

Implementation of the Export Control Legislative Framework

Department of Agriculture, Fisheries and Forestry

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Canberra ACT
18 October 2022

Dear Mr Speaker
Dear President

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Department of Agriculture, Fisheries and Forestry. The report is titled *Implementation of the Export Control Legislative Framework*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely



Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

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Audit snapshot

Auditor-General Report No.6 2022–23

Implementation of the Export Control Legislative Framework



Why did we do this audit?

- ▶ The Australian Government introduced a new legislative framework for regulating Australia's agricultural exports with the *Export Control Act 2020*, which commenced on 28 March 2021.
- ▶ This audit provides the Parliament with assurance on the Department of Agriculture, Fisheries and Forestry's effectiveness in implementing the revised export control legislative framework.



Key facts

- ▶ Australia exports approximately 70 per cent of its agricultural production.
- ▶ The Department of Agriculture, Fisheries and Forestry is a key regulator of agricultural exports.
- ▶ Australia's agriculture products were exported to over 165 countries in 2021. Importing countries can impose different requirements when receiving goods from Australia.
- ▶ The top five commodities exported in 2021 were wheat, beef and veal, sheep meat, canola and wool.



What did we find?

- ▶ The Department of Agriculture, Fisheries and Forestry's implementation of the revised export control legislative framework was partly effective.
- ▶ The department established a governance framework that was largely appropriate to implement the revised export control legislation.
- ▶ Internal arrangements to support the revised legislative framework were not fully in place on commencement of the legislation.
- ▶ Arrangements to manage benefits realisation and the department's performance as a regulator of agricultural exports were partly appropriate.



What did we recommend?

- ▶ The Auditor-General made five recommendations relating to: risk management; assurance activities; policies and processes; and benefits management.
- ▶ The department agreed to all five recommendations.

\$62.8bn

Total Australian agricultural goods exported in 2021.

15

Reduction in the number of Acts regulating export controls under the revised legislative framework.

11

Number of prescribed goods regulated by the revised legislative framework as at May 2022.

Summary and recommendations

Background

1. The *Export Control Act 2020* and subordinate legislation provide the primary framework for the Australian Government to regulate goods exported from Australian territory. The revised legislative framework is intended to:

- support access to international trading markets for Australian goods;
- protect Australia's global trading reputation;
- allow greater flexibility to respond to changes in technology and requirements; and
- improve the efficiency of export procedures by reducing complexity and duplication.¹

2. The Department of Agriculture, Fisheries and Forestry (the department) is the lead agency responsible for the agriculture sector and for the delivery of the Australian Government's Ag2030 plan to grow agricultural production to \$100 billion by 2030.² The department is also the primary regulator for agricultural exports.

Rationale for undertaking the audit

3. The revised export control legislative framework commenced on 28 March 2021. This performance audit was conducted to provide assurance to Parliament on the department's progress in facilitating the framework's intended benefits. The audit focuses on the department's arrangements to implement the revised export control legislative framework, including its management of the transition from the previous legislative framework and the development of performance monitoring and reporting arrangements.

Audit objective and criteria

4. The objective of the audit was to assess the effectiveness of the implementation of the revised export control legislative framework by the department.

5. To form a conclusion against the objective, the following high-level criteria were adopted.

- Did the department establish an appropriate governance framework?
- Has the department established effective arrangements to support the implementation of the legislative framework?
- Has the department developed appropriate arrangements to manage its performance as a regulator of agricultural exports?

1 The intention of the legislative framework was outlined on the department's website. Department of Agriculture, Fisheries and Forestry, *Have your say: Export Control Bill 2017* [Internet], available from <https://haveyoursay.agriculture.gov.au/export-control-bill-2017> [accessed July 2022].

2 The Ag2030 plan, as announced by the Australian Government in October 2020, details measures supporting the agriculture sector's ambition to become a \$100 billion industry by 2030. Since then the department has released three updates on progress in delivering Ag2030. Department of Agriculture, Fisheries and Forestry, *Delivering Ag2030* [Internet], available from <https://www.awe.gov.au/agriculture-land/farm-food-drought/ag2030#theme-1-trade-and-exports> [accessed July 2022].

Conclusion

6. The Department of Agriculture, Fisheries and Forestry's implementation of the revised export control legislative framework was partly effective. Project planning and governance were well documented, and stakeholder engagement in the development of the revised legislation was sound. On commencement of the legislation, the department did not have a compliance framework, policies and procedures were not fully updated, and arrangements to support benefits management were not established.

7. The department's governance framework was largely appropriate to support the implementation of the revised export control legislation. The planning processes were appropriate, supported by project plans that established milestones, allocated roles and responsibilities, and identified the risks relating to the implementation of the revised legislation. The compliance plan required by the department's compliance policy has not been published for agricultural exports. The department did not identify shared risks to support the implementation of the revised export control legislative framework.

8. Arrangements to support the implementation of the revised legislative framework were partly effective. The department has not complied with its instructional material policy to review materials every two years and has not updated all instructional material as originally planned. The department's engagement with stakeholders in the development of the revised legislation was transparent and consultative. Planning of changes to IT systems to support the legislative framework was partly appropriate with records for the implementation of IT changes not maintained, making it difficult to identify if all required IT changes were implemented.

9. Arrangements to monitor and measure the intended benefits of the legislative framework were not established by the commencement date of the revised legislation. There were performance measures in the department's corporate plan and annual report relating to export controls. The department reported under the regulator performance framework that it has areas for improvement.

10. The audit team has not assessed the impact of the Administrative Arrangement Order dated 23 June 2022 on the department after its implementation on 1 July 2022.

Supporting findings

Governance framework

11. The planning processes were appropriate to support the implementation of the legislative framework. Governance arrangements were established with committees providing oversight of the implementation within the department. The project plans developed to support the implementation of the revised legislative framework were detailed with ongoing monitoring and reporting (see paragraphs 2.5 to 2.17).

12. There were processes and documentation for project risk identification, risk assessment, and risk reporting. The project risk plans were incomplete. The department could not demonstrate the application of its risk tolerance on the projects and no assurance has been provided to the Agricultural Trade Reform Board that shared risks relating to the export legislative framework have been assessed (see paragraphs 2.18 to 2.33).

13. While the department has established an enterprise-wide compliance policy, it has not published annual or multi-year compliance plans as required under the policy for agricultural exports. The department undertakes compliance audits however there is room for improvement in the execution of this work (see paragraphs 2.35 to 2.54).

Arrangements to support the legislative framework

14. The department updated its high-risk instructional materials to support the implementation of the legislative framework. Materials rated low and medium risk have not been fully updated to reflect the revised legislation. The department has not complied with its instructional material policy to review materials every two years (see paragraphs 3.5 to 3.24).

15. The department's engagement with stakeholders in the development of the revised legislation was transparent and consultative. The department did not publish feedback on its post-commencement consultation until after May 2022 (see paragraphs 3.27 to 3.36).

16. Planning for IT changes relating to the implementation of the revised export control framework was not fully coordinated, which resulted in the delayed implementation of IT changes. Records for work related to IT changes were not documented or maintained in a systematic and accessible form (see paragraphs 3.37 to 3.46).

Arrangements to manage performance

17. Arrangements to monitor and measure the intended benefits of the legislative framework were not established by the commencement date (28 March 2021). Post commencement, there were documents outlining the department's approach to benefits management. Milestones have not been established to support the monitoring and reporting of benefits realisation (see paragraphs 4.4 to 4.21).

18. The department has export-related performance measures in its corporate plan and annual reporting, most of which relate to the objects of the Act. It has reported an 'emerging' maturity level under the regulatory performance framework (see paragraphs 4.24 to 4.44).

Recommendations

Recommendation no. 1 Paragraph 2.31

The Department of Agriculture, Fisheries and Forestry ensure that shared risks relating to the revised export legislative framework — with industry, the community and all jurisdictions of governments — have been identified, analysed and treated.

Department of Agriculture, Fisheries and Forestry response:
Agreed.

Recommendation no. 2
Paragraph 2.55

The Department of Agriculture, Fisheries and Forestry develops a compliance plan that communicates its compliance priorities, strategies, focus areas and objectives for regulating exports in accordance with its compliance policy. The compliance plan should include a program of quality assurance activities and milestones to ensure its compliance framework remains effective throughout the business process review.

Department of Agriculture, Fisheries and Forestry response:
Agreed.

Recommendation no. 3
Paragraph 3.25

The Department of Agriculture, Fisheries and Forestry ensure policies and processes are up-to-date, reflective of current legislation, fit-for-purpose and are operating as intended for both its internal instructional materials and external website content.

