

# 2020-21 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, 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 and are the Department of Veterans' Affairs' only regulatory activity. A very minor part of the Department of Veterans' Affairs' business, the Regulations affect a small number of organisations and individuals each year.

The Framework requires the Department of Veterans' Affairs 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 the Department of Veterans' Affairs to identify opportunities for improvements that could reduce compliance burden.

In 2015, the Department of Veterans' Affairs developed a self-assessment methodology for the six Key Performance Indicators 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 as the stakeholder mechanism for external validation of the Department of Veterans' Affairs' self-assessment results.

The Key Performance Indicators, measures, self-assessment methodology, and output/activity-based metrics are published on the Department of Veterans' Affairs' website, and are contained within this report. The evidence for this reporting period, 1 July 2020 to 30 June 2021, is also in this report. This evidence identifies the extent to which the Department of Veterans' Affairs is achieving good regulatory performance and highlights areas for improvement.

The Department of Veterans' Affairs is confident that it is complying with the Framework, while identifying areas for continuous improvement.

The 2020-21 assessment report will be the last report produced under the Regulator Performance Framework. On 1 July 2021 a new reporting framework, the Regulator Performance Guide for regulators, was introduced.

Department of Veterans' Affairs will continue to report annually on the outcomes of our efforts to manage the Regulations and will develop the Regulator Performance Guide reporting model over the 2021-22 period, with a view to publish the report in late 2022.

## Use of the Word ‘Anzac’ Regulations

### Key Performance Indicator 1: Regulators do not unnecessarily impede the efficient operation of regulated entities

#### Measures

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

#### Self-assessment methodology

1. Analysing all logged 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 2020-21 performance

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

The Department of Veterans’ Affairs, as the delegate for the Minister for Veterans’ Affairs (the Minister), assesses applications and issues permits to use the word ‘Anzac’. The Department of Veterans’ Affairs’ 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, the Department of Veterans’ Affairs 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, 76 applications were received (a 26 percent decrease from 2019-20), of which 48 were approved, two were declined, three were withdrawn and 23 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 48 approved applications during this reporting period, five included permission to import ‘Anzac’ goods. Additionally 69 simple inquiries and 25 more complex inquiries were recorded during this reporting period.

In the reporting period, no feedback was received from regulated entities about the regulations. The Department of Veterans’ Affairs also responds to all enquiries or complaints from other parties. Public reports/tip offs about suspected misuse of the word ‘Anzac’ declined slightly from 86 complaints in the 2019-20 reporting period, to 73 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 in recipes and social media blogs; and in general merchandise.

In October 2020 the Department of Veterans' Affairs updated the *Use of the Word 'Anzac' Guidelines* (the Guidelines) associated with the Regulations, providing clarity around these topics. The updated Guidelines were published on the Department of Veterans' Affairs' website, and contained 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*

The Department of Veterans' Affairs 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 has been challenging to clients when they seek to renew or transfer their domain names. While domain name renewals are the responsibility of businesses and organisations, Department of Veterans' Affairs continues to work closely with the .au Domain Administration (.auDA), the Australian Government organisation with policy responsibility for domain names in Australia, to minimise any impacts.

The number of client inquiries or requested assistance from the Department of Veterans' Affairs on behalf of regulated entities to help with renewing or transferring domain names has reduced significantly from previous years. This reduction may be due in part to the additional information around domain names included in the updated Guidelines.

The coronavirus disease of 2019 pandemic continues to impact commemorative activities and events that traditionally occur on Anzac Day, resulting in many Australian communities commemorating in unique and personal ways (such as dawn driveway vigils). Small businesses again marketed Anzac Day themed merchandise such as candles, stickers and window decals during the Anzac Day 2021 period. A small number of these businesses were previously the subject of complaints and informal warnings from the Department of Veterans' Affairs for not having prior approval to use the word 'Anzac', however in 2021 most of those businesses applied for and received approval to use the word.

