	C2.4 Number of new or revised business compliance resources (published guidance) to empower small business.	C3.4 At least 60 per cent business compliance projects that are in priority areas identified in the Compliance and Enforcement Policy.		C5.4 80 per cent of business compliance resources developed in consultation with business, stakeholder groups and peak bodies.	C6.4 Description of purpose of communications sent to the ACCC Small Business Information Network and ACCC Franchising Information Network.

	C1.5 Number of reviews of mandatory product safety standards completed.	C2.5 At least 80 per cent of respondents to customer satisfaction survey that are 'satisfied' or 'very satisfied' with Infocentre contact responses (phone line and webforms).	C3.5 Staff assessing contacts to ACCC are trained in use of Compliance & Enforcement Policy to identify matters for referral to an internal decision-making body (Under Assessment) for potential contravention investigation. Under Assessment meeting runs under documented protocols.			C6.5 Explanation of how attendance at relevant international forums has contributed to sharing best practice for product safety regulation and Competition and Consumer Act compliance.
	C1.6 At least 80 per cent of routine product safety business queries responded to within 7 days.	C2.6 At least 80 per cent of evaluations of responses to Infocentre contacts (phone line and webforms) that meet or exceed quality assurance methodology criteria.				
	C1.7 At least 60 per cent of moderately complex product safety queries from businesses that are resolved within 10 days (if ACCC view required) or 15 days (if conferring through multi-regulator model required).	C2.7 Number of small business Infocentre contacts served.				
		C2.8 Documented Infocentre standardised scripts and training.				
		C2.9 At least 75 per cent of positive responses received from businesses (via survey or webstats) about compliance guidance (written, online, videos etc.).				
		C2.10 Explanation of the small business education program (10 online modules designed to help small businesses learn more about their rights and obligations under the CCA).				
		C2.11 Confirmation of number of Small Business in Focus reports published.				

Infrastructure Regulation	I1.1 Confirmation that the Infrastructure Regulation Division has published a two-year planning document on the ACCC website that details planned activities and important milestones to assist businesses in their own planning.	I2.1 Confirmation there are diagrams for major regulatory processes published on the ACCC website, which include indicative timeframes for key stages of these processes.	I3.1 Confirmation that the Infrastructure Regulation Division has published on the ACCC website a documents that explain the conceptual framework for considering when new ACCC-administered regulation is imposed or existing ACCC-administered regulation is removed.	I4.1 Explanation of the process for establishing a Record Keeping Rule under section 151BU of the CCA. Further information on how the ACCC periodically reviews its RKR to ensure they are required and proportionate.	I5.1 All performance measurement information committed to in the ACCC and AER Corporate Plan for this function is published in the ACCC Annual Report from 2015-16 onwards.	I6.1 Description of how the Infrastructure Regulation Division has used industry forums to assist businesses to understand and provide feedback on potential changes to regulatory settings.
	I1.2 Confirmation the Infrastructure Regulation Division has published a document on the ACCC website at the end of the financial year that notes how many matter IRD had 'open' at the beginning of the year and had initiated over the course of the year. The document will also list the distribution of ages of matters left 'open' at the end of the year.	I2.2 Confirmation that all major regulatory determinations have been accompanied by a decision document that explains the reasoning for the decision.	I3.2 Confirmation the Infrastructure Regulation Division maintains a document on the ACCC website that categorises regulations by those that have (a) expiry dates or (b) sunset clauses. The document will also note any regulations that have neither, and when they were last reviewed.	I4.2 Examples of information sharing between the ACCC and Australian Communications and Media Authority.	I5.2 Confirmation that all major regulatory inquiries have included an opportunity for stakeholders to provide written submissions to the ACCC prior to a final decision being made.	I6.2 Summary of engagement with international organisations to learn from peer experiences and share best practices.
	I1.3 Explanation of how the following stakeholder forums have contributed to the ACCC's understanding of the operating environment of the businesses it regulates and emerging issues that affect the sector: - Utility Regulators Forum - Infrastructure Consultative Committee - Fuel Consultative Committee - Wholesale Telecommunications Consultative Forum		I3.3 Confirmation that all major regulatory determinations/decisions follow full consultation process during which businesses can make submissions regarding the level of regulation that reflects appropriate risk.	I4.3 Confirmation that monitoring reports have used existing available information where possible and information sought from external parties was limited to that necessary to undertake the task.	I5.3 Confirmation that IRD publishes public submissions to its regulatory inquiries on the ACCC website and addresses the views of stakeholders in draft and/or final decisions.	
	I1.4 List of monitoring reports that examine how specific infrastructure sectors are operating.		I3.4 Description of the regular interaction Infrastructure Regulation Division staff have with relevant regulated industry sectors.		I5.4 Confirmation that industry has been consulted on the preparation of any guidelines or policies, where relevant.	
	I1.5 Confirmation the ACCC held annual Regulatory Conference, with a short description of its theme and the key take outs from the conference for the ACCC.					

	I1.6 Percentage of regulatory decisions completed within statutory timeframes. A breakdown will be provided of how many of these decisions were subject to 'stop the clock' and timeframe extension provisions in the CCA.					
ACCC-wide evidence	A1.1 Summary of the Global Competition Review's annual ranking of the ACCC's performance, relative to other international competition authorities.	A2.1 Confirmation the ACCC has a media code of conduct.	A3.1 Confirmation the ACCC has published its Statement of expectations and Statement of intent on its website.	A4.1 The ACCC will report how many times it has used its compulsory information gathering powers, broken down by specific power, annually over the past five years. The ACCC will explain why there may be significant variation from trend in any particular year.	A5.1 Confirmation the ACCC has a dispute management policy published on its website.	A6.1 Confirmation the ACCC has documented procedures in place to facilitate the flow of information with Ministerial offices and relevant policy departments.
	A1.2 Explanation of how the ACCC uses five subject matter committees to streamline its decision-making.	A2.2 Confirmation the ACCC has released quarterly editions of <i>ACCCcount</i> , which comprehensively details the ACCC's activities for the relevant reporting period. Details of how <i>ACCCcount</i> is distributed to stakeholders to be included.				