Department of Agriculture, Fisheries and Forestry response:
Agreed.

Recommendation no. 4
Paragraph 3.47

The Department of Agriculture, Fisheries and Forestry establish relevant policies, plans and supporting assurance arrangements to ensure IT project changes are appropriately coordinated, documented and monitored.

Department of Agriculture, Fisheries and Forestry response:
Agreed.

Recommendation no. 5
Paragraph 4.22

The Department of Agriculture, Fisheries and Forestry:

- (a) develop milestones to ensure that the intended benefits of the revised legislative framework can be measured and monitored; and
- (b) fully implement its benefits management arrangements.

Department of Agriculture, Fisheries and Forestry response:
Agreed.

Summary of the Department of Agriculture, Fisheries and Forestry's response

19. The department's summary response is provided below and its full response is included at Appendix 1.

The Department of Agriculture, Fisheries and Forestry (the department) welcomes the report's conclusions and findings. The department is committed to appropriate and timely implementation of the five recommendations of the report, all of which we agree.

We note that the five recommendations focus on risk management, assurance activities, policies and processes and benefits management.

The Export Control Act 2020 came into effect on 28 March 2021 with exports unimpeded, export control risks mitigated, and industry and staff well-positioned to understand and comply with the new legislation.

The department agrees with the ANAO's assessment that the planning processes, governance arrangements, and the management of project risks were largely appropriate. The department also acknowledges that our engagement with stakeholders was transparent and consultative.

The department acknowledges that it can benefit from improving processes in place for shared export risks management and IT projects change management. It is noted also that some non-high-risk instruction material require updating and an exports compliance plan needs to be established.

Key messages from this audit for all Australian Government entities

20. Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

Governance and risk management

- It is important for regulators to maintain the currency of all supporting documentation to ensure the implementation of legislative changes is consistent with achieving intended outcomes.

Program implementation

- Regulators should implement a risk and assurance program to ensure compliance frameworks remain effective, including when implementing organisational-wide changes that span over several years.

Performance and impact measurement

- To support a meaningful assessment of progress and improvements, regulators should establish clear measurables so that performance can be monitored, evaluated and reported on an ongoing basis.

Audit findings

1. Background

Introduction

1.1 Approximately 70 per cent of Australia's agricultural production value is exported with an average value of \$51.8 billion per year.³ In 2020–21, Australian agriculture accounted for 12 per cent of exported goods and services.

1.2 Key Australian export markets are provided in Table 1.1.

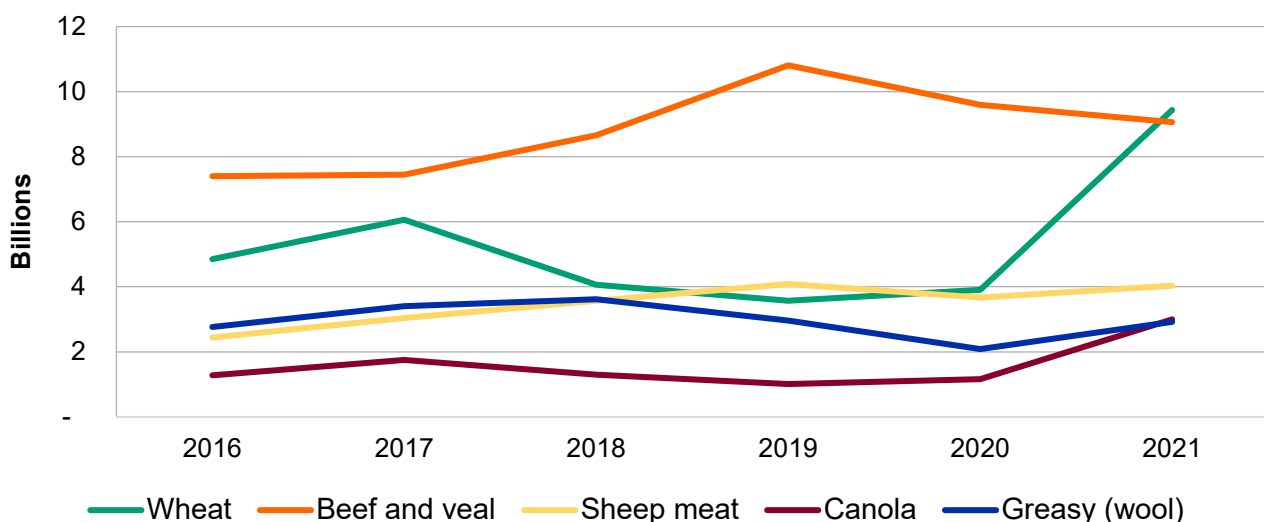
Table 1.1: Value of agricultural exports in top five markets by country in 2021

Country	Value (\$ billion)	Percentage of total exports
China	12.0	19.1%
Japan	5.2	8.2%
USA	4.8	7.6%
Indonesia	4.0	6.4%
European Union	3.5	5.6%

Source: ANAO analysis of departmental documentation.

1.3 Australia exports a variety of agricultural products. The value of exported products changes each year according to production and market fluctuations. In 2021, this figure was \$62.8 billion. Figure 1.1 shows the value of the top five Australian agricultural export commodities between 2016 and 2021.

Figure 1.1: Top five Australian agricultural export commodities 2016–2021



Source: ANAO analysis of departmental documentation.

³ This is the 10-year average value of agricultural, forestry and fisheries exports as reported by the department. Department of Agriculture, Water and Environment, *Annual Report 2020–21; Performance Results* [Internet], available from <https://www.transparency.gov.au/annual-reports/department-agriculture-water-and-environment/reporting-year/2020-21-12> [accessed May 2022].

1.4 In October 2020, the Australian Government announced the Ag2030 plan to grow the agriculture sector to \$100 billion in output by 2030.⁴ Expanding trade and exports is the first of seven themes for action under the Ag2030 plan and increased access to international markets is identified as ‘one of the greatest opportunities for industry growth’.

1.5 In its 2020–21 Budget and as part of Ag2030, the Australian Government announced the \$328.4 million Busting Congestion for Agricultural Exporters package. The funding is to be delivered over four years to encourage growth in the Australian agricultural export sector and support economic recovery in response to the COVID-19 pandemic, bushfires and drought. The package includes proposals to modernise the sector by transitioning the Department of Agriculture, Fisheries and Forestry’s (the department) export system online⁵, introducing flexible assurance methods, investing in technology to improve regulatory activities, and reforming inspection and quality assurance processes.

Legislative reforms

1.6 The *Export Control Act 1982* was the foundation of Australia’s previous export control legislative framework. This legislative framework was amended over time and by 2019 it consisted of 17 Acts and 45 legislative instruments. The legislative instruments were due to sunset on 1 April 2021.⁶

1.7 The Australian Government decided to review these legislative instruments as part of a broader review of the agricultural exports legislative framework. In July 2015, the department released a discussion paper outlining the proposed review of the export regulation and commenced consultation with stakeholders, including industry bodies, exporters and state and territory governments.

1.8 The review found that agricultural exports regulation should:

- reduce unnecessary regulation;
- increase flexibility to respond to issues such as new technologies and changing certifications;
- provide more opportunities for government–industry cooperation;
- reduce regulation complexity and duplication;
- provide stronger regulation for compliance and enforcement; and
- be consistently applied and interpreted by the department.⁷

4 Department of Agriculture, Fisheries and Forestry, *Delivering Ag2030*, [Internet], p. 4, available from <https://www.awe.gov.au/agriculture-land/farm-food-drought/ag2030#theme-1-trade-and-exports> [accessed May 2022].

5 Administrative Arrangement Order dated 23 June 2022 renamed the Department of Agriculture, Water and the Environment to the Department of Agriculture, Fisheries and Forestry. Department of the Prime Minister and Cabinet, *Administrative Arrangements Order made on 23 June 2022*, available from <https://www.pmc.gov.au/resource-centre/government/administrative-arrangements-order> [accessed July 2022].

6 Parliament of Australia, *Export Control Bill 2019* [Internet], available from https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6481_ems_0713f727-1deb-4300-8f2d-f5551a7ccd85/upload_pdf/723932.pdf;fileType=application%2Fpdf [accessed November 2021].

7 Department of Agriculture, Fisheries and Forestry, *Delivering Ag2030*, [Internet], available from <https://haveyoursay.awe.gov.au/export-control-bill-2017> [accessed May 2022].

