

REVIEW OF EDUCATION REGULATION

DISCUSSION PAPER

Delivering for learners, driving quality in education through
contemporary regulation





Minister's Foreword

The Teachers Registration Board Tasmania (TRB); the Office of Tasmanian Assessment, Standards and Certification (TASC); the Registrar, Education (the Registrar); and the Non-Government Schools Registration Board (NGSRB) all provide critical regulatory oversight and support services to education in Tasmania.

These regulators provide support for all education sectors, including government schools, independent schools, Catholic schools and Vocational Education and Training.

As part of the 2019-20 State Budget, the Tasmanian Government committed to a review of the regulatory framework supporting these regulators. The Government began improving Tasmania's education regulation in 2016, by implementing the new *Education Act 2016* (Tas) (the *Education Act*), with the establishment of the Registrar, Education supported by the Office of the Education Registrar (OER), which has been well received by all education sectors.

The Review represents this Government's next step in modernising education regulation in Tasmania, redesigning it to better meet the needs of children and young people, and preparing them for the future.

Education regulation contributes to the quality of education received by Tasmanian learners and their safety. It supports the quality of the teaching they experience, the quality of their assessment, the quality of their schools and their engagement in learning.

The education of our learners is critical to their future employment and health, as well as contributing greatly in the long term to Tasmania's economy. This Discussion Paper includes an assessment of the current arrangements against elements of a modern regulatory framework for each of the regulators. It outlines some opportunities to improve the framework and poses a series of questions in relation to each. I welcome responses, and your views on any other issues relating to the provision of education regulation, that will help us deliver better outcomes for all Tasmanian learners.

Jeremy Rockliff MP

Minister for Education and Training



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About the Review

In modernising the regulatory framework for education, the Review will seek to achieve the following outcomes:

- the provision of independent cross sectoral advice as it relates to the entities' existing functions (education regulation)
- the strengthening of the governance framework for delivery of the entities' existing functions
- the sustainable funding of education regulation
- the adoption of better practice regulation with a focus on education outcomes.

The Minister has established a cross-sector Steering Committee chaired by Mr Tony Luttrell, with representatives from each of the government, independent and Catholic school sectors, the Department of Treasury and Finance and the Department of Premier and Cabinet.

The Steering Committee will provide strategic direction for the Review, develop options and provide a recommendation to the Minister on a preferred model and phased implementation plan.

The Steering Committee has not made any decisions in relation to options proposed within this paper and actively encourages you to make a submission in relation to them.

The following areas are outside the scope of this review:

- the functions of the regulators (what they do)
- the Tasmanian Home Education Advisory Council (THEAC)
- the Education and Care unit within DoE
- the Education Performance and Review Unit within DoE
- curriculum development in DoE
- subordinate legislation for education regulation.



How to Make a Submission

The Tasmanian Government is committed to providing opportunities for community involvement in the development of Government policy and we are seeking your input as a part of this review.

All submissions must be received by 4 October 2020.

Submissions can be made to legislation@education.tas.gov.au using the subject line *Review of Education Regulation* or via post at:

Review of Education Regulation Steering Committee

GPO Box 169

Hobart TAS 7001

Confidentiality

In accordance with the [Tasmanian Government Public Submissions Policy](#) submissions will be treated as public information and will be published on our website once consideration of submissions has concluded. No personal information other than an individual's name or the organisation making a submission will be published.

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What is a Regulator?

Regulation is used to protect and benefit people, businesses and the environment, and to support economic growth. Regulation is one of the primary ways in which a government can achieve its policy objectives. It is distinct from direct government provision of services, because it relies on using incentives (such as registration) to drive behaviour change in individuals and organisations outside of government's direct oversight.

Regulation is primarily used to address or prevent market or sector failures. The characteristics of some sectors mean that, left to their own devices, they risk failing to produce behaviour or results in accordance with policy objectives or public interest (for example, child safety).

A regulator can be an individual, or group of individuals, established by an Act of parliament, which operates at arm's length from government and which has one or more of the following powers:

- inspection and referral
- advice to a third party
- licensing
- accreditation
- enforcement.



Tasmania's Education Regulators

Teachers Registration Board

The Teachers Registration Board (TRB) is an independent statutory authority and incorporated body established under the [*Teachers Registration Act 2000*](#) (Tas). The TRB is responsible to the Minister for Education and Training. Its purpose is to regulate the teaching profession in Tasmania for schools and TasTAFE, and to promote, maintain and apply the Australian Professional Standards for Teachers. The TRB ensures all students are taught by appropriately qualified and competent teachers of good character who meet community expectations for their fitness to teach. The Board must consider the welfare and best interests of students to be of paramount importance.

Office of Tasmanian Assessment, Standards and Certification

The Office of Tasmanian Assessment, Standards and Certification (TASC) is an independent statutory office responsible to the Minister for Education and Training. TASC is responsible for the development of appropriate standards, the accreditation of courses, and the assessment and certification of student achievement in senior secondary schooling across all educational sectors in Tasmania. It is established under the [*Office of Tasmanian Assessment, Standards and Certification Act 2003*](#) (Tas) (*TASC Act*) and legally constituted by the Executive Officer.

The Registrar, Education and the Non-government Schools Registration Board

The Registrar, Education was established under the [*Education Act 2016*](#) (Tas) (the *Education Act*). It is responsible to the Minister for Education and Training and is responsible for various functions under the Act, including:

- registration and monitoring of home education in Tasmania, including administrative support for the Tasmanian Home Education Advisory Council (THEAC)
- administering the non-government schools' registration process and the operational aspects of the regulatory process
- reporting to and advising the Non-government Schools Registration Board (NGSRB) on decisions about the registration of a school
- managing the compulsory conciliation process for non-attendance at school, for the government, Catholic and independent school sectors.

The Registrar, Education provides executive support to the NGSRB.

Support from the Department of Education

DoE does not have a statutory role in the provision of education regulation (as it relates to the scope of this review). It does provide a significant support function to each of the regulators including:

- employing all staff as State Service officers and State Service employees to enable the regulators to perform their functions
- provision of funding and budget management from the DoE appropriation, except where costs are recovered through fees, eg TRB registration
- providing corporate services, eg Human Resources, Information Technology, accommodation services, etc.



