



Australian Government
**Department of Industry,
Innovation and Science**

Regulator Performance Framework

Self-Assessment Report

Submitted by: Australian Industry Participation Authority

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www.industry.gov.au/aip

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1 Certification by the Accountable Authority

“The regulator’s Accountable Authority under the PGPA Act, if applicable, must certify the self-assessment report and provide it to the MAC or other stakeholder consultation mechanism approved by the responsible Minister”.

On 30 November 2016, the Growth Centres Advisory Committee (GCAC) provided unconditional endorsement of this RPF self-assessment report, commenting that “given the legislation and the AIP Authority’s legislated role - the self-assessments, summaries and advice are a reasonable reflection of their performance.”

It was noted that there is a level of confidence the AIP Authority has processes in place to regularly capture the regulated community’s views on improving its performance.

In line with departmental recommendations for the 2017 report, the Authority will consider strategies for better understanding the operating environment of the industry, as well as further staff training and development.

2 One page snapshot

Summary

The Australian Industry Participation (AIP) Authority is a statutory position established under the *Australian Jobs Act 2013* (the Act) which commenced on 27 December 2013. The AIP Authority is a small regulator that interacts with a limited number of large companies with an emphasis on engagement and encouragement to ensure compliance. The Authority staff for Act administration (7 FTE in 2015-16, increasing to 10 FTE in 2018-19) are provided by the Department of Industry, Innovation and Science. The Authority has a total four year Budget appropriation of \$7 million which also used for the Authority to implement the AIP requirements in Commonwealth Government procurement. The Authority does not undertake any cost recovery.

The Act requires the development and implementation of an AIP plan for major Australian projects that outlines how a project proponent will provide full, fair and reasonable opportunity to Australian industry to supply goods and services to a project. The Act applies to both public and private projects with a capital expenditure of \$500 million or more. The AIP Authority holds the responsibility to ensure compliance with the Act and its role is to evaluate, approve and publish summaries of AIP plans, and monitor and report on the implementation of AIP plans.

Since the Act's commencement the AIP Authority has written to 58 projects alerting them to potential obligations under the Act. This contact and self-identification by projects has resulted in 25 major project notifications lodged with the AIP Authority and 15 AIP plans submitted for approval to date. To date, the AIP Authority has approved 14 AIP plans for 10 different proponents, and has received and evaluated eight related AIP plan compliance reports.

The Australian Industry Participation Authority (the Authority) is covered by the Regulator Performance Framework (the framework) as it is responsible for administering the Act. To meet the requirements of the Framework, the Authority undertook a self-assessment against six outcomes-based key performance indicators: reducing regulatory burden; targeted communications; risk-based and proportionate approaches; efficient and coordinated monitoring; transparency; and continuous improvement.

The Authority has performed robustly against the KPIs, and has developed a comprehensive improvement programme to be initiated in 2016-17. The self-assessment process included a stakeholder survey, queries and responses received in the Australian Industry Participation email inbox. Of the 11 stakeholders surveyed, eight responses were received. The responses to the survey were encouraging, particularly regarding the availability of Authority staff to respond to stakeholder enquiries and the availability of documentation to assist stakeholders to meet compliance obligations. One respondent highlighted a lack of understanding in industry specific procurement practices that impacted on the ability to provide appropriate assistance in developing an Australian Industry Participation (AIP) plan.

Of the responses, there were suggestions for an annual forum, completed example AIP plans and implementation reports and flow-charts for guidance. Authority staff are developing a communication strategy and these suggestions from stakeholders will be considered as part of that strategy.

Review of the compliance and monitoring records show that the Authority had a 100% success rate in responding to queries on (and before) the required timeframe. The Authority was also approving AIP plans within the legislated time frame.

As a response to stakeholder feedback, the Minister streamlined requirements to allow an AIP plan and compliance report approved under the Act to be used by businesses when applying for the Enhanced Project By-law Scheme (EPBS). Previously, separate and duplicative AIP plans were required under both the EPBS and the Act.

3 Introduction

3.1 About the regulator

The Australian Industry Participation Authority (the Authority) administers the *Australian Jobs Act 2013* (the Act). The Act applies to both public and private projects with a capital expenditure of \$500 million or more. Australian Industry Participation (AIP) plans provide detail on how major public and private project proponents will encourage full, fair and reasonable opportunity for Australian industry to compete for work. Target entities are those undertaking a major development project (\$500 million or more) in the resources, infrastructure, and industrial and commercial construction sectors.

AIP plans detail expected opportunities for the supply of goods and/or services to the project; outline how these opportunities will be communicated to potential suppliers; detail how Australian businesses will be assisted in longer-term participation, including encouraging capability development and integration into global supply chains. Major project proponents are encouraged to apply AIP plan principles to all levels of the project's supply chain—from procurement entities to lower tier suppliers.