1.9 The *Export Control Bill 2017* was introduced to Parliament on 7 December 2017 but lapsed on 1 July 2019 with the prorogation of Parliament for the 2019 General Election. The Bill was subsequently reintroduced in December 2019. The Bill was passed by both Houses on 27 February 2020 after scrutiny by the Senate: it was referred to the Rural and Regional Affairs and Transport Legislation Committee; and considered by the Senate Standing Committee for the Scrutiny of Bills. Royal Assent was given on 6 March 2020. For more information on the consultation on the revision of the legislation see paragraphs 3.27 to 3.31.

1.10 The new legislation commenced on 28 March 2021.⁸

Revised export control framework

1.11 The revised export control legislative framework (the framework) provides the primary means for the department to regulate exported agricultural goods. Table 1.2 compares the number of legislative instruments between the old and revised frameworks.

Table 1.2: Number of Acts, rules regulations and orders under the export control legislative frameworks

	Previous legislative framework	Revised legislative framework ^a
Acts	17	2
Rules, Regulations and Orders	45	17

Note a: A list of rules under the revised framework as at May 2022 is provided in Appendix 3.

Source: Department documentation and the Federal Register of Legislation.

1.12 The two Acts forming the revised legislative framework are listed below.

- *Export Control Act 2020* (the Act). This sets out the overarching legal framework for regulation of exported goods and enables the Secretary of the department to make rules. It allows for the regulation of the whole supply chain and applies to the export operations of foreign persons and bodies in Australia.
- *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*. This provides transitional provisions and makes consequential amendments to support the Act and the Export Control Rules.

1.13 The Export Control Rules (the rules) are legislative instruments made by the Secretary of the department that set out the operational rules of the Act. As at May 2022, there were 17 rules (see Appendix 3), many of which apply to specific commodities such as fish and fish products, eggs and egg products, and wood and wood chips.

Rationale for undertaking the audit

1.14 The Act and subordinate legislation provide the primary means for the Australian Government to regulate goods exported from Australian territory. The legislative framework is intended to support access to international trading markets for Australian goods, protect Australia's global trading reputation, allow greater flexibility to respond to changes in technology and

⁸ Section 2 of the *Export Control Act 2020* prescribed that sections 3 to 432 of the Act commence at 3am on 28 March 2021.

requirements, and improve the efficiency of export procedures by reducing complexity and duplication.⁹

1.15 This performance audit was conducted to provide independent assurance to Parliament on the department's progress in facilitating the framework's intended benefits. The audit focuses on the department's arrangements to implement the revised export control legislative framework, including its management of the transition from the previous legislative framework and the development of performance monitoring and reporting arrangements.

Audit approach

Audit objective, criteria and scope

1.16 The audit objective was to assess the effectiveness of the implementation of the revised export control legislative framework by the department.

1.17 To form a conclusion against the objective, the following high-level criteria were adopted.

- Did the department establish an appropriate governance framework?
- Has the department established effective arrangements to support the implementation of the legislative framework?
- Has the department developed appropriate arrangements to manage its performance as a regulator of agricultural exports?

1.18 The audit focused on the department's establishment of a governance framework, the implementation of the legislative framework and the development of performance monitoring and reporting arrangements. The audit did not examine the department's regulation of specific commodities, cost recovery activities, and the implementation of the Ag2030 plan.

Audit methodology

1.19 To address the audit objective and criteria, the ANAO:

- examined departmental documents;
- met with relevant departmental staff;
- invited input from external stakeholders; and
- examined IT systems supporting the legislative changes.

1.20 The audit team did not engage with Australia's international trading partners.

1.21 The ANAO received one submission from the public via the citizen contribution facility on the ANAO website.

1.22 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$515,544.

1.23 The team members for this audit were Hoa Nguyen, Jennifer Myles, Chirag Pathak, Jemimah Hamilton, Jacob Opray, Jennifer Canfield, Chayathri Kulatunge and Corinne Horton.

9 Parliament of Australia, *Export Control Bill 2019* [Internet], available from https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6481_ems_0713f727-1deb-4300-8f2d-f5551a7ccd85/upload_pdf/723932.pdf;fileType=application%2Fpdf [accessed November 2021].

2. Governance framework

Areas examined

This chapter examines whether the Department of Agriculture, Fisheries and Forestry established an appropriate governance framework to implement the revised export control legislative framework.

Conclusion

The department's governance framework was largely appropriate to support the implementation of the revised export control legislation. The planning processes were appropriate, supported by project plans that established milestones, allocated roles and responsibilities, and identified the risks relating to the implementation of the revised legislation. The compliance plan required by the department's compliance policy has not been published for agricultural exports. The department did not identify shared risks to support the implementation of the revised export control legislative framework.

Areas for improvement

The ANAO made two recommendations aimed at improving compliance and risk management. Two opportunities for improvement were also identified relating to the department's review of its Enterprise Risk Management Framework and Policy and the oversight and monitoring of audit reports.

2.1 This chapter examines whether the department established an appropriate governance framework to implement the revised export control legislative framework. This includes an assessment of the planning and governance processes, risk management arrangements for the implementation project, and the compliance framework to support the change in legislation.

2.2 Effective planning processes are required to ensure there is appropriate governance and oversight around development of strategies and objectives, delivering outcomes, assurance and controls, managing risks, and prioritising resources. Establishing appropriate planning and governance arrangements are necessary to effectively implement the legislative framework.

2.3 Inappropriate project risk management can lead to poor decision-making, reducing the likelihood of achieving the department's objectives in implementing the revised legislative framework. Previous ANAO audits have identified shortcomings in the department's risk management processes. Project risk management is critical given the size and complexity of the legislative framework, and the potential impact on the agricultural exports industry.

2.4 A compliance framework is critical in the implementation of the legislation as this establishes plans, policies or procedures for managing compliance.

Have appropriate planning processes been established to implement the legislative framework?

The planning processes were appropriate to support the implementation of the legislative framework. Governance arrangements were established with committees providing oversight of the implementation within the department. The project plans developed to support the implementation of the revised legislative framework were detailed with ongoing monitoring and reporting.

Governance structure

2.5 The department established internal governance arrangements to support the implementation of the legislative framework. There was a hierarchical structure in the establishment of working committees as shown in Figure 2.1, with membership reflecting the level of oversight and responsibility.

Executive Board

2.6 The Executive Board oversees the department's governance structure and business operations. It has responsibility for building capability and promoting collaboration across divisions, other agencies and stakeholders. Chaired by the Secretary, the Executive Board's focus includes being future ready, innovation, regulatory performance, and high-level strategies.

Regulatory Practice Committee

2.7 The Regulatory Practice Committee provides organisational-wide oversight of the department's regulatory practice and capability. The committee reports directly to the Executive Board. The chair of the committee is the First Assistant Secretary of the Biosecurity Strategy and Reform Division. The committee members are all First Assistant Secretaries from different divisions.

Agricultural Trade Reform Board

2.8 The Agricultural Trade Reform Board (ATRB) was established on 26 October 2020 to replace the Trade Exports Project Board (established in May 2016) with a revised terms of reference. The ATRB has oversight of the department's agricultural trade reform. The chair is the Deputy Secretary of the Agricultural Trade Group, who is also the Senior Responsible Owner (SRO) for the agricultural trade reform projects.

2.9 The ATRB terms of reference identifies the chair as the decision-maker for the design and implementation of the overall agricultural trade reform. The chair is also responsible for decisions regarding the delivery of agricultural trade reform projects. This includes approving changes to scope and investment in export reforms. While the ATRB is responsible for the department's overall trade reform program, agenda items for seven meetings in January through March 2021 primarily focused on the revised export control legislation.