Current Education Regulation Framework

Across the last 20 years, each regulator was established through its own legislation to provide for a set of distinct regulatory functions with governance to support their delivery. Over time these have been updated individually. The governance arrangements for the TRB were refined in 2009. In 2015, the TASC Act was amended, replacing the former Tasmanian Qualifications Authority (TQA) with an Executive Officer. The role of the Registrar, Education was established more recently in 2016.

The regulators are part of the wider Tasmanian education system. The system is required to respond to state and national policy directions. A good example is the joint initiative Years 9-12 project, which aims to enable all Tasmanian students to achieve their potential while at school and beyond in further study, training and employment.

The legislation for each regulator provides only limited capacity for the Minister to set policy expectations. They have variable committee and governance structures, some of which are a legacy of older models, developed in isolation across the last two decades.

There is a commonality and element of duplication across their different regulatory functions.

Legislated Functions	Teachers Registration Board	Registrar, Education & Non-government Schools Registration Board	Office of Tasmanian Assessment, Standards & Certification
	<i>Teacher quality and student safety</i>	<i>Institution quality</i>	<i>Course and assessment quality</i>
Review and Investigation	✓	✓	
Compliance	✓	✓	✓
Data Collection and Dissemination	✓	✓	✓
Registration	✓	✓	✓
Quality Promotion	✓	✓	✓
Advising the Minister	✓	✓	✓
Course Accreditation			✓

Figure 1: Legislated functions of the education regulators

They each have different funding arrangements. The three regulators provide services across the three education sectors – government, independent schools and Catholic Education. All three regulators are funded by DoE, except where costs are recovered through fees. They have all experienced increasing costs in recent years and were provided with additional funding in the 2019–20 State Budget.

The budget for these entities sits within the overall DoE appropriation under a specific output. Any shortfalls have been met from funding received by DoE under the Quality Schools Bilateral Agreement for Government Schools (the Bilateral Agreement) between the State and the Australian Government. DoE does not have governance over the expenditure operations of these entities.

DoE also provides extensive corporate services to OER and TASC at no charge. There is however, a cost recovery agreement between DoE and TRB for the provision of corporate services.



Current Funding, Governance, Accountability and Decision-Making Arrangements

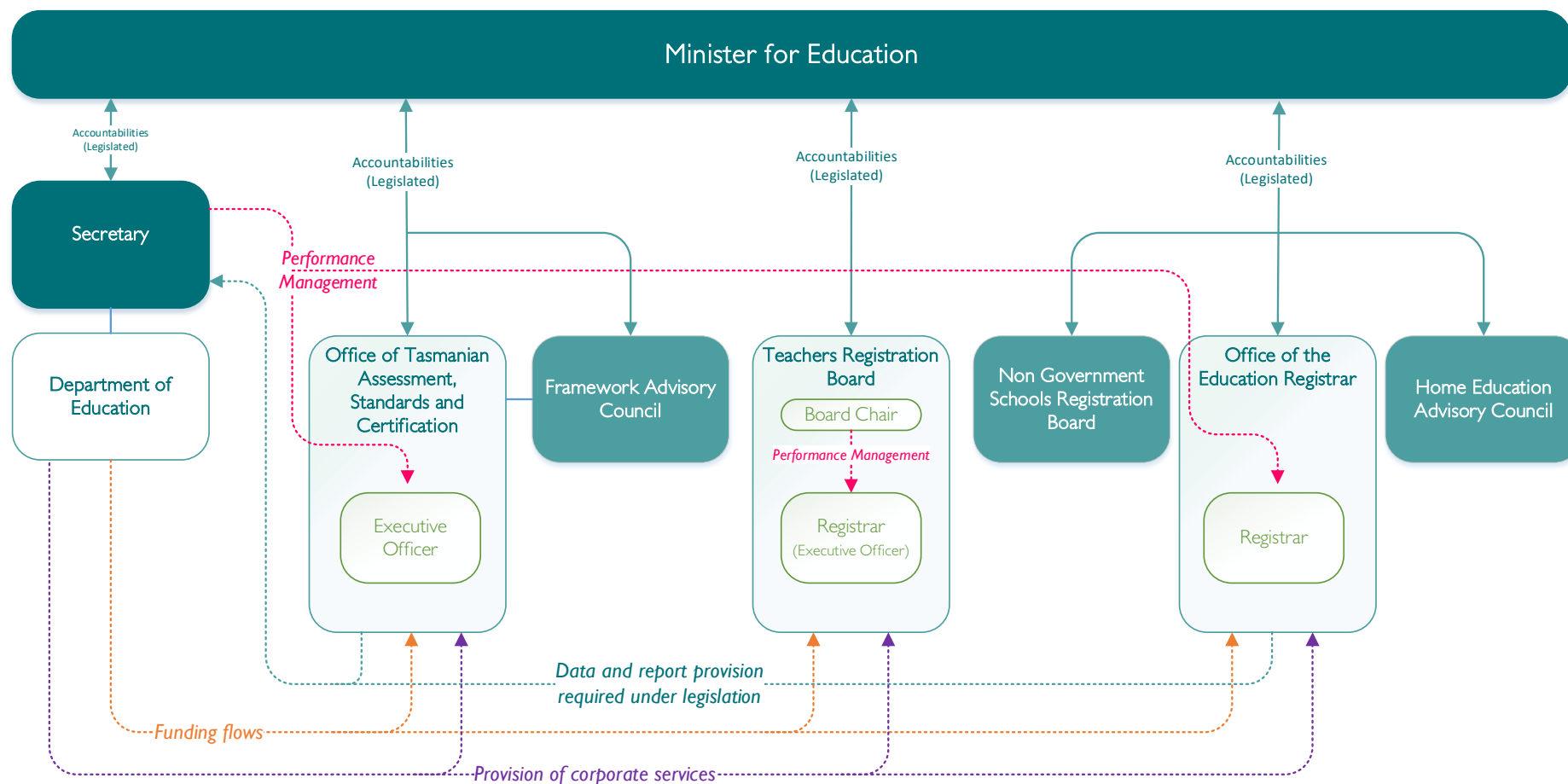


Figure 2: Funding, governance and accountability and decision-making arrangements



All three regulators are established as entities independent from DoE and accountable to the Minister; however, they are funded through an output in DoE's appropriation and all staff, with the exception of board and committee appointments, are employed as State Servants by DoE.

