

Managing Regulator Performance in the Health Portfolio

Tabled 18 March 2015

The Auditor-General provides assurance to Parliament on the accountability and performance of the Victorian Public Sector. The Auditor-General conducts financial audits and performance audits, and reports on the results of these audits to Parliament.

On 18 March 2015, the Auditor-General tabled his performance audit report, *Managing Regulator Performance in the Health Portfolio*.

Overview

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Regulation is meant to protect, but if done poorly can be costly and detrimental to productivity and growth.

How are health regulators performing?

We found that:

- regulators are some distance away from better practice
- the Department of Health & Human Services (DHHS) has not helped address weaknesses
- the Department of Treasury and Finance (DTF) has not effectively helped regulators apply government policy.

Regulators need to improve their performance by applying risk-based regulation, but need the effective support and oversight of DHHS and DTF.

We might not always see them, but regulations—the rules government imposes on businesses and professionals —affect us all.

Regulations cover driving licences to drinking water, builders to pharmacists and aim to protect the community from the potential harm that results from business activities.

This audit focuses on regulators in the health portfolio and this slide provides an overview of our findings.

While diligent in applying regulations on a day-to-day basis we found the sample of regulators we looked at are not near the type of better practice where they can demonstrate that they are efficiently achieving the intended benefits of regulation.

Given their size and resource base, they need help to do this but agencies responsible for this supporting them—the Department of Health and Human Services (DHHS) and the Department of Treasury and Finance (DTF)—have not done this effectively.

There are significant performance weaknesses that need to be addressed and the remaining slides provide some more detail around these findings.

Background

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Regulation—a critical tool but also a balancing act.

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Victoria has 58 diverse regulators—with 14 in health.

Past audits show significant weaknesses:

- clarity of outcomes and how to measure these
- absence of risk-based approaches to regulation
- poor coordination between regulators and ineffective oversight.

Regulation is a careful balancing act—regulators need to understand what they are trying to achieve for the community and balance these impacts against the costs to government and the inevitable burden they impose on those that are regulated.

The diversity of Victoria's 58 regulators further heightens the challenges in consistently raising regulator quality and effectiveness.

Our audits over the past five years show some consistent and significant weaknesses.

We highlight the absence of a risk-based approach.

A risk-based framework, when properly applied, is a good way of prioritising the use of limited resources to achieve the intended outcomes of regulation while taking account of the costs and burden imposed on businesses.

Background – *continued*

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Government policy:

- Reduce burden, improve efficiency and effectiveness—
Statements of Expectations (SOE):
 - **Stage 1**—five big regulators.
 - Reduce red tape by 25%.
 - **Stage 2**—all regulators.
 - Improve regulatory outcomes including risk-based approaches.

Government's consistent policy over several years has aimed to improve outcomes and efficiency while reducing the burden imposed on the business community.

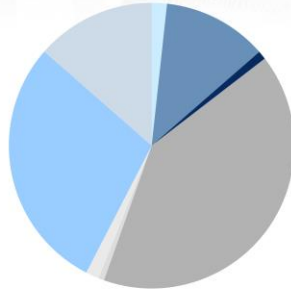
Of particular interest in this audit is the Stage 2 Statements of Expectations, or SOEs, which required all regulators to respond to ministers' expectation about how they would improve performance over a two-year period.

Regulator characteristics

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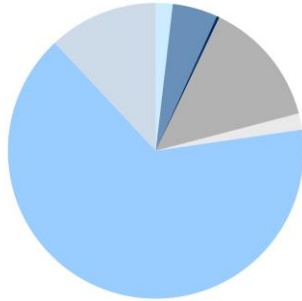
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Staff



- Education
- Environment and Primary Industries
- Health
- Justice
- Premier and Cabinet
- Development, Business and Innovation
- Transport
- Treasury and Finance

Licensed parties



We focused on the health portfolio and these pie charts show that health regulators by many measures, such as staff and licensed parties, are extremely small players.

But these are not the only measure of importance because the things they regulate, for example drugs and poisons, drinking water, radiation safety, food safety and pharmacies are areas where it is critical that the government and community are protected.

The audit

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Examined how well responsible agencies had contributed to improved performance in terms of:

Regulators

- Efficiently achieving outcomes and reducing red tape.
- Pest Control, Radiation Safety, Drugs and Poisons Regulation—embedded.
- Victorian Pharmacy Authority (VPA)—statutory authority.

DHHS

- Overseeing and supporting portfolio regulators.

DTF

- Adequately informing government's policies and programs and effectively supporting their implementation.

So for this audit we decided to examine the health area, where our coverage has not been as extensive because of the smaller scale of the 14 regulators.

We selected one statutory regulator, the Victorian Pharmacy Authority (or VPA), and three embedded regulators for detailed examination.

We also examined the oversight and policy leadership and support roles of DHHS and DTF.

Sampled health regulators

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We found:

- operational focus on day-to-day application
- examples of good practice at each regulator
- lack of structured approach undermined performance.

The main weaknesses:

- linking objectives to outcomes
- stakeholder engagement
- performance measuring and reporting.

Health regulators need to develop and implement plans to address clear weaknesses and gaps.