The AIP Authority is a statutory position established under the Act. The AIP Authority is a small regulator that interacts with a limited number of large companies with an emphasis on engagement and encouragement to ensure compliance.

The Authority staff for Act administration (7 FTE in 2015-16, increasing to 10 FTE in 2018-19) are provided by the Department of Industry, Innovation and Science. The Authority has a total four year Budget appropriation of \$7 million which is also used by the Authority to implement the AIP requirements in Commonwealth Government procurement. The Authority does not undertake any cost recovery.

The Act also requires compliance reporting on each AIP plan, during the project's construction phase and two years into the operations phase. The AIP Authority holds the responsibility to ensure compliance with the Act and its role is to evaluate, approve and publish summaries of AIP plans, and monitor and report on the implementation of AIP plans.

Currently, there are 12 AIP plans approved under the Act, with one under consideration. Since the Act's commencement on 27 December 2013 the AIP Authority has written to 58 projects alerting them to potential obligations under the Act. This contact and self-identification by projects has resulted in 25 major project notifications lodged with the AIP Authority and 15 AIP plans submitted for approval to date. To date, the AIP Authority has approved 14 AIP plans for 10 different proponents, and has received and evaluated eight related AIP plan compliance reports.

The department has commissioned external reviews but there was little feedback in those reviews on how the Authority performed as a regulator. However, it was noted the Authority had broad discretion in applying some requirements of the Act, for example:

- establishing appropriate timing to submit AIP plans and reports
- providing exceptions to the need for an AIP plan
- the provision of penalties in cases of non-compliance.

The Authority applies discretion in establishing appropriate timing for AIP plans and reports and has provided two exceptions to the requirement to submit an AIP plan. The Authority is yet to impose a penalty for a case of non-compliance.

3.2 The Australian Government Regulator Performance Framework

The Regulator Performance Framework (the Framework) is an important part of the Government's commitment to reduce the cost, by at least \$1 billion a year, of unnecessary or inefficient regulation imposed on individuals, business and community organisations. The Framework has been developed following consultation with a range of stakeholders and consists of six outcomes-based key performance indicators: reducing regulatory burden; targeted communications; risk-based and proportionate approaches; efficient and coordinated monitoring; transparency; and, continuous improvement.

Commonwealth regulators that administer, monitor or enforce regulation are required to implement the Framework. The Authority is covered by the Framework as it is responsible for administering the Act.

As a relatively new piece of legislation (2013) it has taken some time to bed down implementation of the Act and to create awareness of the requirements of the Act. With the operation of the Act now in a settled state, albeit with fewer new projects as the construction phase of the mining boom passes, lessons learned now need to inform a continuous improvement process.

The Authority has developed a preliminary programme of activities that will impact across all KPIs informed by:

- the findings of external reviews
- the feedback of this self-assessment process
- one-on-one industry consultation
- discussions with other related Commonwealth agencies
- working with state and territory jurisdictions operating under the AIP National Framework 2001.

The process to implement the programme will need the agreement of the Minister where policy change and legal instruments are required; agreement with affected Commonwealth agencies; coordination with the states and territories through COAG and engagement with industry. Key proposed measures include:

- reducing regulatory burden
 - the principal activity will be on better harmonisation between Commonwealth, state and territory requirements. While current arrangements avoid potential for duplication, there are some further harmonisation opportunities that would simplify industry requirements.
- targeted communications
 - a communications strategy is under development and budget provision has been made to promote industry awareness, engagement and education, consistent with the legislative functions of the Authority.
- risk-based and proportionate approaches
 - while the Act provides the frameworks and powers of the Authority, it is limited in providing guidance on proportionality in the use of discretions. It is proposed to seek ministerial approval to develop legal instruments under the Act, for Ministerial execution, that will provide guidance on proportionality to the Authority.
- efficient and coordinated monitoring
 - investment has been made to access further information to monitor new project proposals, and to ensure that compliance reporting is targeted and efficient.
- transparency
 - will be a focus of the communications strategy.
- continuous improvement
 - the communications strategy will enable feedback loops that can support ongoing self-assessment of regulatory performance.

3.3 Your approach/response to the implementation of the Framework

Performance measures (PM)

The following five performance measures were agreed upon by the Hon Ian Macfarlane, the former Minister for Industry and Science on 21 July 2015, for the assessment of the Authority under the Framework.

1. **Performance commitment (PM 1):** Demonstrating a clear commitment to performance standards, that are transparent to all stakeholders and monitoring progress against these standards.
2. **Risk-based compliance (PM 2):** Evidence of implementing risk-based approaches and streamlined compliance approaches.
3. **Clarity of expectations and decision-making (PM 3):** Regulated entities are clear as to the expectations of the AIP Authority on requirements under the Act. In addition entities are provided with informative and clear advice as to reasons for an adverse decision given to them including avenues of appeal.
4. **Stakeholder engagement (PM 4):** Evidence of targeted, effective and relevant engagement with stakeholders to gain feedback or input on policy or administration changes, organisational improvements and better understanding of the regulatory cost impact.
5. **Continuous improvement (PM 5):** Evidence of a continuous improvement culture through changing practices in response to staff feedback, stakeholder suggestions, and internal or external reviews.

