

# 2019-20 Self- Assessment under the Regulator Performance Framework

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## Introduction

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

The Framework encourages regulators to regulate with the minimum impact necessary. It is focused on the administration, monitoring and enforcement of regulation, rather than policy setting.

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

The Framework requires DVA to self-assess and report annually on the outcomes of our efforts to administer the Regulations fairly, effectively and efficiently. This report must then be externally validated by an appropriate stakeholder consultation mechanism. This process is also a useful tool for DVA to identify opportunities for improvements that could reduce compliance burden.

In 2015, DVA developed a self-assessment methodology for the six KPIs and associated measures, and undertook stakeholder consultation on this by engaging with the ex-service community. The then-Minister for Veterans' Affairs, Senator the Hon Michael Ronaldson, agreed the methodology and the use of the Ex-Service Organisation Round Table (ESORT) as the stakeholder mechanism for external validation of DVA's self-assessment results.

The KPIs, measures, self-assessment methodology, and output/activity-based metrics are published on DVA's website, and are contained within this report. The evidence for this reporting period, 1 July 2019 to 30 June 2020, is also in this report. This evidence identifies the extent to which DVA is achieving good regulatory performance and highlights areas for improvement.

DVA is confident that it is complying with the Framework, while identifying areas for continuous improvement.

## Use of the Word ‘Anzac’ Regulations

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

#### Measures

1. DVA takes actions to minimise the potential for unintended negative impacts of regulatory activities on regulated entities or affected supplier industries and supply chains.
2. DVA implements continuous improvement strategies to reduce the costs of compliance for those it regulates.

#### Self-assessment methodology

1. Logging all applications, queries, complaints and other feedback regarding the protection of the word ‘Anzac’.

#### Output/activity-based evidence

1. Documented responsiveness to feedback from regulated entities, including feedback from existing complaint mechanisms and surveys of regulated entities.
2. Environment scanning is undertaken regularly and at a minimum, on an annual basis.
3. Demonstrated engagement with relevant international organisations to learn from peer experiences and share better practices.

#### Evidence/results against 2019-20 performance

##### *Recording of applicant information and responsiveness*

DVA, as the delegate for the Minister for Veterans’ Affairs (the Minister), assesses applications and issues permits to use the word ‘Anzac’. DVA’s application process is simple and it is free to apply for a permit. Permits last for varying lengths of time, depending on the purpose of the permitted activity/product, but can be made to last a number of years, reducing the burden on regulated entities to reapply. Once a permit has been issued, DVA does not require any regular follow-up reporting from regulated entities.

All applications, complaints and queries regarding the protection of the word ‘Anzac’ were logged over the reporting period. During this time, 107 applications were received (a 54 percent increase from 2018-19), of which 86 were approved, seven were declined, two were withdrawn and 12 did not require approval under the Regulations.

Permission is also required by the Minister or delegate to import goods into Australia that bear the word ‘Anzac’, under the *Customs (Prohibited Imports) Regulations 1956 (Cth)*. If an applicant requests permission to import ‘Anzac’ goods, it is considered on the same basis as any other application to use the word ‘Anzac’. Of the 86 approved applications during this reporting period, 11 included permission to import ‘Anzac’ goods.

In July 2019, DVA implemented enhanced record keeping procedures through recording all client interactions and inquiries (separate to formal applications), providing a more accurate assessment of the caseload. During this reporting period, 40 simple inquiries and 37 more complex inquiries were recorded.

In the reporting period, no feedback was received from regulated entities about the regulations. DVA also responds to all enquiries or complaints from other parties. Public reports/‘tip offs’ about suspected misuse of the word ‘Anzac’ declined slightly from 96 complaints in the 2018-19 reporting

period, to 86 complaints in this reporting period. The most common areas of complaint were: the use of the word 'Anzac' in personal social media handles; for Anzac biscuits (products using alternative ingredients, in recipes and social media blogs); and general merchandise.