The current arrangements for funding, accountability, performance management, the provision of corporate services and data flows are at times complex and opaque. The next section discusses challenges these governance arrangements present.

During the past 20 years, there have been changes in the governance of comparable institutions interstate as well as governance reforms of regulators outside the education sector. It is timely to consider whether, collectively, the existing arrangements best support the policy intent and existing functions of the regulators.

Among others, the Victorian State Government, Australian Government and the Organisation for Economic Cooperation and Development (OECD) have adopted better practice regulation outside the education sector. This review provides an opportunity to consider how regulation is presently undertaken and whether the current arrangements are efficient, effective and sustainable.

The Four Elements of a Modern Regulatory Framework



Modern governance for delivery of outcomes



Provision of independent advice



Sustainability of funding



Better practice regulation with a focus on outcomes

The next section sets out what these elements are in further detail before an assessment of each of the regulators' frameworks against the elements.



Modern Governance for the Delivery of Outcomes

Good governance involves establishing fit-for-purpose structures, frameworks and processes to achieve expected outcomes, consistent with legal and policy requirements. However, these 'hard' governance arrangements by themselves are not sufficient to support high performance. Achieving high performance also requires the 'soft' elements—including leadership, the right behaviours and the nurturing of relationships within and across entities.

Three elements central to the governance of regulators are: understanding what success looks like; organising for success; and making sure success is achieved.

Understanding what success looks like

The Minister has to be clear about what a regulator needs to achieve, and communicate that effectively. This involves establishing a clear sense of purpose and developing clear expectations of performance.

Organising for success – getting the framework and organisational structure right

How a regulator is established and structured can vary, from a unit within a department to a stand-alone regulator.

Regulator or board?

Where the legislation for a regulator provides for a narrow set of outputs to be delivered, it is likely that a single regulator will be the better governance option. If the legislation provides a wide remit, eg where there is a large degree of complexity, risk, strategy and independence required, a board would be the preferred mechanism for governance.

Consideration of powers

Individual regulators and/or boards must be empowered to fulfil their functions. In a regulatory framework, power must exist, be delegated, be limited and then be exercised. For example, for an entity to achieve its purpose, individuals need to be empowered to develop strategy for approval by the authority.

Clarity of roles

All parties to the governance framework of a regulator need to have a clear understanding of their roles and responsibilities, including their individual accountability.

Making sure success is achieved – are we delivering the outcomes?

Individuals responsible for regulation must understand what outcomes they are required to achieve and must be empowered to achieve them. With responsibility, there needs to be accountability. A robust governance framework should, through transparency and accountability mechanisms, link power and responsibility to performance and review.

Regulators need to identify operational and outcome indicators against which they can be assessed. The performance criteria and results should be published and used for improvement. Criteria should provide measures to help assess the efficiency, effectiveness and sustainability of the governance arrangements.

Regulators need to be accountable and transparent to the Minister, the legislature, the community, and importantly to those that they regulate: learners, teachers and the community.

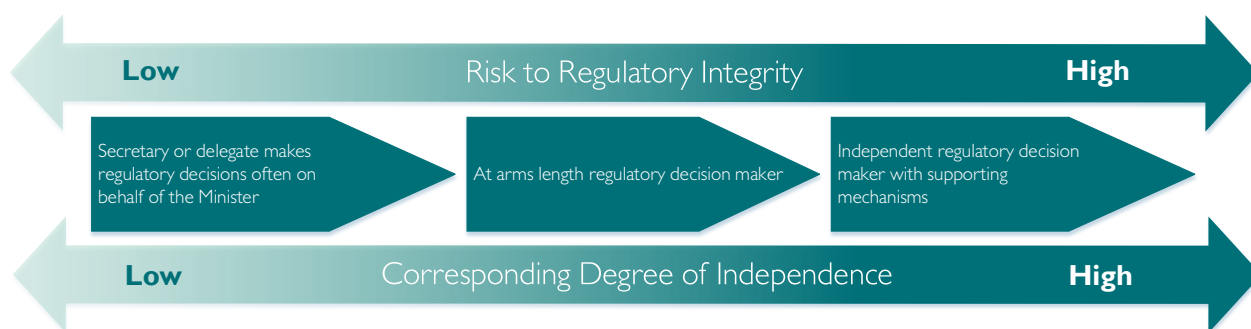


Provision of Independent Advice

Establishing the regulator with a degree of independence, both from those it regulates and from government, can provide greater confidence that regulatory decisions are made with integrity. This is characterised as actions and advice that are impartial, consistent and free from conflicts of interest.

It was discussed earlier that a regulator operates at arm's length from government. 'Arm's length' is taken to mean that the regulator is not subject to direction on individual regulatory decisions by government or the Minister, but could be supported by officials within a department – or have its own staff.

The independence of regulators and how they are structured will vary depending on the risk to regulatory integrity. Where the activity is such that there is a low risk, a departmental secretary or delegate can make regulatory decisions on behalf of the Minister. Where there is a high risk to regulatory integrity use of an independent regulatory decision-maker is more appropriate. A diagram of this governance spectrum is below. An example of the former is the issue of a fishing licence; an example of the latter is the issue of a gaming licence.



Adapted from *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy 2014

An example of how independence and regulatory integrity may be compromised is when a Minister or department has power of direction over regulatory decisions (as distinct from setting policy expectations for decision-making).

Independent regulatory decision-makers can be supported by departmental staff if the risks associated with such an approach are managed. For example, the Liquor and Gaming Commission in Tasmania receives corporate support and staffing through the Department of Treasury and Finance, but retains its independence as a regulator.

Principles for setting up and operating a regulator that can provide independent advice include:

- no power to direct on individual regulatory decisions
- terms of appointment for board members of independent regulators to be clearly and publicly defined
- termination provisions for independent regulators also to be clearly and publicly defined
- the makeup of the membership for the governing body (board or committee).

Boards can be skills based (ie people on the board are selected for their particular skill set), representative based (ie people chosen because of their position) or a mix of both, also known as blended.

To avoid conflicts of interest, or perceived conflicts of interest, where there is a need for formal representation of specific stakeholders in strategic decision making, stakeholder engagement mechanisms such as an advisory or consultative committee should be considered, instead of making those stakeholders members of the regulator's governing body. Where State Service executive representatives are also accountable to the Minister, their presence in the membership of a governing body should also be considered, noting they are accountable for their



behaviour through the State Service code of conduct. Public sector representation is a common element of most regulatory frameworks, both within education and across other jurisdictions and portfolio areas.