The performance measures listed above were developed to assess the Authority against the Framework's Key Performance Indicators (KPIs) (see below). They are used for annual assessment of continuous improvement within the Authority and its staff.

KPI	Regulator Performance Framework	Performance Measures
1	Regulators do not unnecessarily impede the efficient operation of regulated entities	PM 2, PM 5
2	Communication with regulated entities is clear, targeted and effective	PM 3, PM 4
3	Actions undertaken by regulators are proportionate to the regulatory risk being managed	PM 2, PM 5,
4	Compliance and monitoring approaches are streamlined and co-ordinated	PM 2, PM 5
5	Regulators are open and transparent in their dealings with regulated entities	PM 1
6	Regulators actively contribute to the continuous improvement of regulatory frameworks	PM 1, PM 4, PM 5

The Authority, and the Act, have operated for three years, with a legislated five year review due in 2018. As such, the measures listed above may be refined for future assessments.

4 Assessment

4.1 Common resources

The Authority is a small and recently established regulator so most evidence collected is qualitative and survey-based. See Survey section of the report for explanation of the survey approach and results.

A number of approaches were used to inform the self-assessment of the Authority. They include:

- a stakeholder survey where stakeholders responded to a number of questions based on the agreed PMs
- the notifications register: recording project details, project milestone dates, estimated values, responsible officers, Authority decision dates including exceptions granted
- the compliance monitoring: tracking locations, proponent details, industry information and letters sent to potential major project proponents
- guidance documents: instructional documents leading proponents through the AIP process, including plan preparation and compliance reporting
- the AIP inbox: email communication received and sent from aip@industry.gov.au—the communal email address for Authority staff to use when contacting existing and potential proponents
- the AIP website www.aip.gov.au: where information about the scheme, public notices and public resources (i.e. user guides, templates, FAQs) are published
- project files: electronic and hard copy files kept on all major projects, documenting regulatory processes and project progress.

The limitation of the reliance on qualitative data for assessment is that it does not serve well as a baseline for longitudinal monitoring. However, attempts to develop a more quantitative monitoring approach for a small number of regulated entities is that it will likely suffer from exaggerated effects of small changes and anomalies.

The qualitative approach will however be repeated, along with ongoing monitoring of feedback (both structured under a proposed communications strategy and from 'transactions' with regulated entities).

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

KPI 1 addresses whether current regulation is achieving its outcome without unnecessarily restricting or burdening regulated entities. Where appropriate, regulators also recognise the need to adapt approaches to particular stakeholders.

The KPI is linked to risk-based compliance (PM2) and continuous improvement (PM5). These measures were used to assess against this KPI as it addresses whether current regulation is achieving its outcome without unnecessarily restricting or burdening regulated entities. Where appropriate, regulators also recognise the need to adapt approaches to particular stakeholders.

Measures used for this KPI:

- Risk-based compliance (PM 2): While the Act is broadly prescriptive regarding requirements, the approach of the Authority has been, particularly for compliance, to only require sufficient reporting to identify potential problems which can then be further pursued.
- Continuous improvement (PM 5): The multiple of sourcing of feedback both in and outside of the self-assessment and the proactive development of an improvement programme evidence a strong culture of working with industry to improve implementation.

The Authority has reduced regulatory burdens to entities by designing documents, such as user guides for plan preparation and compliance reporting, that reflect the requirements of the legislation. Authority staff meet weekly to discuss Authority business (including processes, best practice and feedback) aimed at improving processes.

The Authority will negotiate with proponents on the timing for submission of a draft AIP plan (the trigger date) to agree on a date that balances proponent and supplier interests.

All major project proponents who have submitted draft AIP plans receive feedback. Authority staff provide tailored advice via email, phone and occasionally in person. Authority expectations are available to stakeholders on the AIP website.

The Act specifies that the Authority must take all reasonable steps to approve or refuse AIP plans within 30 days of submission (Section 18 (10)). The 30 day timeframe is publicised in the AIP guidance documentation available on the website, and is easily accessible to stakeholders according to the assessment survey. A review of submitted AIP plans indicates the Authority approves AIP plans well within the legislated time frame. There is no formal approval process for compliance reports.

4.3 KPI 2: Communication with regulated entities is clear, targeted and effective

KPI 2 addresses whether regulators are communicating in such a way that regulated entities understand regulatory obligations.

This KPI is linked to clarity of expectations and decision-making (PM 3) and stakeholder engagement (PM 4). These measures were used to assess against this KPI as it addresses whether regulators are communicating in such a way that regulated entities understand regulatory obligations and how to meet them.