DVA is in the process of updating the *Use of the Word 'Anzac' Guidelines* (the Guidelines) associated with the Regulations to provide further clarity around these topics. The updated Guidelines will be published on the DVA website once finalised, and will contain further guidance on use of the word 'Anzac':

- In .au domain names;
- In social media posts for personal use including social media 'handles';
- For Anzac biscuits that cater for specific dietary requirements;
- For Anzac biscuit recipes in broader publications or online media posts/blogs; and
- In publications, including electronic publications.

#### *Environment scanning*

DVA also proactively seeks to identify emerging issues through ongoing environment scanning. First reported in the 2018-2019 self-assessment report, use of the word 'Anzac' or words or acronyms resembling 'Anzac' in .au domain names continues to present challenges to clients when they seek to renew or transfer their domain names. While DVA has been proactive in contacting and informing clients about having permits to use the word 'Anzac' in domain names, many clients fail to take the necessary steps to ensure renewal of their domain name registration prior to its expiry date. In some instances, this has led to an interruption in service to a client's domain name and associated website. While domain name renewal is the responsibility of businesses and organisations, DVA continues to work closely with the .au Domain Administration (.auDA), the Australian Government endorsed organisation with policy responsibility for domain names in Australia, to minimise any impacts. DVA often seeks .auDA's assistance, on behalf of regulated entities, to facilitate the renewal or transfer of domain names that have appropriate permits in place.

The COVID-19 pandemic significantly impacted commemorative activities and events that traditionally occur on Anzac Day, resulting in Australian communities commemorating in unique and personal ways (such as dawn driveway vigils). To aid these initiatives, a number of small businesses began marketing merchandise such as candles and garbage bin stickers featuring the word 'Anzac' (both online and through shopfronts). While admirable in their intent to commemorate Australia's service personnel, many of these businesses were using the word 'Anzac' without prior approval. Some of the businesses supported ex-service organisations with donations and some were purely commercial. Garbage bin stickers produced the most complaints from the Australian public over the Anzac Day period, with many complainants stating that they considered placing the word 'Anzac' on a garbage bin disrespectful. DVA wrote to a number of these businesses advising that the stickers did not meet the Australian public's expectations of appropriate use of the word 'Anzac' and to cease production and marketing immediately.

As the rules associated with the word 'Anzac' are not widely known, some businesses and members of the public misuse the word 'Anzac' unintentionally. DVA continues to engage with the public using a range of communication products to raise awareness.

In addition to this, in January 2020 the Minister wrote to the following peak industry and sporting bodies, drawing their attention to the rules around using the word 'Anzac' and requesting they disseminate this information to their members:

- real estate
- retail and services
- advertising and public relations
- small business groups
- Australian Football League
- Australian Rugby Union
- Netball Australia
- National Basketball League
- Football Federation Australia
- Basketball Australia
- Volleyball Australia
- Confederation of Australian Motor Sport
- Thoroughbred racing clubs.

#### *Engagement with international peers*

During this reporting period DVA also reached out to officers in New Zealand at Manatū Taonga, Ministry for Culture and Heritage to explore any shared experiences around managing use of the word 'Anzac'. The issues New Zealand faces around regulation are similar, although they have less discretion in the ability to issue permits for use of 'Anzac' compared with Australia. We will continue to exchange information with New Zealand colleagues, in particular around the emerging issue of the registration of domain names and the policy for protected words in New Zealand.

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

### Measures

1. DVA provides guidance and information that is up to date, clear, accessible and concise through media appropriate to the target audience.
2. DVA's decisions and advice are provided in a timely manner, clearly articulating expectations and the underlying reasons for decisions.
3. DVA's advice is consistent and supports predictable outcomes.

### Self-assessment methodology

1. Updated *Use of the word 'Anzac' Guidelines*, outlining rules around use of the word 'Anzac', how to apply, procedural fairness, and time frames are published on the DVA website.
2. A staff handbook comprising procedural information and how to manage the use of the word 'Anzac' caseload is currently being updated to reflect new Guidelines available to DVA staff.
3. Templates and standard words when communicating with regulated entities are already in place.

