

DRAFT Australian Regulators: Approaches and Key Metrics

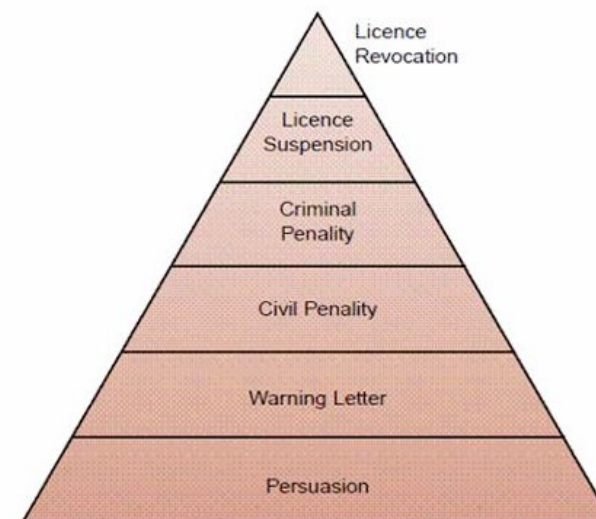
1. Australian Regulatory Approaches

Modern Australian regulators adopt various regulatory postures and approaches, shaped by the relevant governing legislation and the intent of the legislators at the time of the regulatory framework’s establishment. Regardless of the regulatory posture adopted, best-practice regulation should be appropriately tailored and responsive to the regulated community. The Regulatory Institutions Network terms this “responsive regulation”, described as below:

“...regulators should be responsive to the culture, conduct and context of those they seek to regulate when deciding whether a more or less interventionist response is needed. In other words, “soft words before hard words, and carrots before sticks”. It also recognises the need for a diversity of regulatory strategies and the need for all strategies to be practically grounded and context appropriate.”¹

This is depicted in the image below, and reflects a preference for outcomes-based (rather than prescriptive, rules-based) regulation in Australian law-making. The table below outlines the features of principles-based and compliance-based regulation, as compared with rules-based regulation.

Theory	Definition	Features
Principles-based regulation	High level, broadly stated principles (rather than detailed rules) set out the outcomes to be achieved by the regulated entities.	<ul style="list-style-type: none"> Regulators define the outcomes to be achieved, rather than prescribing the processes or actions that regulated entities should take. Regulated entities are free to determine the most efficient, effective way of achieving the required outcomes. Avoids reliance on detailed, prescriptive rules.
Compliance-oriented regulation	Regulatory design, implementation, monitoring and enforcement are undertaken to achieve a particular regulatory objective.	<ul style="list-style-type: none"> Use processes or outcomes-based regulation to maximize voluntary compliance. Provide incentives and encouragement for voluntary compliance and self-regulation. Regulator provides education, guidance and other assistance to support regulated entities. Regulator monitors for non-compliance and acts to enforce in the event of non-compliance.
Rules-based regulation	Prescribes the detailed steps and imposes standards that regulated entities must comply with.	<ul style="list-style-type: none"> Rules are focused on specific areas for regulation and use quantitative measures (i.e. X must be completed within 6 weeks). Applies clear standards, rather than relying on regulated entities’ interpretations.



Source: Ayres and Braithwaite (1992).

¹ Regulatory Institutions Network, ‘Applications of Responsive Regulatory Theory in Australia and Overseas’, pg. 3.

2. Key Metrics of Selected Australian Regulators

Regulator	Overview of Role	Size (FTEs)	Expenses	Revenue	Overview of Regulated Community
Australian Maritime Safety Authority (AMSA)²	<p>Statutory authority established under the Australian Maritime Safety Authority Act 1990. AMSA's regulatory activities may include:</p> <ul style="list-style-type: none"> making decisions about the most appropriate way to respond to a risk or international obligation making standards, mandatory rules or recommending legislative amendment assessing a wide range of permissioning arrangements including the issue, suspension or revocation of certificates, exemptions, approvals, determinations, directions and permits providing information, guidance and education to regulated community monitoring compliance, including through survey, observation, record checks, audits and inspections undertaking investigations taking enforcement action through fines, prosecutions and court action 	<p>2021-22: 457 FTEs</p> <p>2020-21: 433 FTEs</p>	<p>2021-22: \$232.0m</p> <p>Includes supplier expenses, employee benefits, depreciation expenses and other.</p>	<p>2021-22: \$246.9m</p> <p>Includes major revenue from levy revenue (\$134.066m) and Government appropriations (\$87.896m). Minor revenue contributions from sale of goods & rendering services, contributions by states and territories, pollution incidents and insurance recoveries, iron ore, coal, general bulk cargo, liquid product & gas, and other revenue.</p>	<p>DCVs</p> <p>AMSA regulates all domestic commercial vessels that operate within Australian waters, under the National System for Domestic Commercial Vessel Safety, and includes owners, operators, masters, crew and builders of DCVs working in Australia.</p> <p>There are approximately 31,000 active DCVs operating within Australia's Exclusive Economic Zone across the four vessel use clauses (passenger, non-passenger, fishing, hire & drive).</p> <p>Port & Flag State Control</p> <p>AMSA employs approx. 60 marine surveyors at 16 Australian ports, who carry out port and flag state control inspections, marine surveys and cargo related inspections.³</p> <p>In 2021-22, AMSA undertook 10,738 port State, Flag State and domestic commercial vessel inspections.⁴</p>