Measures used for this KPI:

- Clarity of expectations and decision-making (PM 3): Regulated entities are clear as to the expectations of the AIP Authority on requirements under the Act. In addition entities are provided with informative and clear advice as to reasons for an adverse decision given to them including avenues of appeal.
- Stakeholder engagement (PM 4): Evidence of targeted, effective and relevant engagement with stakeholders to gain feedback or input on policy or administration changes, organisational improvements and better understanding of the regulatory cost impact.

All major project proponents who have submitted draft AIP plans receive feedback. Authority staff provide tailored advice via email, phone and occasionally in person. Authority expectations are available to stakeholders on the AIP website.

As mentioned above, the Authority has a website which outlines the requirements of the legislation. The website also houses a number of user guides to assist proponents in meeting obligations under the Act. Respondents to the stakeholder survey suggested the development of example AIP plans and implementation reports would provide additional assistance in meeting Authority expectations. This idea will require some consideration as projects covered under the Act are quite varied and it will be difficult to provide an example that will assist all projects.

Throughout the project, Authority staff interact with regulated entities to build understanding and provide appropriate advice. Phone and email contact details are available on the AIP website. When a proponent contacts the Authority, a 'case manager' is allocated, however any member of the Authority staff can respond to calls and enquiries received on the hotline or group mailbox. Contact details are also provided in written communication sent from the Authority when notifying major projects of potential obligations under the Act. This demonstrates openness to communication from the Authority. This was supported by stakeholder survey results, revealing respondents knew how to contact the Authority and had engaged with Authority staff by phone and email.

As required by Section 23 of the Act, the Authority maintains a register of all approved AIP plans in force along with the dates notifications, plans and compliance reports are received and the date of the Authority's response. The Authority has implemented an internal policy of resolving enquiries within ten business days. Currently, Authority staff have a 100% success rate responding within the required timeframe. All major project AIP plan submissions listed in the register have been approved or refused within the 30 day timeframe.

The Authority demonstrates accountability and transparency through its legislated annual report (Section 83 of the Act). At the end of each financial year, a report on the operations of the Authority must be provided to the Minister for presentation to the Parliament. The Authority's annual report is published as an appendix to the department's Annual Report and is available on the department's website.

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

KPI 3 ensures a risk-based approach is undertaken to promote the effective use of resources and improve regulatory framework effectiveness.

This KPI is linked to risk-based compliance (PM2) and continuous improvement (PM5). These measures were used to assess against this KPI to ensure a risk-based approach is undertaken to promote the effective use of resources and improve regulatory framework effectiveness.

Measures used for this KPI:

- Risk-based compliance (PM 2): Evidence of implementing risk-based approaches and streamlined compliance approaches.
- Continuous improvement (PM 5): Evidence of a continuous improvement culture through changing practices in response to staff feedback, stakeholder suggestions, and internal or external reviews.

The Authority will negotiate with proponents on the timing for submission of a draft AIP plan (the trigger date) to agree on a date that balances proponent and supplier interests.

The Authority provides support to project proponents in the development of AIP plans, taking into consideration the particular characteristics of each project. This helps project proponents tailor AIP activities appropriately taking into account the size and scope of the project while avoiding unnecessary compliance burdens. When a project proponent submits a draft AIP plan to the Authority, the case manager prepares any required feedback which is quality checked by another team member.

Following the approval of an AIP plan, project proponents must submit to the Authority six-monthly compliance reports during the project phase of the project, and the first two years of the operations phase. Proponents report on AIP activities undertaken, contracts awarded and outcomes for Australian suppliers. The Authority reviews each report and will seek clarification if required. The Authority records expected dates for the reports, with Authority staff notifying proponents in advance on upcoming deadlines.

Proponents may apply to the Authority to extend a compliance reporting period when a project has been delayed and AIP activities have been put on hold. Where the scope of a project is changed such that the capital value falls below the \$500 million threshold, the proponent may withdraw its AIP plan. A proponent may make minor alterations to an approved AIP plan (such as change of project contact name) without the requirement to submit a new plan for approval.

The Authority acknowledges that states and territories have local industry participation plan requirements. Under the Act, (Section 17(5)) a project proponent can gain an exception from submitting an AIP plan to the Authority if a plan has been prepared for a state or territory that complies with the conditions specified in the legislative rules.

To date two exceptions have been granted, removing the requirement to lodge an AIP plan, and the Authority has been notified on the potential of four more exceptions in 2016–17. Currently, all states and territories with the exception of New South Wales, have local industry participation plan submission requirements for certain projects.

4.5 KPI 4: Compliance and monitoring approaches are streamlined and co-ordinated

The KPI is linked to risk-based compliance (PM2) and continuous improvement (PM5). These measures were used to assess against this KPI as compliance and monitoring are essential in allowing regulators to determine the level of compliance with regulation, and fall under chief actions undertaken by the Authority. However, the Act does not have a verification component to determine the level of compliance with the regulation and utilises engagement and encouragement to ensure compliance.