### Output/activity-based evidence

1. Percentage of guidance materials that complies with government accessibility guidelines.
2. Maximum, minimum and average time for decision.
3. Published timeframes for decision making.
4. Percentage of decisions accompanied by statement of reasons and advice about relevant review or appeal mechanisms, where appropriate.
5. Approved procedures for communications (including issue-specific scripts if relevant) are available for staff use when interacting with regulated entities.
6. Advice provided to regulated entities is consistent with communication policies.

### Evidence/results against 2019–20 performance

#### *Accessibility*

Guidelines setting out the rules governing the use of the word 'Anzac' are available on the DVA website. These are written in plain English, provide advice on use of the word and help applicants interpret the Regulations. DVA continually seeks to improve the accessibility of the Guidelines through ensuring that any updates on the DVA website increasingly comply with the government accessibility guidelines. To make this report more accessible to screen readers, this year we have removed tables that were in the appendices in previous years.

#### *Decision making processes and advice*

The publication of the Guidelines on the DVA website provides readily accessible information for applicants and eliminates a significant workload associated with answering general enquiries on use of the word 'Anzac'.

The Guidelines have codified several procedures associated with use of the word 'Anzac' and assist in meeting the requirements of KPI 2. These include clarifying various exemptions for Ministerial approval under the Regulations such as:

- When using the word 'Anzac' in a personal manner, such as the naming of a child or pet or in a personal social media post; and

- When producing a publication (including electronic publications), on the condition that the party producing the publication is not a professional writer, the project is not commercial and the content of the publication is historical, commemorative or educative in nature.

DVA records the time between an applicant's first contact with DVA and a response. Advice on the DVA website notes that all applications are processed as quickly as possible, but applicants should allow up to four weeks to be notified of an outcome, with this time frame potentially pushing out around the Anzac Day period. Most applications are processed in under four weeks, excluding a few exceptions where more information is sought from the applicant or during peak times around Anzac Day. No feedback has been recorded regarding the timeliness of decisions.

DVA has established internal processes to advise applicants when an adverse recommendation (i.e. not permitting use of 'Anzac') is likely to be made. In these instances DVA also seeks any further supporting information from the applicant if available, before finalising a recommendation to the delegate. However this process is not in the current Guidelines and as a result of the Guidelines update, this process will now be codified.

#### *Communications*

DVA uses templates for communications with regulated entities, such as standard letters and permits. During this reporting year, an application form for approval to use the word was introduced. This has significantly reduced the need for follow-up inquiries by DVA to the applicant (previously people applied via email or letter). The form captures relevant information that had often been previously omitted from applications. Verbal feedback has been received from regulated entities that the new form is easy to use and allows them to better target the information sought for a permit application.

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

#### Measures

1. DVA applies a risk-based, proportionate approach to compliance obligations, engagement and regulatory enforcement actions.
2. DVA's preferred approach to regulatory risk is regularly reassessed. Strategies, activities and enforcement actions are amended to reflect changing priorities that result from new and evolving regulatory threats, without diminishing regulatory certainty or impact.
3. DVA recognises the compliance record of regulated entities, including using earned autonomy where this is appropriate. All available and relevant data on compliance, including evidence of relevant external verification is considered.

#### Self-assessment methodology

1. The use of the word 'Anzac' is considered a low risk caseload and decisions are based on established precedent, and the application of policy Guidelines.
2. Enforcement strategies are documented in the Guidelines.
3. The number of enforcement actions are recorded and tracked.
4. DVA grants a level of autonomy to regulated entities who have demonstrated a high level of compliance and have been assessed as low risk. This is done through granting permits for extended periods of time or in some cases, open ended permits.

#### Output/activity-based evidence

1. Risk management policies and procedures are available to regulator staff and the public.
2. Compliance and enforcement strategies, consistent with agreed risk management policies are published.
3. Documented enforcement strategy which allows for the compliance records of regulated entities to be considered in determining regulatory actions.
4. Documented enforcement strategy includes options for graduated compliance actions consistent with regulators' powers.

#### Evidence/Results against 2019–20 performance

DVA's risk management approach and policies are readily available to regulation staff. Risk associated with the Regulations is low. All decisions on applications to use the word 'Anzac' are made by the Minister, or by a senior officer of DVA to whom the Minister has delegated the authority. Recommendations regarding decisions are based on well-established precedent, and if required, legal advice is sought. As a result, there are limited risk management actions for applications to use the word 'Anzac'.