Sustainability of Funding

Sustainability, as it relates to funding for a regulator, is driven by four principles: supporting regulatory outcomes efficiently; cost recovery reflecting services provided; equitable funding processes; and responsibility for funding matched with accountability for outcomes.

Supports outcomes efficiently

- Funding levels should be adequate to enable the regulator to operate efficiently, and to fulfil the objectives set by parliament and government (including obligations imposed by other legislation).
- Funding processes should be simple, transparent, and as efficient as possible.

Regulatory cost recovery

- Cost recovery through fees and charges is most often adopted when government services do not directly benefit all citizens. Many programs benefit only selected groups in the community (eg users of particular services or various professions). In these circumstances, fees on the regulated providers allow the costs of the regulation to be incorporated into the costs of delivering the service.
- Regulators should not set the level of their cost recovery fees, or the scope of activities that incur fees, without arm's-length oversight. These fees, and the scope of activities subject to fees, should be in accordance with the policy objectives and fee guidance set by government.
- Where cost recovery is required, the regulator should not set unnecessary or inefficient administrative burdens or compliance costs on regulated entities. Costs recovered should be proportionate to the services provided by the regulator.

Funding processes should be equitable

- The source of funding for regulators should be recovered from those regulated where feasible; if not, then it should be provided by appropriation administered for government.
- Provided the objectives, scope and performance measures of a regulator are clear, budget funding is an appropriate means to fund general regulators, where it is not efficient to impose user-charges.

Responsibility and Accountability should be matched

Responsibility for the achievement of outcomes, such as sustainable funding for education regulation, should be matched with accountability for their achievement.

Better Practice Regulation with a Focus on Outcomes

Governance is the *way things get done*, rather than just *that things are done*.

In designing regulatory approaches, governments need to strike a balance between the obligation to protect the community or public interest, while at the same time not imposing unnecessary costs on those they regulate or the broader community indirectly.

TasTAFE in the [Training and Workforce Development Act 2013 \(Tas\)](#) offers an example of a modern performance framework. The key elements are:

- governing legislation which specifies Objects and Principles



- the setting of policy expectations by the Minister
- preparation of a corporate plan, including performance targets for approval by the Minister
- reporting to the Minister against performance targets in an annual report.

Effective regulatory administration supports the achievement of key policy objectives while minimising the burden and compliance cost for regulated entities. In 2014, the Australian Government issued a code of practice for regulators. The Framework recommends:

- The adoption of outcomes-based key performance indicators to articulate the Government's expectations of regulator performance, complemented by suggested output- or activity-based measures to provide evidence in respect of performance.
- A process for annual, externally validated, self-assessment for all regulators against the Framework including, if applicable, certification from the regulator's CEO or Board.
- A process for targeted external review every three years for a selected set of regulators, with responsible Ministers agreeing to the proposed evidence to assess performance, and the evidence metrics published as part of the review.
- The option for the Government to commission annual external reviews of a small number of major regulators, with the results published.

The following outcomes-based key performance indicators (KPIs) for regulators were issued by the Australian Government in 2014:

- Regulators do not unnecessarily impede the efficient operation of regulated entities. This recognises that the way regulation is implemented and enforced can have as significant an impact on productivity and economic growth, and cause as much overhead for individuals, as the content of the regulation itself.
- Communication with regulated entities is clear, targeted and effective. Better-practice regulators communicate in such a way that regulated entities clearly understand what they need to do to comply with regulation. Regulated entities are able to find out quickly which regulations apply to them, what the requirements are, and how they can comply and/or improve compliance over time.
- Actions undertaken by regulators are proportionate to the risk being managed. A risk-based approach to regulation reflects that where the risk of non-compliance is high or the consequence of non-compliance significant, there is a higher degree of monitoring. Where the risk of non-compliance is low or the consequences of non-compliance minor, regulators take lighter-touch approaches. Adopting a risk-based approach can help a regulator to minimise compliance costs for lower-risk regulated entities, as well as the regulator's own costs.
- Compliance and monitoring approaches are streamlined and coordinated.
- Regulators are open and transparent in their dealings with regulated entities.
- Regulators actively contribute to the continuous improvement of regulatory frameworks.

Further Information

See Appendix A for what we can learn from other jurisdictions as well as locally.



Teachers Registration Board

The *Teachers Registration Act 2000 (Tas)* (the *Teachers Registration Act*) commenced in 2002 and was amended in 2009 to add clarity and improve the provisions of the original Act, including refinements relating to the Board's functions and powers. However, this did not represent a substantive review of the governance model. Almost 10 years later it is timely to consider whether the governance in place is fit for purpose according to a contemporary set of standards.

The policy context for the *Teachers Registration Act* was outlined in the second reading speech for the Teachers Registration Bill 2000:

One of the aims is to improve the existing status of the teaching profession and to increase the professional standing of teachers and the desirability of teaching as a profession. As well as optimising the educational outcomes of students through setting minimum standards for entry to the profession, the introduction of the legislation will protect children in government and non-government schools from the possibility of sexual or other abuse.

The policy statement in the second-reading speech for the Teachers Registration Amendment Bill 2009 stated that:

- All students are taught by appropriately qualified and competent teachers of good character and meet community expectations regarding their fitness to teach.
- The Board must consider the welfare and best interests of students to be of paramount importance.

Assessment against the Elements of a Modern Regulatory Framework

Modern governance for the delivery of outcomes

- The TRB is a Statutory Board appointed by, and responsible to, the Minister for Education and Training.
- The composition of the Board is 'representative' with members nominated by the relevant organisation, and subsequently appointed by the Minister.
- The TRB has an organisational structure whereby the Board is supported by an Executive Officer and staff.
- The Executive Officer role is set out in the Act, and is appointed under the State Service Act.
- The Act does not include a clear statement of purpose, eg objects and principles to guide administration of the Act.
- There are no published performance expectations set for the TRB; nor is there a performance management framework.
- There is no delineation between regulatory outcomes and administrative accountabilities – including the management of staff, budgets, accommodation and facilities – with the TRB responsible for both.
- The TRB reports on operational performance only.
- The TRB does not report on outcomes.