Measures used for this KPI:

- Risk-based compliance (PM 2): Evidence of implementing risk-based approaches and streamlined compliance approaches.
- Continuous improvement (PM 5): Evidence of a continuous improvement culture through changing practices in response to staff feedback, stakeholder suggestions, and internal or external reviews.

While compliance with the Act is the responsibility of project proponents, the Authority works to ensure awareness of obligations under the Act, and makes information available to assist in meeting those obligations. As mentioned, the AIP website details all obligations under the Act and provides the necessary templates and guidance material.

The Authority promotes and monitors compliance with the Act and there are penalties for non-compliance. These include administrative action or court enforcement. The Authority has not yet imposed a penalty for non-compliance. Risk to social licence and ease of meeting compliance appear to be the major reasons for compliance.

To ensure the Authority has a streamlined and coordinated approach to compliance and monitoring, a number of strategies have been developed. The Authority maintains a compliance monitoring database that tracks potential major projects and includes details of project locations, proponent details, industry information and letters sent to proponents. The Authority's primary source of data on upcoming projects is Deloitte Access Economics' quarterly Investment Monitor. This Monitor is a comprehensive database of Australian project investment commitments and intentions across major industry sectors. Projects are categorised as 'under construction', 'committed', 'under consideration' or 'possible'. Information from the Monitor is complemented by ongoing reviews and cross-checking of the Chief Economist's energy and resources projects register, daily business and financial news, ASX announcements, project websites, Morningstar and internal departmental intelligence. Some projects may be identified to the department directly by third parties. Some projects only come to the attention of the Authority when a draft plan is lodged. After reviewing the data, the Authority may notify potential project proponents of compliance obligations under the Act.

All project proponents submitting project notifications or AIP plans are recorded in the Authority's register with dates listed for obligations, a case manager is allocated and project contacts are advised ahead of dates where compliance is required.

On the website, the Authority provides details for stakeholders to raise compliance issues. Since inception, the Authority has received three project complaints from the Australian Steel Institute. The Authority contacted each of the three project proponents and found that two did not have Act obligations while the third is yet to be resolved. In addition, the Authority has sent letters to two project proponents, querying Act obligations, which resulted in no further necessary action. There have been no complaints on the performance of the Authority.

The Authority acknowledges that states and territories have local industry participation plan requirements. Under the Act, (Section 17(5)) a project proponent can gain an exception from submitting an AIP plan to the Authority if a plan has been prepared for a state or territory that complies with the conditions specified in the legislative rules.

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

This KPI is linked to performance commitment (PM 1). This KPI ensures regulators are open and transparent during the regulatory process, fostering the confidence of regulated entities. Transparency also increases the accountability of both regulators and the government.

Measures used for this KPI:

- Performance commitment (PM 1): Demonstrating a clear commitment to performance standards, that are transparent to all stakeholders and monitoring progress against these standards.

Stakeholder engagement with regulated entities is key to transparency. As detailed in other KPI's, the Authority has well established methods for stakeholder communication, including the website, phone line and email inbox, as well as designated case managers for proponents. Upon contacting the Authority, a case manager is allocated to a stakeholder to assist with meeting compliance responsibilities. Case managers assist stakeholders via phone, email and face to face meetings.

The expectations of the Authority are clearly outlined in website text or within public guidance documents and are easily accessible to stakeholders.

The Act specifies that the Authority should approve or refuse AIP plans within 30 days of submission (Section 18(10)). When the Authority receives a draft AIP plan for approval, the executive summary of the plan is placed on the AIP website within one day of receipt. The summary identifies the date of the plan received and until the AIP Authority approves the plan, the published status is 'under consideration'. Proponents can monitor the Authority's progress on meeting the 30 day requirement. Stakeholders can also obtain information about each project and corresponding AIP activities from the published summaries and subsequent updates.

According to the stakeholder survey, regulated entities clearly understand Authority expectations on requirements under the Act. In addition entities are provided with informative and clear advice explaining reasons for an adverse decision and avenues of appeal.

Under legislation, the Authority is required to prepare an annual report, outlining the operations of the Authority in each financial year.

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

The KPI is linked to performance commitment (PM 1), stakeholder engagement (PM 4) and continuous improvement (PM 5). This KPI promotes the continuous improvement of regulatory frameworks and ensures the framework has the flexibility to adjust to changing circumstances.

Measures used for this KPI:

- Performance commitment (PM 1): Demonstrating a clear commitment to performance standards, that are transparent to all stakeholders and monitoring progress against these standards.
- Stakeholder engagement (PM 4): Evidence of targeted, effective and relevant engagement with stakeholders to gain feedback or input on policy or administration changes, organisational improvements and better understanding of the regulatory cost impact.
- Continuous improvement (PM 5): Evidence of a continuous improvement culture through changing practices in response to staff feedback, stakeholder suggestions, and internal or external reviews

The Authority has developed several ways to engage stakeholders. As detailed in other KPI's, these include the AIP hotline and email inbox, allocated case manager and the provision of guidance documents on the AIP website.