Assistant Secretary Working Group

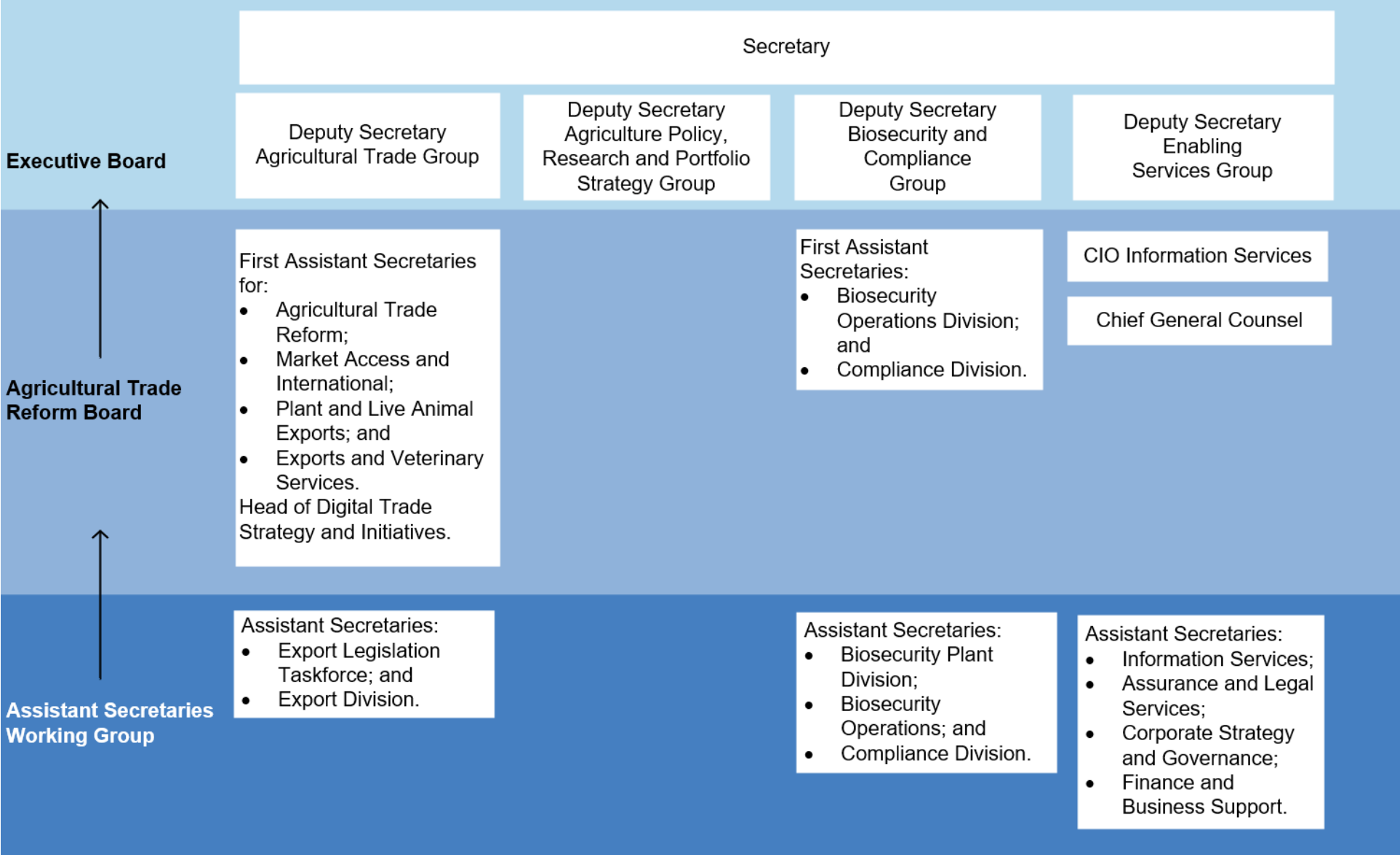
2.10 The Assistant Secretary Working Group (ASWG) was established in 2016 to consider policy issues in the development of the revised export control legislative framework. An update to its terms of reference was made in June 2018 to reflect positions and to recognise the need to meet more frequently, from intervals of six weeks to every four to five weeks.

2.11 The ATRB and ASWG met more frequently closer to the commencement date of the legislation on 28 March 2021.

Export Legislation Taskforce

2.12 In May 2016, the Export Legislation Taskforce was established. This was an operational branch that provided support in the planning and coordination of the revised legislation. The Assistant Secretary for this branch was the ASWG chair.

Figure 2.1: Governance structure for implementation of the revised export control legislation



Source: ANAO analysis of departmental documentation.

Project planning and monitoring

2.13 Two detailed project plans were developed in 2018 and 2019 to support the implementation of the revised legislative framework (see Table 2.1).

- 2018 — Legislation (Bills, Rules and Instruments): this project developed and drafted the instructions for the revised agricultural export legislation, including Bills, Export Control Rules, regulations and explanatory materials (such as regulatory impact statements and statements of accountability).
- 2019 — Implementation Activities: this project developed policies and processes needed to support the change in legislation. The project scope included developing instructional materials (internal policies and procedures), training for staff, IT system changes, forms and applications, and instruments of delegations and authorisations.

Table 2.1: Key details in project plans to implement the revised export legislation

	Legislation (Bills, Rules & Instruments)	Implementation Activities
Senior Responsible Officer	Assistant Secretary Export Legislation Taskforce	Assistant Secretary Export Legislation Taskforce
Start date	1 January 2018	1 July 2019
End date	31 March 2021	30 April 2021
Stated outcomes ^a	The legislation is considered easier to navigate and use.	Instructional material updated. IT systems reviewed and updated if required.
Budget	Capital expenditure: \$0 ^b Operational expenditure: \$0 ^b	Capital expenditure: \$0 ^b Operational expenditure: \$0 ^b
Governance boards identified in project plan	Trade Export Projects Board ^c Export Legislation Assistant Secretary Working Group	Export Legislation Assistant Secretary Working Group
Number of outputs (products) ^a	18	20
Number of milestones (chronological items)	13	25

Note a: The project closure reports did not include whether the stated outcomes were achieved (see paragraph 2.16). These reports identified whether the outputs, the number of which are shown in Table 2.1, were completed.

Note b: The department did not prepare a budget for the projects.

Note c: The Trade Export Projects Board was replaced by the Agricultural Trade Reform Board on 26 October 2020.

Source: ANAO analysis of Department project plans.

2.14 Both projects were managed in Planning Hub, the department's cloud-based internal system for reporting and managing projects and project risks. The department also used Critical Path to monitor and report individual activities within the project plans.¹⁰ Outputs and milestones in the project plans were logically set out with relevant data fields such as start and end dates,

10 Critical Path is managed in Microsoft Project. It is system that is designed to capture critical milestones which are broken down into outputs. Critical Path provides a quick summary of the project status and whether it is on track.

defined deliverables, and responsible personnel. Project risks were also identified within Planning Hub. Each identified risk included a description of the risk; the date the risk was reviewed; risk status (open or closed); the assessed risk; the corresponding risk treatment; and the residual risk post-treatment.

2.15 Supporting the two project plans were two sub-project plans. These sub-project plans included the Stakeholder Engagement Plan (see paragraph 3.30) and the Instructional and Training Sub-Project Plan (see paragraph 3.7).

2.16 Project updates were provided to the ASWG with subsequent reporting to the ATRB. The updates covered completion of implementation activities, risks and issues. Project closures reports were prepared for both the implementation activities and legislation projects and the 'reason for closure' was reported as 'Completed'. All risks within the project closures reports were marked as 'low'.

2.17 The department engaged PricewaterhouseCoopers (PwC) in September 2020 to provide assurance on its preparation in implementing the revised legislation. Referred to as the 'Business Readiness Assessment', the report was finalised on 24 February 2021. The final report included fifty-five recommendations and seven observations directed across 14 divisions. All recommendations were assessed as complete by PwC in its board update dated 24 March 2021.

Did the department establish appropriate project risk management arrangements?

There were processes and documentation for project risk identification, risk assessment, and risk reporting. The project risk plans were incomplete. The department could not demonstrate the application of its risk tolerance on the projects and no assurance has been provided to the Agricultural Trade Reform Board that shared risks relating to the export legislative framework have been assessed.

Project risk management planning

2.18 Appropriate arrangements were in place to manage project risks associated with the implementation of the legislative framework. These arrangements were underpinned by the:

- Enterprise Risk Management Framework and Policy (ERMFP) that outlines the department's organisational approach to risk management¹¹;
- Export Legislation Reform Program Risk Management Plan (export legislation risk plan) that outlines the principles, roles and responsibilities, reporting requirements, and resources to manage the risks that relate to the implementation of the export legislation;
- Program Risk Management Administration (risk administration program) that identifies the project risks and provides guidance on how risks will be managed within the export legislation program of work¹²;

11 The department advised that it had received a Highly Commended award in the Comcover Enterprise Wide Risk Management category in 2019, noting that this relates to how the department implemented its 2019 Enterprise Risk Management Framework and Policy.

12 In the email of 17 December 2021, the department referred to this document as the 'Program Risk Management Instructions' even though it is headed 'Administration Risk Management'.

- Risk assessment template, an Excel-based worksheet to assist with risk assessment, particularly for activities not linked to a program or project; and
- Planning Hub, the department's risk management and project management tool.