Provision of independent advice

- The Minister may give the Board a written direction on the performance of its functions and powers if satisfied that it is in the public interest to do so. The Board is required to comply with such a direction. There is no requirement for public disclosure of such a direction.
- The term of appointment for Board Members (three years) is specified in the *Teachers Registration Act*.
- The *Teachers Registration Act* specifies that membership of the TRB includes wide representation of stakeholder groups; it also including a DoE representative.
- The Secretary DoE (Secretary) has no power to direct the TRB.
- Termination provisions for Board Members are specified in the *Teachers Registration Act*, although there is no requirement for public disclosure of the termination by the Minister.

Sustainability of funding

- The majority of funding for TRB is from teacher registration fees.
- TRB was provided with significant additional budget support by DoE during 2018–19 and 2019–20 which is ongoing. The additional funding being provided in 2019–20 represents a significant proportion of total funding. See Appendix B for details.
- The additional funding provided was to support functions outside of the core registration process – such as discipline and inquiries under Part 4 of the Act – that are outside the scope of those able to be funded by teacher registration fees.
- DoE provides the TRB with corporate services eg HR, IT, accommodation services, etc. This is managed through a cost recovery agreement between DoE and TRB.
- TRB is responsible for both its administrative and regulatory functions.
- Regulatory services are provided across the three sectors, but only DoE contributes to the TRB's operation by funding its 'Part 4' functions directly from funding provided under the Bilateral Agreement for the Government Sector.
- The legislation is unclear whether the Treasurer's Instructions (TIs) apply to the TRB or how internal controls such as delegations, internal audit and work health and safety policies and procedures apply.
- Internal controls relating to the TIs have been put in place by DoE through the application of delegations for procurement and financial management.
- There is an ongoing budget risk for DoE under the current arrangements, because the TRB is established in its legislation as independent from DoE. DoE partly funds the TRB's operations but has no control over its outlays. Budget risks should usually be allocated to the party best able to manage them. This is not currently the case.

Better-practice regulation with a focus on outcomes

- The TRB only reports on outputs and activity.
- There is currently no performance framework for the TRB; for example, there are no outcomes-based key performance indicators on:
 - meeting the service expectations of regulated entities



- effectiveness of communication with regulated and other relevant entities
- whether regulator actions are proportionate to the risk of non-compliance – representing a risk-based approach to regulation.

What do you think?

The Steering Committee will make recommendations to update the education regulation framework using the elements of a modern regulatory framework as a guide. They invite you to share your thoughts on the following questions.

1. Do you think that the *Teachers Registration Act 2000* should be updated to include a clearer statement of purpose (object) and principles to guide how the TRB regulates? What do you think it should include?
2. The Steering Committee will make recommendations to update the TRB framework using the elements of a modern regulatory framework as a guide. Some options that could be considered include:
 - separating the responsibility for regulatory outcomes and administrative accountability
 - considering whether a skills-based board, or a blended model, is more appropriate than a representative board
 - assessing the complexity of regulatory functions to determine whether a single regulator could be responsible for the existing TRB regulatory functions, in place of a board.

Do you have any other ideas or views on these possible options?

Is there anything else the Steering Committee should consider?

3. In what ways could the current funding model for the TRB be improved to promote efficiency and ensure sustainability?
4. What does 'better-practice regulation by the TRB' mean to you? What does it look like?
5. Do you think introducing a performance framework for the TRB, such as that used for government businesses and TasTAFE, would deliver better outcomes for learners, teachers and the community? Why?



Office of Tasmanian Assessment, Standards and Certification

Established under the *Office of Tasmanian Assessment, Standards and Certification Act 2003* (Tas) (*TASC Act*) TASC is an independent statutory office responsible for the development of appropriate standards, the accreditation of courses, and the assessment and certification of student achievement in senior secondary schooling across all educational sectors in Tasmania.

In 2015, the Act was amended, replacing the former Tasmanian Qualifications Authority (TQA) with an Executive Officer (the regulator). The amendments sought to address three key underlying principles: the creation of TASC including the independence of the office, improved standards, and openness and transparency.

Assessment against the elements of a modern regulatory framework

Modern governance for the delivery of outcomes

- TASC is an independent statutory office (single regulator) responsible to the Minister for Education and Training, appointed under the State Service Act.
- The Executive Officer is supported by staff and the Framework Advisory Council.
- There is no delineation between regulatory outcomes and administrative accountabilities – including the management of staff, budgets, accommodation and facilities – with TASC responsible for both.
- TASC does not report on outcomes performance; rather, it reports only on operational performance – eg activity and outputs.
- With the exception of a recent Ministerial Direction – Statement of Policy Expectations, there are no published performance expectations set for TASC, and no performance management framework.

Provision of independent advice

- TASC is constituted by the Executive Officer. The tenure and termination provisions for the Executive Officer are provided under the [State Service Act 2000](#) (Tas) (the *State Service Act*).
- The Minister may give TASC directions in respect of:
 - (a) the policy expectations of the Minister
 - (b) written directions with respect to the compliance by the Office with those policy expectations in performing and exercising its functions and powers under this Act.

TASC is required to comply with such a direction and its annual report is to contain any policy expectations and associated directions.

- TASC is expressly not subject to direction by the Head of Agency (HoA) (eg Secretary, DoE), with the HoA having no direction powers over TASC in respect of its statutory functions. There is however a tension with the *State Service Act* framework requiring the Secretary DoE to be responsible for the performance management of State Servants, including the Executive Officer of TASC.
- Requirements for the avoidance or management of conflicts of interest by the Executive Officer are specified under the *State Service Act* framework.



Sustainability of funding

- There is minimal cost recovery by TASC with over 95 per cent of its costs funded by Government appropriation provided through DoE.
- TASC was provided with significant additional budget support by the DoE during 2018–19 and 2019–20 which is ongoing. The additional funding provided in 2019–20 represents a significant proportion of TASC's total funding and was provided to address structural under-funding identified by WLF Accounting and Advisory. See Appendix B for details.
- DoE provides TASC with corporate services, eg HR, IT, accommodation services, etc. However, there is no service level agreement or cost recovery agreement for these services.
- TASC is responsible for both its administrative and regulatory functions.
- Regulatory services relate to education provision by all three sectors, but only DoE contributes to TASC's operation by funding the functions directly from funding provided under the Bilateral Agreement for the Government Sector.
- The legislation is unclear whether the Treasurer's Instructions (TIs) apply to TASC or how internal controls such as delegations, internal audit and work health and safety policies and procedures apply.
- Internal controls relating to the TIs have been put in place by DoE through the application of delegations for procurement and financial management.
- There is an ongoing budget risk for DoE from the current arrangements because TASC is established in its legislation as independent from DoE. Risks should usually be allocated to the party best able to manage them. This is not currently the case.