² FTE and financial information contained in this table has been extracted from 'Financial summary' (pg. 9) of AMSA's 2021-22 Annual Report.

³ See: [What is port State control? \(amsa.gov.au\)](https://www.amsa.gov.au/what-is-port-state-control)

⁴ Extracted from AMSA's 2021-22 Annual Report (pg. 8).

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	<ul style="list-style-type: none"> doing what the regulated entity could not do, or failed to do. 				

Impact of 2012 Shift to National System:

“Our staffing costs grew significantly during the year. The major driver for this growth was the recruitment of staff needed in preparation for the implementation of the National System from 1 July 2013. We expect to see a stabilisation in numbers for the 2013-14 financial year...The main drivers of expenditure were staffing cost increases due to increased staff numbers”⁵

*Table 1
Comparison of actual results for 2012-13 and 2011-12*

	Actual 2012-13 \$m	Actual 2011-12 \$m	Variance \$m
Income	185.0	171.5	13.5
Expenses	174.4	169.4	(5.0)
Surplus / (Deficit)	10.6	2.1	8.5

Total staff 356, as compared to 332 in the previous year.⁶ (*Note – this increase in number of staff is equivalent to the staffing increase across 2020-21 / 2021-22 indicated above*).

⁵ Extracted from AMSA 2011-12 Annual Report (pg. 9)

⁶ Extracted from AMSA 2011-12 Annual Report (pg. 99)

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Regulator	Overview of Role	Size (FTEs)	Expenses	Revenue	Overview of Regulated Community
Comcare ⁷	<p>National work health and safety regulator, including regulatory functions and powers for compliance and enforcement across four streams:</p> <ul style="list-style-type: none"> • providing information and advice; • making authorisation and approval decisions; • monitoring the extent of compliance in the jurisdiction; and <p>investigating alleged or potential contraventions.</p>	<p>June 2022: 569 FTEs (ongoing), 73 (non-ongoing)</p> <p>June 2021: 544 FTEs (ongoing), 89 (non-ongoing)</p>	<p>2021-22: \$313.8m</p> <p>Includes claim payments (\$196.2m), administration costs (BAU) (\$107.7m), administration expenses (project) (\$9m), administration costs (finance) (\$0.9m).</p>	<p>2021-22: \$259.8m</p> <p>Includes workers' compensation premiums (\$161.6m), other cost-recovery revenue (\$45m), interest and other revenue (\$9.2m), revenue from Government (\$44.0m)</p>	<p>Comcare programs and services are used by:</p> <ul style="list-style-type: none"> • Australian Government agencies, authorities and their employees; • national companies and other organisations licenced by the SRCC and their employees; • members of the Australian Defence Force including reservists and cadets; and • individuals making claims against the Commonwealth for asbestos-related conditions. <p>FTE employees under SRC Act (June 2022): 442,458</p> <p>FTE employees under WHS Act (June 2022): 422,964</p>

⁷ Information in this table has been extracted from Chapter four: Financial statements (pg. 91) of Comcare and the Safety, Rehabilitation and Compensation Commission's 2021-2022 Annual Report.

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Regulator	Overview of Role	Size (FTEs)	Expenses	Revenue	Overview of Regulated Community
Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)⁸	<p>Under the Australian Radiation Protection and Nuclear Safety Act 1998, ARPANSA regulates Commonwealth entities including all nuclear installations in Australia. ARPANSA's Regulatory Services Branch has carriage of the regulation of safety and security of Commonwealth radiation sources and facilities authorised by ARPANSA. ARPANSA ensures Licensees take responsibility for protection of people and the environment from the harmful effects of radiation, through:</p> <ul style="list-style-type: none"> • assessing licence applications, issue authorisations, perform compliance inspections and promote best practice • assessing and issuing import and export permits for radioactive material • assessing transport plans and approving transport of radioactive material • promoting national uniformity in radiation protection practices • securing radioactive material. 	<p>June 2022: 125 FTEs (ongoing), 5 (non-ongoing)</p> <p>June 2021: 134 FTEs (ongoing), 11 (non-ongoing)</p>	<p>2022: \$29.266m</p> <p>Includes employee benefits (\$18.486m), supplier and other expenses (\$7.585m), and depreciation and amortisation expenses (\$3.336m)</p>	<p>2022: \$26.688m</p> <p>Includes Government appropriation (\$13.869m), regulatory license fees and charges (\$5.260m), and sale of goods, provision of services and other revenue (\$7.623m).</p>	<p>ARPANSA's Regulatory Services Branch oversees 32 facility licences and 59 source licences.</p>

⁸ Information contained in this table has been extracted from Part 5: Financial statements (pg. 77) of ARPANSA's 2021-22 Annual Report.