When a project proponent submits a draft AIP plan, the allocated case manager prepares feedback for the entity. Before the feedback is sent, the staff member has the feedback quality checked by another team member.

The Authority's expectations are detailed under the Act. The Authority makes decisions on whether project proponents have met the requirements under the Act. In addition, entities are provided with informative and clear advice explaining reasons for an adverse decision including avenues of appeal. The Act, templates and guidance documents are available on the AIP website.

The Authority is open to feedback and suggestions from stakeholders. As already detailed, the former Minister for Industry and Science streamlined the requirements of EPBS and the Act in 2015. The Authority has instituted annual review meetings with project proponents with approved AIP plans to elicit feedback on regulatory function.

The Authority demonstrates a culture of continuous improvement in professional development, with staff attending relevant industry-related conferences and events, attending face-to-face meetings with major stakeholders, and the hiring and training of new staff.

4.8 Stakeholder survey

The AIP Authority chose to conduct a targeted stakeholder survey to test the Authority's performance as a regulator. The Authority is a relatively new regulator and does not have a large number of stakeholders to canvass for opinions. Eleven stakeholders were approached for the survey in June 2016 and eight survey responses were received.

The survey consisted of 15 questions, all designed to collect qualitative responses. The stakeholders had an option to take the survey over the phone with a departmental staff member independent of the Authority recording responses, or to submit text responses via return email.

Stakeholder bodies will not be listed in this report due to respect confidentiality. The stakeholder list was signed off by the Authority and approved by the department's Deregulation Policy section, which coordinated the departmental Framework responses.

4.8.1.1 Survey questions

The questions developed by the Authority addressed the predetermined performance measures and the Framework KPIs (see 3.3 Your approach/response to the implementation of the Framework).

PM 1 & PM 5

1. Does the Authority respond within a reasonable timeframe:
 - a. to general queries?
 - b. with feedback on notification forms, and submitted AIP plans and compliance reports?
2. What do you judge as a reasonable timeframe for responses?
3. Was/is it possible to raise issues about compliance with the Jobs Act or provide comments to the Authority about the processes for notification, development and approval of AIP plans and compliance reports?
4. Did/do you know how to contact the Authority to provide comments? Is the Authority receptive to comments and suggestions?

PM 2

5. Did the Authority notify you of potential obligations under the Jobs Act? Was the purpose of the notification clear and was sufficient time provided for a response?
6. How did you find the process of complying with the Jobs Act? Do you have any suggestions for streamlining or simplifying the process?

PM 3

7. How have you found the standard of decision making in determining compliance with the Jobs Act, including trigger dates, notification forms, gaining an exception from the Jobs Act, approval of AIP plans and compliance reports, amendments, and withdrawal of AIP plans?
8. Did you find the guidance documents for AIP plan preparation and compliance reporting easily on the AIP website, and were the guidance documents useful? Why?
9. Do you have any suggestions for improvements in the guidance documents?
10. Was the feedback provided by the Authority on your AIP plan before formal submission adequate and reasonable? Was the feedback provided sufficiently detailed to enable you to make the required changes?

PM 4

11. How would you rate the Authority's stakeholder engagement regarding feedback about implementation and input into policy changes? Do you have suggestions for improvement?
12. How did the Authority engage and communicate with you? (teleconference, in-person meeting, phone calls, emails, letters, etc.) Were these methods of communication effective?

PM 5

13. Are there areas in which the Jobs Act compliance and approvals processes could be improved?
14. How can the Authority improve communication?
15. Are there other comments or suggestions you would like to make?

4.8.1.2 Survey results

As mentioned above, eleven stakeholders were approached for the survey in June 2016 and eight survey responses were received. These responses, as well as a review of the resources listed on page seven, have been grouped under each KPI.

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

The stakeholders found the standard of decision making to be good. Specific feedback from some stakeholders agreed the Authority worked with them to determine the appropriate trigger date for notifications, plans, and reporting, and provided assistance in meeting obligations of the Act and resolved issues identified. However, one respondent found it difficult to understand the notification process, the obligations of the Act on smaller companies and the value of undertaking the AIP process.

A review of the Authority approval process indicates the Authority responds to enquiries within 24 hours and AIP plans are approved well within the legislated 30 day requirement.

Authority Staff maintain a notification register that records project dates and milestones and Authority decisions including exceptions granted. In addition, the compliance monitoring spreadsheet records industry information and letters sent to potential major project proponents.

In addition, the Authority has instituted informal annual review meetings with project proponents with approved AIP plans to elicit feedback on regulatory function.