Better-practice regulation with a focus on outcomes

- TASC only reports on outputs and activity.
- There is currently no performance framework for TASC; for example, there are no outcomes-based key performance indicators on:
 - meeting the service expectations of regulated entities
 - effectiveness of communication with regulated and other relevant entities
 - whether regulator actions are proportionate to the risk of non-compliance – representing a risk-based approach to regulation.

What do you think?

The Steering Committee will make recommendations to update the education regulation framework using the elements of a modern regulatory framework as a guide. They invite you to share your thoughts on the following questions.

6. Do you think that the *Office of Tasmanian Assessment, Standards and Certification Act 2003* should be updated to include a clearer statement of purpose (object) and principles to guide how TASC regulates? What do you think it should include?
7. The Steering Committee will make recommendations to update the TASC framework using the elements of a modern regulatory framework as a guide. Some options that could be considered include:



- separating the responsibility for regulatory outcomes and administrative accountability
- considering whether a skills-based board, or a blended model, is more appropriate than a single regulator, given the complexity of TASC's operations.

Do you have any other ideas or views on these possible options?

Is there anything else the Steering Committee should consider?

8. In what ways could the current funding model for TASC be improved to promote efficiency and ensure sustainability?
9. What does 'better-practice regulation by the TASC' mean to you? What does it look like?
10. Do you think introducing a performance framework for TASC, such as that used for government businesses and TasTAFE, would deliver better outcomes for learners, teachers and the community? Why?



The Registrar, Education and the Non-government Schools Registration Board

The Registrar, Education (the Registrar), supported by the Office of the Education Registrar (OER) was established under the *Education Act 2016 (Tas)* (the *Education Act*) and is responsible for a number of functions under the Act. This includes managing registration processes for non-government schools and supporting the operation of the Non-Government Schools Registration Board (NGSRB). Governance arrangements for the Registrar are more contemporary, having been established in 2016.

Assessment against the elements of a modern regulatory framework

Modern governance for the delivery of outcomes

- The Registrar is an independent statutory office responsible to the Minister for Education and Training.
- The Registrar is appointed under the *State Service Act*.
- The Registrar is responsible for:
 - registering and monitoring home education in Tasmania
 - managing the compulsory conciliation process for non-attendance at school, for the government, Catholic and independent school sectors
 - reporting to, advising, and providing executive support to the NGSRB, and providing administrative support to the Tasmanian Home Education Advisory Council (THEAC).
- The NGSRB is a Statutory Board, which has decision-making powers in relation to the registration of a non-government school.
- The Act includes Objects (or purpose) and Principles to guide administration of the Act.
- There is limited delineation for the Registrar of regulatory outcomes and administrative accountabilities including the management of staff, budgets, accommodation and facilities.
- The Registrar reports on outcomes performance.
- There is no performance management framework for the Registrar or NGSRB.
- There are no published performance expectations set for the Registrar or the NGSRB.

Provision of independent advice

- The Registrar is subject to Ministerial instruction under Section 6 of the *Education Act*, but not instruction or direction by the Secretary DoE.
- The tenure and termination provisions for the Registrar are provided under the *State Service Act*.
- Provisions for the avoidance or management of conflicts of interest by the Registrar are specified under the *State Service Act* framework.
- The Secretary DoE has no direction power over the Registrar or the NGSRB in respect of their statutory functions. There is a tension with the *State Service Act* framework requiring the Secretary DoE to be responsible for the performance management of State Servants, including the Registrar.



- The NGSRB is subject to Ministerial direction in respect of any other (additional or new) function the Minister specifies and provides in writing to the Board. There is no requirement for this direction to be published.
- The terms of appointment and termination provisions for the NGSRB members are specified in the *Education Act*, along with the composition of members which includes representatives of stakeholder groups with an additional requirement for these representatives to have skills specified in the *Education Act*. The *Education Act* provides for the NGSRB to include a DoE representative, and also provides for the disclosure of interests by members.

Sustainability of funding

- There is minimal cost recovery by the Registrar with over 95 per cent of its costs funded by Government appropriation provided through DoE.
- The Registrar was provided with significant additional budget support by DoE during the 2018–19 and 2019–20 financial years which is ongoing. The additional funding being provided in 2019–20 represents a significant proportion of total funding and was provided to address under-funding of the OER when it was established in 2017 and the cost of undertaking an appropriate level of review of Home Education. See Appendix B for details.
- The Registrar is responsible for both administrative and regulatory functions.
- Regulatory services are provided across the three sectors, but only DoE contributes to the Registrar's operation by funding the functions directly from funding provided under the Bilateral Agreement for the Government Sector.
- DoE provides the Registrar with corporate services, eg HR, IT, accommodation services, etc. There is no service level agreement or cost recovery agreement for these services.
- The legislation is unclear whether the Treasurer's Instructions (TIs) apply to the Registrar or how internal controls such as delegations, internal audit and work health and safety policies and procedures apply.
- Internal controls relating to the TIs have been put in place by DoE through the application of delegations for procurement and financial management.
- There is an ongoing budget risk for DoE from the current arrangements because the Registrar is established in its legislation as independent from DoE. DoE funds the OER but has no control over its outlays. Risks should usually be allocated to the party best able to manage them. This is not currently the case.

Better-practice regulation with a focus on outcomes

- The Registrar does report on outcomes performance.
- There is currently no performance framework for the Registrar and the NGSRB; for example, there are no outcomes-based key performance indicators for:
 - meeting the service expectations of regulated entities
 - effectiveness of communication with regulated and other relevant entities
 - whether regulator actions are proportionate to the risk of non-compliance – a risk-based approach to regulation.



What do you think?

The Steering Committee will make recommendations to update the education regulation framework using the elements of a modern regulatory framework as a guide. They invite you to share your thoughts on the following questions.