2.19 Roles and responsibilities in managing project risks were outlined in the export legislation risk plan for risk owners, which included the Executive Board, project senior responsible officer (SRO), ASWG, project managers, First Assistant Secretaries and Assistant Secretaries, and the Export Legislation Taskforce. The SRO's responsibilities relating to risks under the ATRB terms of reference — 'approving actions to mitigate risks and issues that may or will impact the successful delivery and implementation of the reform and transformation agenda' — were not duplicated in the export legislation risk plan.

Project risk assessment

2.20 Risks relating to the two projects (legislation and implementation activities — see paragraph 2.13) were identified in the risk administration program (see paragraph 2.18). Four risks were identified under the legislation project and eight risks were identified under the implementation activities project — 12 risks in total.

2.21 The risks identified in the risk administration program were assessed and detailed in two project risk plans, one for each project. The project risk plans were linked to the project plans (see paragraph 2.13). Four additional risks were outlined in the project risk plans dated July 2020 that were not identified in the risk administration program. Three of these additional risks related to cost recovery and one related to the COVID-19 pandemic. In total, 16 risks were identified in the project risk plans dated July 2020. By October 2020, the four additional risks were removed from the project risk plans as the department considered the risks to be out of scope or had been closed.




2.22 The two project risk plans were managed via Planning Hub. Planning Hub follows a standardised format with key information fields such as the description of risk, status, source of risk, risk consequence and risk controls.

2.23 Planning Hub includes the following information fields for the SRO to complete:

- actual risk rating (including a separate rating for likelihood and consequence);
- risk treatment (including action items, owners, and start and end dates); and
- residual risk (the risk after treatment).

2.24 Not all fields were completed for the two project risk plans dated July 2020. For three risks in the legislation project risk plan, information was missing in several fields (see Table 2.2). This diminishes the completeness of the project risk plan and detracts from how the risk was assessed.

Table 2.2: Completeness of project risk plans dated July 2020

Fields for completion	ANAO assessment	ANAO comment
Linked to strategic risk		3 of the 16 risks did not have links to strategic risks
Risk source		3 of the 16 risks did not identify the risk source
Risk consequence		3 of the 16 risks did not identify the consequence

Fields for completion	ANAO assessment	ANAO comment
Risk control	▲	4 of the 16 risks did not have risk controls
Actual risk rating	◆	The likelihood and consequence were assessed for all actual risks
Risk treatment	▲	4 of the 16 risks did not have risk treatments
Residual risk rating	◆	The likelihood and consequence were assessed for all residual risks

Key: ◆ Fields completed ▲ Fields partly completed ■ Fields not completed

Source: ANAO's analysis of the department's project risk plans.

2.25 The ERMFP defined eight risk categories: regulatory activities; stakeholder; program management; people; financial; infrastructure and systems; governance; and workplace health and safety. Each risk category contains sub-categories (15 in total), and each sub-category has been assigned different tolerance ratings.

2.26 The ERMFP prescribed risk tolerance as 'the level of risk-taking acceptable to the department to achieve a specific objective or manage a category of risk.' Three risk tolerance ratings are prescribed in the ERMFP:

- Limited: A cautious approach towards risk. Seek to limit consequences of risks in these areas.
- Balanced: A balanced approach towards risk taking. Risk exposure is given equal consideration to the pursuit of innovation and opportunity.
- Enhanced: Taking risk is considered part of the department's strategy. Greater risk exposure is accepted in the pursuit of innovation and opportunity.¹³

2.27 The department did not demonstrate how its projects to implement the revised legislation were aligned with the risk categories, sub-categories, or relevant risk tolerance ratings. For most risk sub-categories, the risk tolerance rating straddles across 'limited', 'balanced' and 'enhanced'. There is subjectivity in how the risk tolerance ratings can be applied, and the department has noted that the lack of quantitative measures does not provide clear direction. The department has stated that its ERMFP, including risk tolerance, is being reviewed (see paragraph 2.33).

Shared risks

2.28 Under element seven of the Commonwealth Risk Management Policy (CRMP), an entity must implement arrangements to understand and contribute to the management of shared risk. This is reaffirmed in the ERMFP, which states that 'the department shares risk with industry, the community and other jurisdictions or governments' and that arrangements to manage shared risks may include memoranda of understanding (MoU). Coinciding with the implementation of the export legislation, the department signed four MoUs with state regulatory authorities on 28 March 2021. Two MoUs were signed in July 2021 and another in December 2021, allowing the department to have at least one MoU in each state.

¹³ The department's Enterprise Risk Management Framework and Policy.

2.29 The department's performance measures in its performance indicator guide (see paragraph 4.19) note that to achieve a reduction in regulatory duplication, it needs to collaborate with other regulatory entities such as state and territories, and to co-design and implement regulatory activities with industry.

2.30 The department has not conducted a shared risk assessment. No shared risks were identified in the project plan or project risk plan and no assurances have been provided to the ATRB that shared risks relating to the export legislative framework have been identified, analysed and treated.

Recommendation no. 1

2.31 The Department of Agriculture, Fisheries and Forestry ensure that shared risks relating to the revised export legislative framework — with industry, the community and all jurisdictions of governments — have been identified, analysed and treated.

Department of Agriculture, Fisheries and Forestry response: *Agreed.*

2.32 *The shared risks relating to the revised export legislative framework (including those shared with the industry, community and all jurisdictions of governments) were managed throughout the implementation using the project risk management framework. Separate documentation of shared risks was not completed. The department will now review and document shared risks, including identification, analyses and treatment.*

Review of the Enterprise Risk Management Framework and Policy

2.33 The foundation of project risk management relating to the implementation of the export control legislation is the department's ERMFP (see paragraph 2.18). The current version of the ERMFP was published on 10 August 2020 and communicated to staff on 1 September 2020. On 8 November 2021, the department engaged KPMG to review and develop a revised ERMFP and associated guidance materials to ensure it is fit-for-purpose. The department has advised that the delivery of the revised ERMFP is not expected until after the machinery of government changes on 1 July 2022, to ensure it aligns with the new departmental structure (see paragraph 2.51).

Opportunity for improvement

2.34 In revising the Enterprise Risk Management Framework and Policy, the department should clearly identify how project risks will be managed to ensure there is consistency in project risk management, terminology, roles and responsibilities, and risk tolerance.

Has the department established an appropriate compliance framework to support the legislative change?

While the department has established an enterprise-wide compliance policy, it has not published annual or multi-year compliance plans as required under the policy for agricultural exports. The department undertakes compliance audits however there is room for improvement in the execution of this work.

2.35 The Export Control Bill 2019 Explanatory Memorandum notes that the Bill ‘will remove a lot of the duplication in the current framework and enable the harmonisation of requirements’. The previous legislative framework consisted of 17 Acts (the primary one being the *Export Control Act 1982*) and 45 legal instruments comprising rules, regulations and orders (see Table 1.2).

2.36 The revised legislative framework has reduced the number of Acts and rules to two and 17 respectively — the former being the *Export Control Act 2020* and the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020* (see Appendix 3). The authority to make rules rests with the Secretary under section 432 of the Act.

2.37 The revised framework adopts a standardised structure whereby the chapters of the rules directly align with the Act. The revised legislation establishes ‘prescribed goods’ that are regulated by the Act and rules. As at May 2022, there were eleven prescribed goods:

- milk and milk products;
- rabbit and ratite meat and rabbit and ratite meat products;
- poultry meat and poultry meat products;
- eggs and egg products;
- wild game meat and wild game meat products;
- plants and plant products;
- fish and fish products;
- wood and woodchips;
- meat and meat products;
- organic goods; and
- animals.

2.38 Prescribed goods must comply with the requirements of the Act and rules before they can be exported. The revised legislative framework also sets out requirements for ‘export operations’ which cover supply chain activities such as production and preparation, storage and handling, transportation, trade descriptions and certification. See paragraphs 2.46 to 2.49 on compliance audits of commodity-based export operations.