Pleasingly, in 2021 the Department of Veterans' Affairs did not receive any complaints about the marketing of Anzac Day-themed garbage bin stickers, which were the source of many complaints in 2020.

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

In addition to this, in February 2021 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 has not had any interactions with our New Zealand counterparts at Manatū Taonga, Ministry for Culture and Heritage, however the Department of Veterans' Affairs continues to monitor their website for any policy changes for protected words in New Zealand.

## Key Performance Indicator 2: Communications with regulated entities are clear, targeted and effective

### Measures

1. The Department of Veterans' Affairs provides guidance and information that is up to date, clear, accessible and concise through media appropriate to the target audience.
2. The Department of Veterans' Affairs' decisions and advice are provided in a timely manner, clearly articulating expectations and the underlying reasons for decisions.
3. The Department of Veterans' Affairs' 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 Department of Veterans' Affairs' website.
2. A staff handbook comprising procedural information and how to manage the use of the word 'Anzac' caseload (updated to reflect new Guidelines) used by the Department of Veterans' Affairs staff.
3. Templates and standard words when communicating with regulated entities are in place and used.

### 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 2020-21 performance

#### *Accessibility*

Guidelines setting out the rules governing the use of the word 'Anzac' are available on the Department of Veterans' Affairs website. These are written in plain English, provide advice on use of the word and help applicants interpret the Regulations. The Department of Veterans' Affairs continually seeks to improve the accessibility of the Guidelines and any updates increasingly comply with the government accessibility requirements.

#### *Decision making processes and advice*

The Guidelines on the Department of Veterans' Affairs website provide upfront 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 Key Performance Indicator 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.

The Department of Veterans' Affairs records the time between an applicant's first contact with the Department of Veterans' Affairs and a response. Advice on the Department of Veterans' Affairs 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 timeframe 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.

The Department of Veterans' Affairs has established internal processes advising applicants when an adverse recommendation (i.e. not permitting use of 'Anzac') is likely to be made. In these instances the Department of Veterans' Affairs also seeks any further supporting information from the applicant if available, before finalising a recommendation to the delegate. This process has been codified in the recently updated Guidelines.

#### *Communications*

The Department of Veterans' Affairs uses templates for communications with regulated entities, such as standard letters and permits. The introduction in 2019 of an application form for approval to use the word has significantly reduced the need for follow-up inquiries by the Department of Veterans' Affairs to the applicant (previously people applied via email or letter).

## Key Performance Indicator 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed

### Measures

1. The Department of Veterans' Affairs applies a risk-based, proportionate approach to compliance obligations, engagement and regulatory enforcement actions.
2. The Department of Veterans' Affairs 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. The Department of Veterans' Affairs 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 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 tracked.
4. The Department of Veterans' Affairs grants a level of autonomy to regulated entities who have demonstrated a high level of compliance and considered low risk. This is done through granting permits for lengthy 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. A documented enforcement strategy, which allows for the compliance records of regulated entities, is available to be considered in determining regulatory actions.
4. Documented enforcement strategy includes options for graduated compliance actions, consistent with regulators' powers.

### Evidence/Results against 2020-21 performance

The Department of Veterans' Affairs risk management approach and policies are 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 the Department of Veterans' Affairs 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 that need to be taken around applications to use the word 'Anzac'.

The Department of Veterans' Affairs 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, the Department of Veterans' Affairs took 12 compliance actions, which involved Department of Veterans' Affairs 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 occurred.



## Key Performance Indicator 4: Compliance and monitoring approaches are streamlined and coordinated

### Measures

1. The Department of Veterans' Affairs utilises existing information to limit the reliance on requests from regulated entities and shares the information among other regulators, where possible.
2. The Department of Veterans' Affairs 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 2020-21 performance

#### *Information usage and sharing*

The Department of Veterans' Affairs 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.