- I 1. How well does the existing framework provide for understanding, organising for, and ensuring success by the Registrar and the NGSRB? How could it be improved?
- I 2. The Steering Committee will make recommendations to update the Registrar's and NGSRB framework using the elements of a modern regulatory framework as a guide. Some options that could be considered include:
 - separating the responsibility for regulatory outcomes and administrative accountability
 - considering whether a skills-based board, or a blended model, is more appropriate than a single regulator for the Registrar's functions
 - considering whether a single regulator, or skills-based board, is more appropriate than a representative board for the NGSRB's functions.

Do you have any other ideas or views on these possible options?

Is there anything else the Steering Committee should consider?

- I 3. In what ways could the current funding model for the Registrar and the NGSRB be improved to promote efficiency and ensure sustainability?
- I 4. What does 'better-practice regulation by the Registrar and NGSRB' mean to you? What does it look like?
- I 5. Do you think introducing a performance framework for the Registrar and NGSRB, such as that used for government businesses and TasTAFE, would deliver outcomes for learners, schools, and the community? Why?



Appendices

- A. What can we learn from other jurisdictions and local regulators?
- B. Funding and FTEs of Regulators
- C. References



Appendix A: What can we learn from other jurisdictions and local regulators?

What can we learn from other jurisdictions?

Teacher Registration Regulators Across Australia

State	Regulator	Scope	Board membership	Funding source	Performance framework
TAS	Teachers Registration Board	Government Non-government VET	Representative	Department of Education and Registration fees	Legislative requirement to deliver annual report to the Minister No reporting against strategic objectives
VIC	Victorian Institute of Teaching	Government Non-government	Skills and Representative	Registration fees and departmental grants	Legislative requirement to prepare strategic plan and annual business plan approved by the Minister Annual Report reports performance against Statement of Expectation set by the Minister
SA	Teachers Registration Board SA	Government Non-government	Representative	Registration fees	Legislative requirement to deliver annual report to the Minister Annual Report against whole of government objectives
WA	Teachers Registration Board WA	Government Non-government	Skills	Registration fees and WA Treasury	Legislative requirement to deliver annual report to the CEO Annual Report against key performance indicators dictated by whole of government goals



State	Regulator	Scope	Board membership	Funding source	Performance framework
NSW	New South Wales Education Standards Authority	Government Non-government	Skills and Representative	NSW Treasury	Minister to issue annual Statement of Expectations to determine priorities
NT	Teachers Registration Board NT	Government Non-government	Representative	Not found	Legislative requirement to deliver annual report to the Minister No reporting against strategic priorities
ACT	Teacher Quality Institute ACT	Government Non-government	Representative	Registration fees ACT Government	Annual Report – Performance analysis against Key achievements of the Strategic Direction
QLD	Queensland College of Teachers	Government Non-government	Representative	Registration fees	Legislative requirement to report to the Minister on efficiency, effectiveness, economy and timeliness of the college and its systems and processes, when and in the way required by the Minister



Assessment, Standards and Certification Regulators Across Australia

State	Regulator	Scope	Board membership	Funding source	Performance framework
TAS	Office of Tasmanian Assessment, Standards and Certification	Government Non-government	N/A	Tasmanian Department of Education	Annual report delivered to Secretary DoE No reporting against objectives
VIC	Victorian Curriculum and Assessment Authority	Government Non-government VET	Skills	Accrual-based appropriations from DET	Annual report against Strategic Directions
SA	SACE Board of South Australia	Government Non-government	Representative and Skills	South Australian Government grants	Legislative requirement to deliver annual report to the Minister Reporting against strategic priorities, contribution to whole of Government objectives, agency specific objectives and performance
WA	School Curriculum and Standards Authority	Government Non-government	Skills	Function funding: Department of Education Board funding: grant	Annual report against State Government's Outcome Based Management Framework and agency level desired outcomes
NSW	NSW Education Standards Authority	Government Non-government	Representative and Skills	NSW Treasury	Minister to issue annual Statement of Expectations to determine priorities Annual report against objectives of Minister's Statement of Expectations
NT	Northern Territory Board of Studies	Government Non-government	Representative and Skills	Department of Education NT	Annual report doesn't measure against Strategic Directions



ACT	ACT Board of Senior Secondary Studies	Government Non-government	Representative	Not found	Annual Report – Performance analysis against: <ol style="list-style-type: none"> 1. An informed and effective response to international, national and local initiatives 2. A high quality, high equity curriculum, assessment and certification system that caters for all students
QLD	Queensland Curriculum and Assessment Authority	Government Non-government Tertiary	Representative and Skills	Departmental grants	Legislative requirement to deliver annual report, further reporting at Minister's request Annual report against objectives of Strategic Plan and DoE Service Delivery Statement



School Registration Regulators Across Australia

State	Regulator	Scope	Board membership	Funding source	Performance framework
TAS	Non-government Schools Registration Board Registrar, Education	Non-government Home school	Skills and Representative	TAS Department of Education	Annual report delivered to the Secretary DoE No reporting against specific objectives
VIC	Victorian Registration and Qualifications Authority	Government Non-government Home school VET	Skills	Department of Education and Training grants	Annual report outlines key achievements against strategic plan and Statement of Expectation set by the Minister
SA	Education Standards Board	Government Non-government	Representative	SA Governmental grants and Commonwealth Government	Annual report delivered to the Minister Annual report against whole of government objectives, and agency specific objectives and performance
WA	Department of Education WA	Non-government Home School	N/A	WA Government	N/A
NSW	NSW Education Standards Authority	Non-government Home school	Skills and Representative	NSW Treasury	Minister to issue annual Statement of Expectations to determine priorities Annual report against objectives of the Minister's Statement of Expectations



NT	Department of Education NT	Non-government Home school	N/A	NT Government appropriation and Commonwealth Government appropriation	N/A
ACT	ACT Education and Training Directorate	Non-government Home School	N/A	Controlled recurrent payments	N/A
QLD	Non-state Schools Accreditation Board	Non-government	Representative	QLD Department of Education	N/A
	Department of Education	Home school			



What can we learn from regulators outside education?

Modern governance for delivery of outcomes

Separation of responsibility (and accountability) for regulatory and administrative (staffing, finance, IT, accommodation, HR, etc) outcomes occurs in various regulators responsible to the Tasmanian Treasurer including the Liquor and Gaming Commission mentioned above, the [Tasmanian Economic Regulator](#) and the [Superannuation Commission](#), each of which is supported by a branch within the Department of Treasury and Finance.