Department compliance policy

2.39 On 19 January 2022, the department published an enterprise-wide compliance policy.¹⁴ The policy identifies 12 regulatory systems for which the department is responsible, one of which is ‘certifying that livestock and other agricultural goods for export meet Australian export and importing country requirements.’ The compliance policy sets out the principles that the department follows when carrying out compliance activities and outlines its strategies and tools for managing compliance. The compliance policy outlines that the department:

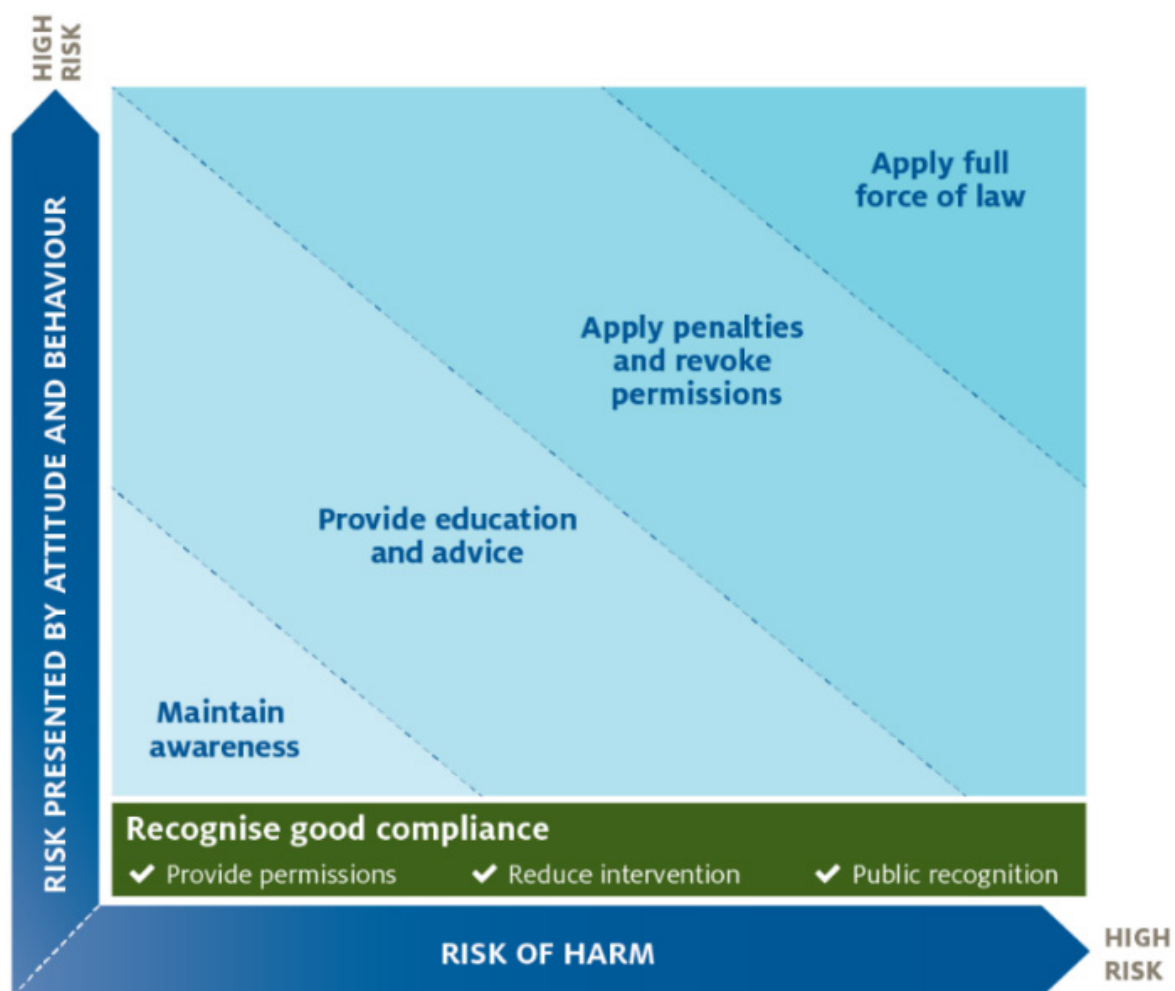
¹⁴ A compliance framework from the Department of the Environment and Energy was available on the department’s website. However, this compliance framework is aimed at national environmental law. Department of Agriculture, Fisheries and Forestry, *Compliance Policy* [Internet], available from <https://www.awe.gov.au/about/commitment/compliance-policy> [accessed May 2022].

will publish annual and multi-year plans that communicate the compliance priorities for each regulatory system. These plans contain specific strategies and focus areas relevant to the regulatory objectives of the target system.¹⁵

2.40 Under the compliance policy, areas within the department with responsibility for the relevant regulatory system are required to develop and publish specific compliance plans to support the policy. As at June 2022, the regulatory area responsible for livestock and other agricultural exports had not published a compliance plan that communicates its compliance priorities, specific strategies and tools, focus areas and regulatory objectives in accordance with the compliance policy.

2.41 The compliance policy includes a model on proportionate compliance response and notes risks as the determining factor for the four compliance responses: maintain awareness; provide education and advice; apply penalties and revoke permissions; and apply full force of law (see Figure 2.2).

Figure 2.2: The department’s proportionate compliance response model



Source: Department compliance policy.

¹⁵ Department of Agriculture, Fisheries and Forestry, *Compliance Policy* [Internet], available from <https://www.awe.gov.au/about/commitment/compliance-policy> [accessed May 2022].

Commodity-based compliance

2.42 The department's organisational structure reflects a commodity-based compliance approach with Assistant Secretaries assigned responsibility for implementing regulatory arrangements for one or more commodities (see Figure 2.1).

2.43 The number of policies and procedures relating to a commodity partly reflect its export volume. For example, wheat, beef and veal, sheep meat, canola and greasy (wool) were Australia's top five export commodities in 2016–2021 (Figure 1.1). Corresponding with these commodities, Table 3.1 shows that 90 per cent of high-risk instructional materials (IMs) that were completed on commencement of the revised legislation were from the plant, live animal and meat export divisions.

2.44 In January 2022, the department established the Export Control Act Control Risk Assurance Framework (assurance framework). The department described the introduction of the framework as providing 'a proactive approach that test our current control for high-risk business processes' and 'confidence that the arrangement objectives are being achieved within an acceptable level of risk'. This framework outlines three steps to test effectiveness:

- understanding the requirements and changes to the rules for each commodity and aligning with the commodity-based approach to compliance;
- assessing the effectiveness of the controls including the instructional material, IT systems, staff understanding, business processes and stakeholder engagement; and
- enforcing controls through reporting of the tested business process.

2.45 The assurance framework does not include a plan on what specific high-risk business processes will be tested and by when.

Commodity-based compliance audits

2.46 Section 266 of the Act allows the department to conduct audits on the operations of exporters to ensure they are complying with the legislative framework.

2.47 The ANAO tested 73 audit reports against the requirements under the Act and relevant commodity rules. The testing targeted the 10 most recent audit reports for each commodity group as at April 2022. Table 2.3 provides the number of audit reports tested for each commodity.

Table 2.3: Number of audits of each commodity tested

Commodity	Number of audit reports tested	Date range of audit reports
Organic goods	3 ^a	3 November 2021 to 18 January 2022
Meat and meat products	10	3 December 2021 to 11 April 2022
Poultry meat and poultry meat products	10	16 December 2021 to 8 April 2022
Milk and milk products	10	22 November 2021 to 8 April 2022
Egg and egg products	10	11 May 2021 to 8 April 2022
Fish and fish products	10	2 November 2021 to 8 April 2022
Plants and plant products	10	26 May 2021 to 12 April 2022

Commodity	Number of audit reports tested	Date range of audit reports
Wood and woodchips ^b	0	–
Wild game meat and wild game meat products	10	2 November 2021 to 8 April 2022 ^c
Rabbit and ratite meat products	0 ^d	–
Total	73	26 May 2021 to 12 April 2022

Note a: The department advised that only three audits had been completed since commencement of the revised legislation.

Note b: The ANAO did not examine audit reports on wood and woodchip commodities. The Export Control (Wood and Woodchips) Rules 2021 do not contain provisions for the conduct of an audit of processes for dealing with any non-compliance with a requirement. Paragraph 11(2)(d) of the Export Control (Wood and Woodchips) Rules 2021 contains general requirements for records to be 'accurate, legible and able to be audited.'

Note c: All audit reports included commencement and completion dates. Five audit reports were not signed by the auditor.

Note d: The department advised that there was limited production for rabbit and ratite meat products, therefore it did not conduct any audits for these products.

Source: ANAO analysis of departmental records.

2.48 Each report must meet general requirements contained within the Act and rules for individual commodities, shown at Table 2.4. There are also specific requirements for a select group of commodity types, shown at Table 2.5. Of the 13 requirements tested, six were met. The requirements for timeliness of the report were not met. Two requirements could not be determined due to insufficient information.