We found that the sampled health regulators did a good day-to-day job and we saw examples of good practice. For example:

- VPA and Radiation Safety are collaborating to manage the risks of drugs that contain radioactive material by developing and trialling a joint inspection protocol.
- Radiation Safety is trialling a process for more effectively assessing and managing risks.

However, the lack of a structured and comprehensive approach to risk management undermined performance and you can see on the slide the areas of clear weakness.

Health regulators need to address these weaknesses but as small organisations they face challenges in achieving this so DHHS and DTF need to support them.

Performance of sampled health regulators

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	Drugs and Poisons Regulation	Radiation Safety	Pest control	Victorian Pharmacy Authority
Establishes context	~	~	~	✓
• Clear objectives	✓	✓	✓	✓
• Linked to outcomes	X	X	X	✓
Understands costs, benefits and burdens	~	~	~	~
Comprehensive risk-based prioritisation	X	X	X	~
Stakeholder engagement	X	X	X	~
Collaboration between regulators	~	~	~	~
Performance measurement/reporting	X	X	X	X

Note: ✓ = met X = not met ~ = partly met

This slide shows how the health regulators performed against the requirements for an effective risk-based approach to regulation.

You can see that in all but one category most regulators did not meet these criteria.

Departmental oversight

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Ineffective oversight and support for health regulators:

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- absence of a structured approach to understand and support regulators' performance
- structural deficiencies reflected in the low quality of SOEs.

Positively: DHHS recognises the need for change and has restructured as a first step towards doing this.

DHHS needs to follow through on its intentions and implement a strategy to effectively oversight regulators.

It has been clear from the early planning stage that DHHS has not effectively supported and overseen health regulators.

We take as positive first steps that DHHS is recognising this need and changing its structure to more clearly focus attention on regulators.

DHHS now has to follow through on its intentions by committing to the implementation of a strategy to effectively support and oversee its regulators.

DTF policy development and oversight

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DTF approach has not helped address health regulators performance gaps:

- advice to government did not adequately address the risks
- support and review not appropriately tailored for regulators' capabilities and maturities
- lack of clarity about how outcomes would be evaluated.

DTF needs to improve its advice to government on the risks, be better prepared to measure performance and provide tailored support and review to regulators.

The way DTF implements whole-of-government policies to raise regulator performance needs to improve because:

- DTF did not adequately advise the government on the risks to success of a truncated timeline for implementation and adopting the same approach to regulators with widely varying capabilities and resources
- Once it issued the guidelines support and review were reactive rather than proactively applied and this was not sufficient for smaller, less mature regulators
- It had not adequately defined outcomes and how these would be measured

DTF needs to address these areas.

Recommendations

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	Accept
1. That all health portfolio regulators develop and implement detailed plans to address the weaknesses identified in this audit by: <ul style="list-style-type: none"> • clearly defining the regulatory outcomes they are seeking to achieve • establishing and applying appropriate stakeholder engagement strategies • improving their understanding of activity-based costs and benefits and the burden imposed on the entities they regulate • developing robust performance measurement systems to underpin monitoring and continuous improvement. 	✓
2. That DHHS develop and implement a detailed strategy for how it oversees, supports and monitors the performance of health portfolio regulators.	✓

The following two slides list our five recommendations.

The recommendations are designed to improve health portfolio regulators' performance, and the oversight and support of DHHS and DTF.

Recommendations – *continued*

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	Accept
That DTF:	
3. improves the quality and comprehensiveness of its advice to government about the risks that threaten the success of regulatory reform programs	✓
4. develops an appropriate evaluation framework for future regulatory reform programs, before they are implemented, that clearly describes how performance will be assessed and who is responsible for doing this	✓
5. assesses and incorporates in regulatory reform programs the level of support required for successful implementation and aligns the level of support offered with the characteristics and capabilities of different regulators.	✓

Agencies have accepted all the recommendations.

Key messages about what agencies need to do

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Health regulators need to develop and implement plans to address clear weaknesses and gaps.

DHHS needs to follow through on its intentions and implement a strategy to effectively oversight regulators.

DTF needs to improve its advice to government on the risks, be better prepared to measure performance and provide tailored support and review to regulators.

To recap, our key messages are that:

- Health regulators need to develop and implement plans to address clear weaknesses and gaps.
- DHHS needs to follow through on its intentions and implement a strategy to effectively oversight regulators. And
- DTF needs to improve its advice to government on the risks, be better prepared to measure performance and provide tailored support and review to regulators.

Concluding statement

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Regulators need to improve their performance by applying risk-based regulation and need the effective support and oversight of DHHS and DTF to do this.

Our concluding statement is that regulators need to improve their performance by applying risk-based regulation but need help to do this from the portfolio department and DTF.

Relevant reports

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- *Recreational Maritime Safety (2013–14)*
- *Effectiveness of Compliance Activities: Departments of Primary Industries and Sustainability and Environment (2012–13).*
- *Consumer Protection (2012–13).*
- *Managing Contaminated Sites (2011–12).*
- *Compliance with Building Permits (2011–12).*

Our past relevant audits in this area include the audits listed on this slide.

Contact details

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For further information on this presentation please contact:

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