DVA takes the minimum compliance approach possible in every case. The Guidelines outline penalties that are associated with misusing the word 'Anzac'. During the reporting period, DVA took 28 compliance actions, which involved DVA staff contacting offending parties, noting the rules around the word 'Anzac' and the penalties for misuse. In all but a few cases, offending parties were quick to note they had been unaware of the Regulations and remove the offending content.

No legal action was required during the reporting period. Indeed, departmental records show that prosecution action to enforce the Regulations has not previously been required.



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

### Measures

1. DVA utilises existing information to limit the reliance on requests from regulated entities and shares the information among other regulators, where possible.
2. DVA bases monitoring and inspection approaches on risk and, where possible, takes into account the circumstance and operational needs of the regulated entity.

### Self-assessment methodology

1. Information will be shared with similar regulators, such as the Army Brand Manager.
2. Information collected during this reporting period was used to update the Use of the Word 'Anzac' Guidelines.
3. Where appropriate, earned autonomy approaches will be considered for organisations that make use of the word 'Anzac' regularly.

### Output/activity-based metric

1. Information shared and received among regulators.
2. Evidence of collected information being acted upon, stored and re-used.
3. Regular review and assessment of agreed monitoring and compliance strategies, including use of earned autonomy approaches.

### Evidence/results against 2019 – 20 performance

#### *Information usage and sharing*

DVA has kept detailed records of all applications to use the word 'Anzac' since late 2013. All 'tip offs'/public reports received and enforcement actions taken in relation to the Regulations are recorded. All new applications and 'tip offs' are checked against the existing records to minimise requests for information.

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

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

#### *Review of compliance and earned autonomy*

DVA provides a degree of autonomy through a broader or longer permit to organisations to use the word 'Anzac' where they have demonstrated that their usage is strictly in accordance with the Regulations. For example, the RSL has broad permission to use the word 'Anzac' in connection with the 'Anzac Appeal', an annual fundraising event. This allows the RSL to handle standard Anzac Appeal business without needing to seek permission to use the word 'Anzac' for any new promotions or merchandise. However under the *Customs (Prohibited Imports) Regulations 1956*, the RSL still requires Ministerial authority to import goods on an item-specific basis.

DVA has also granted a level of autonomy to those organisations whose domain names include the word 'Anzac' in the context of their geographic location on a street, road, avenue, or similar that is named 'Anzac'. For example, as a hypothetical, a restaurant located on Anzac Avenue may request approval to use the word 'Anzac' in its website and domain name

*'www.restaurantanzacparade.com.au'*. In these scenarios, DVA may grant a long term permit, as use of the word in this case is purely geographical and not for a commemorative purpose.

During this assessment period, the use of the word 'Anzac' in domain names, coupled with the level of reported suspected misuse of 'Anzac' on social media, for Anzac biscuits and recipes, and garbage bin stickers, confirmed the enduring, strong community sentiment around 'Anzac'. DVA closely examines the risks of granting autonomy to organisations, balancing the needs of regulated entities and regulator obligations with stakeholder and community expectations. DVA will continue to monitor any organisation granted broad permission to use the word 'Anzac' on an ongoing basis.

## KPI 5: Regulators are open and transparent in their dealings with regulated entities

### Measures

1. DVA's risk-based framework is publicly available in a format which is clear, understandable and accessible.
2. DVA is open and responsive to requests from regulated entities regarding the operation of the regulatory framework, and approaches implemented by regulators.
3. DVA's performance measurement results are published in a timely manner to ensure accountability to the public.

### Self-assessment methodology

1. The Use of the Word 'Anzac' Guidelines contain information on DVA's enforcement strategy and risk approach.
2. Information on responses and the time taken to respond is collected.
3. The Guidelines include information for the public. When received, feedback will be used to inform any updates deemed necessary to the Guidelines.

### Output/activity-based metric

1. Enforcement strategy and risk approach are published.
2. Performance measurement results are published.
3. Number of responses to requests from regulated entities provided within specified timeframes.
4. Advice and guidance is widely available to stakeholders, with feedback mechanisms in place to support and inform continuous improvement.