In 2014, the department commissioned a review, undertaken by Ernst & Young (E&Y), of all AIP programmes and policies. There was little feedback on how the Authority performed as a regulator, however, E&Y suggested the Authority could use discretion in applying some requirements of the Act, for example:

- establishing appropriate timing to submit AIP plans and reports
- providing exceptions
- the provision of penalties in cases of non-compliance.

Two of the above actions have been implemented. The Authority applies discretion in establishing appropriate timing for AIP plans and reports and has provided two exceptions to the requirement to submit an AIP plan.

In 2015, the Hon Ian Macfarlane, the former Minister for Industry and Science, from advice from the Authority, streamlined the administration of the Enhanced Project By-law Scheme (EPBS) to allow an AIP plan and compliance reports approved under the Act to be used by businesses when applying for the EPBS. This change was a response to feedback from a stakeholder seeking clarification on the alignment of AIP plans for the EPBS and the Act. At the time, separate AIP plans were required to meet the requirements of both the Act and EPBS. This change is evidence of the regulator taking steps to minimise duplication and optimise harmonisation with other relevant government programmes

KPI 2 Communication with regulated entities is clear, targeted and effective

Most of the stakeholders found the guidance documents easily on the website and considered them useful. However, some stakeholders indicated the AIP plan template is repetitive and onerous. In addition, there were suggestions to make available a mock-up AIP plan and compliance report with prescribed appropriate activities, and a flow chart which outlined the AIP and decision-making process for the project or business. Respondents to the stakeholder

survey suggested the development of example AIP plans and implementation reports would provide additional assistance in meeting Authority expectations.

Respondents knew how to contact the Authority and had engaged with Authority staff by phone and email.

All of the stakeholders found communication to be efficient and effective and that the Authority engaged with stakeholders in a helpful way. The website provides useful documents for stakeholders to use and the allocation of a case manager is useful. One stakeholder suggested it would be useful to hold an annual forum to share information and examples of AIP implementation. Another stakeholder suggested it would be useful for state and territory governments to know with which projects the Authority is engaged.

Currently, Authority staff have a 100% success rate responding within the required timeframe. All major project AIP plan submissions listed in the register have been approved or refused well within the 30 day timeframe.

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

Three of the respondents had little difficulty with compliance with the Act due to the availability of guidance documents on the website and advice from Authority staff. Two respondents found compliance to be difficult as one had trouble interpreting the requirements of the legislation and another found it difficult to determine the notification timeline.

The website provides user guides and templates to inform regulated entities of their obligations. In addition, the Authority works with project proponents to determine appropriate notification timelines for projects. This is to ensure the regulated entity is not subject to unnecessary regulation.

When a project proponent submits a draft AIP plan to the Authority, the case manager prepares any required feedback which is quality checked by another team member.

As mentioned earlier, under the Act (Section 17(5)), a project proponent can gain an exception from submitting an AIP plan to the Authority. To date, the Authority has granted two exceptions, removing the requirement to lodge an AIP plan, and the Authority has been notified on the potential of four more exceptions in 2016–17.

KPI 4 Compliance and monitoring approaches are streamlined and co-ordinated

According to the stakeholder survey, regulated entities clearly understand Authority expectations on requirements under the Act.

Most stakeholders surveyed found they had little trouble meeting the compliance obligations of the Act and they considered it the corporation's responsibility to know obligations.

Another stakeholder thought that some corporations were required to meet a higher standard of compliance than others under the Act. One stakeholder had issues with the policy, however, that is outside the remit of this report.

The Authority has received three project complaints from the Australian Steel Institute. The Authority contacted each of the three project proponents and found that two did not have Act obligations while the third is yet to be resolved. In addition, the Authority has sent letters to two project proponents, querying Act obligations, which resulted in no further necessary action.

Authority staff maintain a notification register that records project dates and milestones and Authority decisions including exceptions granted. In addition, the compliance monitoring spreadsheet records industry information and letters sent to potential major project proponents.

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

Respondents indicated the Authority to be responsive answering queries within a reasonable timeframe. There was a mix of responses in what constituted a reasonable timeframe—48 hours to 30 days, however, it was found the response was appropriate to the request made.

The contact details for the Authority, and guidance material were easily found on the website, however, one stakeholder found it difficult to comply with the notification timeline.

As indicated earlier, the Authority responds to enquiries, and approves AIP plans and compliance reports well within the internal and legislated timeframe.

When the Authority receives a draft AIP plan for approval, the executive summary of the plan is placed on the AIP website within one day of receipt. The summary identifies the date of the plan received and until the AIP Authority approves the plan, the published status is 'under consideration'. Proponents can monitor the Authority's progress on meeting the 30 day requirement.

The Authority prepares an annual report, found in the annual report for the Department of Industry, Innovation, and Science.

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

The stakeholder survey results, revealed the Authority was open and responsive to feedback. Authority staff were approachable and responded to enquiries from regulated entities within a reasonable timeframe.