Table 2.4: General legislative requirements for the conduct of audits

Audit report requirements	ANAO assessment	ANAO comment
Applicable to all commodities — 73 audit reports were tested.		
The audit must relate to one of the matters specified under subsection 266(2) of the Act. ^{ab}	◆	All 73 reports tested met the requirement.
Before starting to conduct an audit, an auditor must give the relevant person for the audit a description of the scope of the audit. ^b	–	The audit reports did not contain sufficient information to determine whether requirement was met.
Before entering premises to conduct an audit, an auditor must show the auditor's identity card to the relevant person for the audit, or another person who apparently represents the relevant person for the audit. ^b	–	The audit reports did not contain sufficient information to determine whether requirement was met.
A written report must be generated. ^c	◆	All 73 reports tested met the requirement.
The name of the auditor must be included in the report. ^c	◆	
The day of commencement and completion of the audit must be included in the report. ^c	◆	
The report must contain a description of export operations. ^c	◆	

Audit report requirements	ANAO assessment	ANAO comment
The report must contain the nature and scope of the audit. ^c	◆	
The report must contain the reasoning behind the audit opinion. ^c	▲	Reasoning was not included in 7 of the 73 reports tested.
The report must be provided to the Secretary in an approved manner within 14 business days after the audit is completed. ^{cd}	■	Reports were not provided within 14 days. ^e
The report must be provided to the relevant person within 14 business days (10 business days for plant commodities) after the audit is completed. ^c	■	Of the 73 reports tested, 22 reports met the requirements and 6 reports were not provided within the specified timeframe. For 45 reports, ANAO was unable to determine whether requirements were met either because the audit report was not dated, or it was not signed by the auditee.

Key: ◆ Requirement met ▲ Requirement partly met ■ Requirement not met

Note a: Some examples of the specified matters include whether export operations comply with the requirements of the Act, whether matters stated in a government certificate or tariff rate quota certificate is correct, and export operations have been carried out in accordance with an approved arrangement.

Note b: Requirements under the *Export Control Act 2020*.

Note c: Requirements under the legislative commodity rules.

Note d: The legislative rules for plants and plant products does not include this requirement.

Note e: The Secretary delegated the powers and functions relating to receiving audits reports within 14 days to Senior Executive Service (SES) officers. The department advised that summary reports on audits conducted, completion rates, and non-compliance trends was provided to the Export Assistant Secretaries on a quarterly basis, and the Audit and Assurance Assistant Secretary on a monthly basis.

Source: ANAO analysis of departmental documentation.

Table 2.5: Legislative requirements for conduct of audit on specific commodities

Audit report requirements	ANAO assessment	ANAO comment
Applicable to meat, poultry, wild game, rabbit, eggs, fish, milk commodities — 60 audit reports were tested.		
The report must include the total time spent on the audit (in hours).	■	Of the 60 reports examined, 51 ^a did not comply.
Applicable to eggs, fish and milk commodities — 30 audit reports were tested.		
The report must include names of individuals present at entry and exit meetings.	■	Of the 30 reports examined, 23 did not comply.

Key: ◆ Requirement met. ▲ Requirement partly met. ■ Requirement not met.

Note a: Of the 51 reports identified, 11 had a start and an end time but not the total time spent in hours as required by the rules.

Source: ANAO analysis of departmental documentation.

Reporting non-compliance

2.49 The legislative framework contains requirements relating to reporting of non-compliance found as a result of an audit. The ANAO tested 73 audit reports (see Table 2.3 and Table 2.4) and found that 32 audit reports (43.8 per cent) identified non-compliances. The department was not effective at meeting the requirements for audit reporting when a non-compliance had been identified.

- For the audit reports relating to meat, poultry, wild game and rabbit commodities, the relevant person must be notified ‘immediately after completing the audit’ — for these audits, there were 16 reports that identified a non-compliance. Of these 16 reports, four met this requirement (25 per cent).
- For audits relating to eggs, fish and milk commodities, the relevant person must be notified ‘as soon as practicable’ after the audit report is finalised — for these audits, there were nine reports that identified a non-compliance. Of these nine reports, none met this requirement.
- For audits relating to all commodity groups (except for organic goods, plant, and wood commodities), the audit report must state whether the non-compliance amounts, or contributes to, a finding of ‘critical non-compliance’ — for these audits, there were 25 reports that identified a non-compliance. One of these reports identified whether a non-compliance was critical.

Opportunity for improvement

2.50 The department should ensure that there is sufficient oversight and monitoring of its conduct and reporting on audit reports, to provide assurance to management that its audit reporting activities comply with the requirements under the Act and rules.

Review of compliance business processes

2.51 The department is revising its compliance and regulatory system over four years as indicated in its 2021–22 corporate plan. The department advised that it expects that the revision and subsequent changes will result in amendments to compliance policies and procedures relating to export controls. These include:

- centralising the compliance and enforcement functions to develop a single portal for compliance management;
- upgrading IT and business processes;
- implementing internal audit’s recommendations relating to the design of the regulatory functions to ensure the department’s approach and capability for meeting regulatory objectives are met;
- a new internal controls framework that provides methodology to support the department in the design and monitoring of control effectiveness in business processes;
- reviewing the ERMFP to provide practical guidance on a risk-based approach to compliance activities (see paragraph 2.33);
- establishing a Future Export Regulatory Model over five years to improve the regulation of export goods; and

- identifying and developing cross-commodity instructional material that applies across multiple export divisions.

2.52 The department is also revising its regulatory and assurance business processes. This is expected to change how export control compliance will be conducted through streamlining of policies and processes, upgrading IT systems and engaging with stakeholders.

2.53 The department's ERMFP is being revised to ensure it supports the compliance policy (see paragraph 2.33). The department also advised that it is designing a Regulatory Practice Statement that links the compliance and risk aspects highlighting the need to understand the regulatory risk relating to regulatory objectives and legislative authority and recognising and responding to non-compliance. The department further advised that work is still progressing on implementing a model for the agriculture regulatory exports.

2.54 The structural change in business processes and delays in updating IMs, compliance policies and procedures to reflect the revised legislation, creates uncertainty and risk in how compliance is managed for export controls. Appropriate risk management and assurance arrangements to support the business reforms will be critical in ensuring the compliance activities remain effective throughout the reforms.

Recommendation no. 2

2.55 The Department of Agriculture, Fisheries and Forestry develops a compliance plan that communicates its compliance priorities, strategies, focus areas and objectives for regulating exports in accordance with its compliance policy. The compliance plan should include a program of quality assurance activities and milestones to ensure its compliance framework remains effective throughout the business process review.

Department of Agriculture, Fisheries and Forestry response: *Agreed.*

2.56 *The department agrees with the ANAO assessment that it will benefit from reforming its compliance and assurance business processes. The department will develop a compliance plan and strategy that articulates specific priorities, assurance activities and milestones to make sure that the framework remains effective throughout the business process review.*

3. Arrangements to support the legislative framework

Areas examined

This chapter examines whether the department established effective arrangements to support the implementation of the legislative framework.

Conclusion

Arrangements to support the implementation of the revised legislative framework were partly effective. The department has not complied with its instructional material policy to review materials every two years and has not updated all instructional material as originally planned. The department's engagement with stakeholders in the development of the revised legislation was transparent and consultative. Planning of changes to IT systems to support the legislative framework was partly appropriate with records for the implementation of IT changes not maintained, making it difficult to identify if all required IT changes were implemented.

Areas for improvement

The ANAO made two recommendations, that the department:

- ensure policies and processes are fit-for-purpose, legally accurate, up-to-date, and are operating as intended; and
- establish relevant policies, plans and supporting assurance arrangements to ensure IT project changes are appropriately coordinated, documented and monitored.

3.1 This chapter examines whether the department established effective arrangements to support the implementation of the legislative framework. This includes an assessment of the policies and procedures to support the changes in legislation, the department's engagement with external stakeholders before and after the commencement date, and the planning for IT changes to support the legislative transition.

3.2 The department's Instructional, Training and Information Products for Export Legislation Implementation Strategy identified that instructional training and related information materials are 'important in supporting staff to understand, implement, and comply with changes under the new export legislation.' Policies and processes should be reviewed, developed and amended to ensure that they are fit-for-purpose.

3.3 The Australian Public Service Commission outlines that early engagement with stakeholders is important, as well as having a clear plan and purpose for stakeholder engagement. The Commission also notes that success includes identification of stakeholders, providing updates to stakeholders on consultation findings, and evaluation.

3.4 Project planning for IT changes is critical to ensure the IT systems support the department's and external stakeholders' transition to the revised legislation. The department uses IT systems to support export activities, such as record-keeping, generating receipts, certification, compliance activity, and data collection and monitoring. This includes processes around the governance and approval of changes, stakeholder engagement, and controls designed to ensure that changes are properly identified and tested before implementation.