### Evidence/results against 2019–20 performance

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

The updated Guidelines will formalise information regarding exercising procedural fairness to an applicant when DVA make a recommendation not to grant permission to use the word 'Anzac'. The current practice is that DVA contacts the applicant and provides them with the reasons for a negative recommendation. The applicant is given the opportunity to respond and provide additional information in support of their application, for DVA to further consider prior to submitting the recommendation to the Minister or delegate for decision. While DVA already undertakes this process, it has not previously been documented in the Guidelines.

DVA has not received any direct feedback about the Guidelines, however based on the improved quality of applications received by DVA in this reporting period, the Guidelines and the recently introduced application form are of assistance to regulated entities.

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

### Measures

1. DVA establishes cooperative and collaborative relationships with stakeholders to promote trust and improve the efficiency and effectiveness of the regulatory framework.
2. DVA regularly shares feedback from stakeholders and performance information (including from inspections) with policy departments to improve the operation of the regulatory framework and administrative processes.

### Self-assessment methodology

1. Regulated entities are able to provide feedback.
2. A handbook outlining internal processes for use of the word 'Anzac', including standard words and templates is available to DVA staff.
3. Based on feedback from several stakeholders, an application form for approval to use the word 'Anzac' was developed and implemented during this reporting period and appears to have been widely accepted. This has reduced the amount of follow up contact between DVA and the client to seek further information.

### Output/activity-based metric

1. Feedback mechanisms are available.
2. Documented procedures are in place to facilitate the flow of information between the regulator and policy departments.

### Evidence/results against 2019-20 performance

#### *Feedback mechanisms*

DVA has whole-of-agency public feedback processes. In addition, there is a dedicated mail box for the 'Anzac' Regulations, which is publically advertised online and in the Guidelines. Further feedback is also sometimes received via correspondence to the Minister for Veterans' Affairs.

#### *Information flow between agencies*

DVA is both the regulator and policy agency. However we collaborate with other agencies across the Commonwealth on work that relates to our regulation efforts. For example, we engage with the Australian Border Force (ABF)/Department of Home Affairs in relation to the Border Permits Review (BPR). The BPR aims to remove barriers and reduce regulatory burden for trade.

DVA continues to work closely with the .auDA to ensure that changes in how .auDA applies domain name policy on protected words align with and supports DVA policies, and does not impose overly onerous processes to DVA-regulated entities.

As part of DVA's continuous efforts to improve regulation, over 2021-22 we will review the measures and self-assessment methodology used in this Framework reporting process and consider whether adjustments should be considered for future reports.

## Appendix A: Summary of feedback from consultation

Ex-Service Organisation	Feedback
Air Force Association	Nil response.
Australian Peacekeeper and Peacemaker Veterans' Association	Nil response.
Australian Special Air Service Association	Nil response.
Defence Families Australia	Nil response.
Defence Force Welfare Association	Nil response.
Defence Reserves Association (DRA)	The DRA support the actions taken by DVA against each of the six KPIs.
Legacy Australia Inc.	The DVA Self-Assessment is detailed and the system appears to be working well. The introduction of an application form this reporting year will help shorten application approval wait times, currently not more than 4 weeks. DVA will shortly issue updated guidelines so this will also help the process.
Naval Association of Australia	Nil response.
Partners of Veterans Association of Australia	Nil response.
Returned and Services League of Australia	Nil response.
The Royal Australian Regiment Corporation	Nil response.
TPI Federation Australia	Nil response.
Vietnam Veterans Association of Australia	Response received, no comment.
Vietnam Veterans Federation of Australia	The Federation is happy with DVA's overall performance on the use of the Word 'Anzac'. We are confident that DVA will continue to undertake its regulatory role to protect the inappropriate/misuse of the word 'Anzac', which is so dear to the hearts of Veterans and their families, and to deal with and take the appropriate action upon those who are not complying with the <i>Protection of the Word 'Anzac' Regulations 1921</i> .
War Widows' Guild of Australia	Nil response.