The Tasmanian Department of Justice provides administrative support to an extensive range of independent statutory offices for which its Ministers are accountable.

Provision of independent advice

The [Tasmanian Liquor and Gaming Commission](#) is a skills-based board, appointed by the Governor on the recommendation of the Minister. It may include a State Service officer or employee. The Minister may give written directions to the Commission, subject to certain restrictions specified in section 127 of the [Gaming Control Act 1993](#) (Tas). Each direction and revocation of any direction is to be published in the Gazette.

The [Australian Prudential Regulation Authority](#) (APRA) is an independent statutory authority established, under the [Australian Prudential Regulation Authority Act 1998](#) (Cwth) for the purpose of prudential supervision of financial institutions and for promoting financial stability in Australia. It is a skills-based board appointed by the Governor-General on the recommendation of the Minister. A person may not be appointed as an APRA member if the person is a director, officer or employee of a body regulated by APRA. It is subject to Ministerial direction in respect of APRA policies and priorities, with restrictions specified in section 12 of the [Australian Prudential Regulation Authority Act 1998](#). Any such directions must be published in the Australian Government gazette.

Sustainability of funding

The Department of Justice in Tasmania provides administrative support services to several regulatory authorities for the administration of justice and regulatory and other services. Entities receiving these services include the Supreme Court, Magistrates Court, Tasmanian Electoral Commission, Resource Management and Planning Appeal Tribunal, the Tasmanian Planning Commission and Worksafe Tasmania.

The Australian Health Practitioner Regulation Agency (AHPRA) is the national organisation responsible for implementing the National Registration and Accreditation Scheme across Australia. AHPRA works in partnership with the 15 National Boards, implementing the National Registration and Accreditation Scheme. The primary role of the boards is to protect the public and set standards and policies that all registered health practitioners must meet. Primary income for AHPRA is received from registration fees, but varies each year based upon number of registrants and fee variations for National Boards.

AHPRA's primary source of income is received from transactions, mostly from registration fees followed by application fees.

Better practice regulation with a focus on outcomes.

The performance framework for Tasmanian Government businesses such as that in the [Government Business Enterprises Act 1995](#) (Tas) framework is similar to that adopted for TasTAFE.



The Australian and Victorian Governments have both established regulator performance frameworks. The Victorian framework, for example, identifies elements of good regulatory practice and proposes criteria for self-assessment and reporting by regulators of their regulatory performance. The framework also includes the issue by the Minister of a Statement of Expectations for the regulator that sets, after consultation, outcome-based and measurable improvements and targets for the regulator to report against.

The [Australian Securities and Investments Commission](#) (ASIC) regulates Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit-taking and credit. The Commission is responsible for the exercise of ASIC's functions and powers, strategic direction and priorities through meetings. The Commission is comprised of a Chair (who governs ASIC), Deputy Chairs and members. ASIC is established as a body corporate under the [Australian Securities and Investments Commission Act 2001](#) (Cwth). ASIC is required under the [Public Governance, Performance and Accountability Act 2013](#) (Cwth) to prepare a corporate plan covering purpose, environment, performance, capability, and risk oversight and management for the budget forward estimates period. ASIC's primary source of revenue is Government appropriations.



Appendix B: Funding and FTE of the Regulators

Funding for the Three Regulators in the 2019-20 State Budget

	2019-20	2019-20
	\$	\$
	Total Budget Allocation	Total Budget Allocation includes additional funding from DOE of:
TRB ¹	600 000	600 000
TASC ²	4 090 000	1 038 000
OER	1 948 000	495 000
Total³	7 676 000	2 133 000

Note:

1. This reflects the funding provided by the DoE to TRB. It does not reflect the full budget for this entity. The total 2019–20 budgeted revenue for TRB was \$2.1 million and budgeted expenditure of \$0.3 million. The revenue primarily reflects Teacher Registration payments.
2. The Cross Sector Regulatory Function Review figure for 2020–21 in the 2019–20 budget was \$1.945 million. This was subsequently increased due to \$2.133 million due to the TASC allocation being increased from \$850 000 to \$1.038 million allocation.
3. These budgets include allocations for salaries and non-salaries and does not include any revenues collected.

Approved Establishment¹ FTE at 1 July 2019 for each entity

The approved establishment FTE represent the approved establishment salary budgets that are within the budget allocations provided above.	FTE
TRB ¹	12.31
TASC ²	20.6
OER	13.00



1. TRB does not have a set Approved Establishment staffing allocation. This represents the actual staffing as at 1 July 2019. Approved Establishment FTE represents the staffing allocation supported by the budget for each entity.
2. This FTE does not include casual Sessional staff which include Markers and Exam Supervisors. The budget for these staff in 2019–20 was \$932 439. This budget allocation is within the TASC budget provided above.



Appendix C: References

AITSL 2018, *One Teaching Profession: Teacher Registration in Australia*, Australian Institute for Teaching and School Leadership, Carlton South, Victoria, September.

ANAO 2014, *Public Sector Governance: Strengthening Performance through Good Governance*, Better Practice Guide Series, Australian National Audit Office, Barton, ACT, June.

ANAO 2014, *Administering Regulation: Achieving the Right Balance*, Better Practice Guide Series, Australian National Audit Office, Barton, ACT, June.

Australian Government 2014, *Regulator Performance Framework*, Department of Prime Minister and Cabinet, Canberra, ACT, October.

DTF Vic 2017, *Statement of Expectations for Regulators*, Department of Treasury and Finance, Melbourne, Victoria, May.

McLellan, JG 2011, *All Above Board - Great Governance for the Government Sector*, 2nd edition, Australian Institute of Company Directors, Sydney, NSW, p.2, cited in *Better Practice Guide: Public Sector Governance*, p.7.

OECD 2014, *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris,
<<https://www.oecd-ilibrary.org/docserver/9789264209015-en.pdf?expires=1581979652&id=id&accname=guest&checksum=5518F3F82C46D17C19CE1DFFEB31F0AA>>

Uhrig, J 2003, *Review of the Corporate Governance of Statutory Authorities and Office Holders*, Commonwealth of Australia, Canberra, ACT, June.