Stakeholders suggested a number of improvement measures including:

- a newsletter detailing the variety of activities undertaken to meet compliance obligations
- publish a decision making flow chart so that regulated entities can understand easily the process undertaken by the Authority
- share AIP plans with state or territory government counterparts
- amend the requirement to complete Part C of an AIP plan (the operational phase of the project) to when the facility is operational. When an AIP plan is developed, the operational phase could be five years or more away and it is difficult to develop actions that far in advance.

One stakeholder commented on the Authority's perceived lack of background/understanding of industry-specific procurement practices, and therefore inappropriate actions being recommended for AIP plans.

The Authority works with projects to determine appropriate notification, plan and compliance report deadlines and has granted two exceptions to AIP requirements.

As referred to earlier, in 2014, the Department commissioned a review, undertaken by Ernst & Young (E&Y), of all AIP programmes and policies. The scope of the review did not include the performance of the Authority as a regulator, however, it did make suggestions on how the Authority could use discretion in applying some requirements of the Act. The Act and the Authority will have a five year review in 2018.

The Authority is open to feedback and suggestions from stakeholders. As already detailed, based on advice from the Authority, the former Minister for Industry and Science streamlined the requirements of EPBS and the Act in 2015.

4.8.1.3 Response to survey

On the whole, survey responses regarding the Authority's performance as a regulator were encouraging. Some comments received were directed at AIP policy direction, and these were not included in the survey result analysis.

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

Responses to this KPI included uncertainty regarding notifications, the obligations of the Act on smaller companies and the value of undertaking the AIP process. The AIP Authority is developing a communications strategy focusing on clarifying the purpose of the Act, how proponents can meet compliance obligations and reviewing current methods of communication to ensure regulated entities can understand and meet best practice.

Respondents found the AIP plan template to be onerous and repetitive. The Authority will consider this feedback.

KPI 2 Communication with regulated entities is clear, targeted and effective

There were suggestions to make available a mock-up AIP plan and compliance report and a flow chart which outlined the AIP plan decision-making process for the project or business. Respondents to the stakeholder survey suggested the development of example AIP plans and implementation reports would assist them to meeting Authority expectations. This idea will require further consideration as Act projects are varied and it may be difficult to provide an example that will assist all projects.

Respondents suggested the Authority engage in more active marketing of AIP, with involvement in industry specific forums to assist proponents and other stakeholders to understand the objectives and value of the policy.

These suggestions will also be considered as part of the communications strategy.

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

Some respondents had difficulty interpreting the requirements of the legislation and another found it difficult to determine the notification timeline. These issues will be addressed in the communication strategy.

As mentioned earlier, the Authority has already granted two exceptions removing the requirement to lodge an AIP plan, and the Authority has been notified on the potential of four more exceptions in 2016–17

KPI 4 Compliance and monitoring approaches are streamlined and co-ordinated

One stakeholder thought that some corporations were required to meet a higher standard of compliance than others under the Act. The Authority makes decisions on all projects to the same standard. However, details are available on the website if a regulated entity considers an adverse decision has been made against them.

To date, the Authority has not issued a notice for non-compliance.

One stakeholder had issues with the policy however that is outside the remit of this report.

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

Most respondents were pleased with the Authority's response times, however, one stakeholder found it difficult to comply with the notification timeline. As mentioned earlier, the communication strategy will be used to notify regulated entities of their obligations under the Act.

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

Stakeholders suggested a newsletter and process diagram to assist in meeting AIP obligations and both these suggestions will be considered as part of the communication strategy. However, a suggestion to share plans with the state and territory governments may breach confidentiality and may be outside the remit of this report.

In addition, the suggestions to amend the operational phase of AIP requirements is a policy initiative and outside the remit of this report. However, the feedback will be considered in the future.

One issue highlighted was the perceived lack of background/understanding of industry-specific procurement practices, and therefore inappropriate actions being recommended for AIP plans. Authority staff are committed to ongoing professional development and in the past year have attended face-to-face meetings, conferences and engaged in other personal development opportunities to gain industry-specific experience.

4.8.1.4 Additional feedback

On 1 April 2014, the Prime Minister agreed to a review of AIP policies and programmes. Ernst and Young was engaged to undertake the evaluation which was completed in July 2014. Forty-seven stakeholders were consulted as part of the review including Australian suppliers, project developers, industry bodies, Industry Capability Network offices and state, territory and Commonwealth government departments.

As the review focussed on the policies and programmes of AIP, and was undertaken within the first 12 months of the Act being in force, there was little feedback on how the Authority performed as a regulator. However, E&Y suggested that the Authority could use discretion in applying some requirements of the Act, for example:

- establishing appropriate timing to submit AIP plans and reports
- providing exceptions,
- the provision of penalties in cases of non-compliance

As mentioned throughout the report, the Authority is already using discretion in the above matters. The Authority works with proponents to establish appropriate timing for notifications, plans and reports; and two exceptions have been granted.