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Regulator	Overview of Role	Size (FTEs)	Expenses	Revenue	Overview of Regulated Community
Department of Climate Change, Energy, the Environment and Water (DCCEEW) ⁹	DCCEEW plays a role in regulating areas across energy efficiency and energy markets, greenhouse gas regulation, and protection of Australia’s land, biodiversity, water and air.	Approximately 4,000 staff (not all of whom would have a role in DCCEEW’s regulatory function). ¹⁰	Total departmental expenses budgeted for in 2022-23 are \$947.7 million , comprising \$270.8 million for employee expenses, \$558.4 million for suppliers, \$95.2 million for depreciation and amortisation, \$2.5 million for grants and \$20.4 million for finance costs and other expenses. ¹¹	Total departmental own-source income budgeted for in 2022-23 is \$33.7 million , comprising \$24.7 million from sales of goods and rendering of services and \$8.9 million from other independent sources. Revenue from government for 2022-23 is budgeted at \$823.1 million. ¹²	DCCEEW issues permits and licences for particular activities in Commonwealth Permit Areas (including access to biological resources) in line with the Environment Protection and Biodiversity Conservation Act 1999. In 2020, 27 permits were issued during 2020 for access to biological resources in Commonwealth areas. ¹³

⁹ Note: DCCEEW was established on 1 July 2022 and is yet to release an Annual Report. The information contained in this table relates to DCCEEW’s holistic operations and may not be reflective of its regulatory function.

¹⁰ See ANAO Portfolio Overview: [Climate Change, Energy, the Environment and Water | Australian National Audit Office \(ANAO\)](#)

¹¹ Extracted from PORTFOLIO BUDGET STATEMENTS 202223 BUDGET RELATED PAPER NO. 1.3 (pg. 73).

¹² As above.

¹³ [Science and Research Permits 2020 - DCCEEW](#). This represents permits in relation to biological resources only and may not be representative of the entire number of permits / licences issued by DCCEEW in 202.

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Australian Safeguards and Non-Proliferation Office (ASNO)	<p>ASNO ensures that Australia's international obligations are met under the <i>Nuclear Non-Proliferation Treaty (NPT)</i>, Australia's NPT safeguards agreement with the International Atomic Energy Agency (IAEA), the <i>Convention on the Physical Protection of Nuclear Material (CPPNM)</i> and Australia's various bilateral safeguards agreements. This includes responsibility across four key areas:</p> <ul style="list-style-type: none"> • application of safeguards in Australia; • physical protection and security of nuclear items in Australia; • the operation of Australia's bilateral safeguards agreements; and • contribution to the operation and development of the IAEA safeguards and the strengthening of the international nuclear non-proliferation regime. 	<p>June 2022: 17 FTEs¹⁴</p> <p>June 2021: 12 FTEs¹⁵</p>	<p>2021-22: \$3.415M</p> <p>Includes salaries (\$2.380M), general running costs (\$479K), and seismic monitoring (\$555K).¹⁶</p>	<p>Note: As ASNO is funded as a division of DFAT, details on ASNO's financial performance (outside of expenses included at left) is captured in DFAT's Annual Report and may not be reflective of ANSO's regulatory function.</p>	<p>Number of permit holders for which physical protection or information security is required (2022):</p> <ul style="list-style-type: none"> • Category II - research reactor, storage: 1 • Category III - Storage, scientific research: 1 • Category IV - scientific research: 1 • Uncategorised – LOFs, radiographers: 106 • Natural uranium – uranium mines and concentration plants: 4 • Transport of nuclear material – transport companies, ports, shipping lines: 19 • Associated equipment and technology – enrichment research, storage and archives: 4 • Associated technology – patent attorneys: 5 <p>TOTAL: 141 permits¹⁷</p>

¹⁴ Extracted from ASNO Annual Report 2021-22 (pg. 72).

¹⁵ Extracted from ASNO Annual Report 2020-21 (pg. 87).

¹⁶ Extracted from ASNO Annual Report 2021-22 (pg. 74).

¹⁷ Extracted from ASNO Annual Report 2021-22 (pg. 45-46).