The Department of Veterans' Affairs 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*

The Department of Veterans' Affairs 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 Returned and Services League has broad permission to use the word 'Anzac' in connection with the 'Anzac Appeal', an annual fundraising event. This allows the Returned and Services League 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 Returned and Services League still requires Ministerial authority to import goods on an item-specific basis.

The Department of Veterans' Affairs 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.restaurantonzacparade.com.au*'. In these scenarios, the Department of Veterans' Affairs may grant a long term permit, as use of the word in this case is purely geographical and not for a commemorative purpose.

The Department of Veterans' Affairs closely examines the risks of granting autonomy to organisations, balancing the needs of regulated entities with stakeholder and community expectations. The Department of Veterans' Affairs will continue to carefully monitor any organisation granted broad permission to use the word 'Anzac'.

## Key Performance Indicator 5: Regulators are open and transparent in their dealings with regulated entities

### Measures

1. The Department of Veterans' Affairs' risk-based framework is publicly available in a format which is clear, understandable and accessible.
2. The Department of Veterans' Affairs is open and responsive to requests from regulated entities regarding the operation of the regulatory framework, and approaches implemented by regulators.
3. The Department of Veterans' Affairs' 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 Department of Veterans' Affairs' 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. Feedback informs any updates 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 2020-21 performance

The Department of Veterans' Affairs' 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 annually as part of this report.

The recently updated Guidelines have formalised information regarding exercising procedural fairness to an applicant when the Department of Veterans' Affairs make a recommendation not to grant permission to use the word 'Anzac'. The Department of Veterans' Affairs 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 the Department of Veterans' Affairs to further consider prior to submitting the recommendation to the Minister or delegate for decision.

The Department of Veterans' Affairs has not received any direct feedback about the Guidelines, however based on the improved quality of applications received in this reporting period, the Guidelines and the application form are of assistance to regulated entities.

## Key Performance Indicator 6: Regulators actively contribute to the continuous improvement of regulatory frameworks

### Measures

1. The Department of Veterans' Affairs establishes cooperative and collaborative relationships with stakeholders to promote trust and improve the efficiency and effectiveness of the regulatory framework.
2. The Department of Veterans' Affairs 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 The Department of Veterans' Affairs staff.
3. Based on feedback from several stakeholders, an application form for approval to use the word 'Anzac' that was implemented in the 2019-20 reporting period has been widely accepted. This continues to reduce the amount of follow up contact between the Department of Veterans' Affairs 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 2020-21 performance

#### *Feedback mechanisms*

The Department of Veterans' Affairs 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*

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

The Department of Veterans' Affairs continues to work closely with .auDA to ensure that changes in how .auDA applies domain name policy on protected words align with and support DVA policies, and do not make domain name processes overly onerous to the Department of Veterans' Affairs - regulated entities.

As part of The Department of Veterans' Affairs continuous efforts to improve regulation, over 2021-22 the measures and self-assessment methodology used in this Framework reporting process were reviewed and considered appropriate and proportionate to the relatively small footprint of the use of the word 'Anzac' caseload.

## Appendix A: Summary of feedback from consultation

Ex-Service Organisation	Feedback
Partners of Veterans Association of Australia	Nil
Returned Services League of Australia	Nil
Vietnam Veterans Association of Australia	Nil
Legacy Australia Inc.	Nil
War Widows' Guild of Australia	Nil
Defence Force Welfare Association	Nil
Totally and Permanently Incapacitated PI Federation Australia	Nil
Australian Special Air Service Association	Nil
Naval Association of Australia	Nil
Defence Families Australia	Nil
Australian Peacekeeper & Peacemaker Veterans Association	Nil
The Royal Australian Regiment Corporation	Nil
Defence Reserves Association	Nil
Royal Australian Air Force Association	Nil
Vietnam Veterans Federation of Australia	Nil
Australian Defence Force ex-officio	Nil
ComSuper ex-officio	Nil
Joint Health Command	Nil