Do policies and processes support the implementation of the legislative framework?

The department updated its high-risk instructional materials to support the implementation of the legislative framework. Materials rated low and medium risk have not been fully updated to reflect the revised legislation. The department has not complied with its instructional material policy to review materials every two years.

Planning and monitoring for change to instructional material

3.5 The department's internal policies, guidelines, work instructions, standard operating procedures, templates, and references are captured in instructional materials (IMs). The IMs are contained in the instructional material library (IML), an online database that can be accessed by staff on the department's internal intranet. The IMs cover the department's operations and regulations and are not specific to export controls.

3.6 The implementation project plan identified two outcomes: instruction material updated; and IT systems reviewed and updated if required (see Table 2.1). One of the milestones in the implementation project plan was the mapping and prioritisation of IMs to be completed by 29 March 2020 with all IMs published on IML by 29 March 2021.

3.7 At its meeting on 11 March 2020, the Assistant Secretary Working Group (ASWG) was provided with two key documents.

- Instructional training and information products for export legislation implementation strategy. This document outlined the overarching principles and approach to review, develop and amend instructional, training and related information. The document provided guidance on a risk-based approach to IM development.
- Instructional and training sub-project plan. This document outlined the individual tasks and milestones to support divisions to review, develop and amend instructional, training, and related information.

3.8 On 9 September 2020, the department engaged PwC to provide an assessment of the department's 'business readiness' in implementing the revised export control legislation (business readiness report). The draft report to the department dated 23 December 2020 noted 'There is a large volume of Instructional Material and other key documents that have yet to be updated for the new legislation.' PwC board update report dated 19 February 2021 — a month before the commencement of the revised legislation — noted 'There remains a significant volume of IM and other documentation to be completed prior to commencement. There is a risk of errors being made in IM due to tight timeframes for completion.'

3.9 The department also engaged Noetic Group (Noetic) on 21 October 2020 to assess whether the department was on track to review existing IM, amend or develop new IM, and to communicate the changes to relevant staff. Observations identified by Noetic in its report to the ASWG at its meeting on 10 December 2020 included:

- multiple stakeholders did not seem confident that they would achieve the desired outcome citing insufficient resources for writing, editing and publishing and the competing demands of operational roles;
- the volume of IM that needed legal review had not been fully quantified; and

- significant choke points in legal review and clearance, approvals, editing and IML publishing are looming and there is no clear picture of the liability or a processing schedule.

3.10 In its response to recommendations made by Noetic, the ASWG agreed to identify high risk IMs that must be developed or amended for implementation and deferred medium- and low-risk IMs until post commencement, after 28 March 2021. The original plan was to have all IMs published by 29 March 2021 (see paragraph 3.6).

3.11 IM dashboard reports have been provided to the Agricultural Trade Reform Board (ATRB) since its commencement in October 2020 (see paragraph 2.8). The dashboard identified the number of IMs that were required to be amended or created against the total number of IMs. The dashboard also included the IM development stages and noted whether legal review was required. The total number of IMs varied according to when the dashboard was created as IMs were continually created and archived.

3.12 In the IM dashboard for March 2021, the department identified 595 IMs related to export control within the IML. Of these, 204 were categorised as high-risk that required completion on commencement of the revised export control legislation, as shown in Table 3.1. The remaining IMs were to be completed following the commencement date (337) or archived (54). The 204 IMs equate to approximately 38 per cent of all IMs that required updating on or before the commencement date.¹⁶

3.13 At its meeting on 22 March 2021, the ATRB was advised that 207 IMs were completed to support the implementation of the revised export control legislation. This final number reflects completed high-risk IMs, as well as medium and low risk instructional material. In the instructional training and information products (see paragraph 3.7), the conditions for 'high risk' included all new IMs or significant change to existing IMs (for example, significant change to terminology, roles, policy, processes, procedures or descriptions of legislation critical to support defensible and lawful decision making).

Table 3.1: Instructional material dashboard report

Division	Number of required (high-risk) IMs completed for commencement
Compliance division	2
Plant division	71
Live animal export	30
Meat export division	83
Trade reform division	4
Forestry division	8
Residues & food	6
Total IMs	204

Source: Extract of IM Status Report March 2021.

¹⁶ Number of completed IMs 204 / (595 total IMs related to export control – 54 IMs to be archived) = 38 per cent.

3.14 After the commencement of the revised export control legislation on 28 March 2021, divisions were responsible for reviewing and updating the remaining non-high-priority IMs for their respective business unit. The department's rationale to assign this responsibility to the export business area was that the business areas are best placed to understand their IMs and prioritise their updates according to their risks.

3.15 The IM Policy for export operations, as endorsed by the ATRB at its meeting on 4 February 2021, requires IMs to be reviewed every two years. Other than this requirement, no specific timeframe was set for when non-high-priority IMs relating to the export legislative changes must be reviewed, updated or archived by the export business areas.

3.16 The ANAO assessed an extract of the IML from March 2022.¹⁷ Out of 2303 IMs, 850 related to the department's export activities and the export legislation. Of the 850, 358 or 42 per cent, had been updated over the two years to March 2022 (see Table 3.2). The other 492 or 58 per cent, had not been reviewed every two years as required.

Table 3.2: Instructional material library

Instructional materials related to exports	Total
Published between March 2020 and March 2022	358
Published prior to March 2020	492
Total number of IMs related to exports	850

Source: Extract of IML from 9 March 2022 as provided by the department.

3.17 Of the 492 IMs published prior to March 2020, 374 IMs related to export legislation. Of these 374 IMs, 174 or 47 per cent were for work instructions (see Table 3.3).

Table 3.3: Break-down of IMs related to export legislation with publish date prior to March 2020

IMs related to export legislation with publish date prior to March 2020	IM number	Per cent
Work instruction	174	47%
Template	59	16%
Instruction & guideline	48	13%
Reference	38	10%
Form	26	7%
Checklist	13	3%
Standard operating procedure	11	3%
Business policy	5	1%
Total	374	100%

Source: Extract of IML from 9 March 2022 as provided by the department.

17 Since March 2021, the number of IMs related to export had increased (see paragraphs 3.11 and 3.12). The ANAO extracted a total of 2303 individual IMs from the department's instructional material library. Of the 2303, 1453 were not related to export activities of the department or the export legislative control framework. The ANAO excluded the 1453 from further audit testing.

3.18 Non-compliance with the mandatory two-year review increases the risk that the IMs are not up-to-date and fit-for-purpose. The consequence may be that staff are provided with outdated templates, guidelines and work instructions and do not consistently apply the revised export control legislation.

External website content

3.19 Reference materials are also publicly available on the department's website, enabling external stakeholders to understand their rights and obligations under the revised legislation. The materials include departmental policies (including those relating to compliance and regulatory sanctions), approved forms, applications, authorisations, certificates, and fact sheets.

3.20 At its meeting on 22 March 2021, the ATRB was advised that webpage update was 99 per cent complete and full completion was expected on 29 March 2021.

3.21 In reviewing the department's website on 'Exporting from Australia' in March 2022¹⁸, the ANAO identified content that referenced repealed legislation.¹⁹

3.22 There are provisions within the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020* to accommodate the transfer of legal arrangements to the revised export control legislation. For example, section 3 of the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020* notes that certain instruments, certificates or another document referencing the old Export Control Law can continue in force under the new *Export Control Act 2020*.

3.23 The department does not know how many webpages are not reflective of the revised legislative framework. In March 2022, the department developed a project plan to update its website content to ensure it reflects the revised legislation. The project plan identified approximately 30–40 webpages that were outdated. On 6 April 2022, the department advised that '20 or so webpages' were outdated and required updating. The department's website risk assessment stated that there were '25 departmental webpages that referenced repealed legislation either directly or through hosted documents' and noted that all webpages had a 'low' risk rating. The ANAO has identified 46 weblinks not included in the department's website risk assessment that reference repealed legislation.

3.24 The risk rating in the website project plan rated the risk that external stakeholders may be using superseded forms and templates which may contain wrong information as 'high'. No risk treatments were identified in the website project plan, yet the residual risk was downgraded to 'medium'.

18 Department of Agriculture, Fisheries and Forestry, *Exporting from Australia* [Intranet], available from <https://www.awe.gov.au/biosecurity-trade/export/from-australia> [accessed March 2022].

19 Repealed by the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*.

Recommendation no. 3

3.25 The Department of Agriculture, Fisheries and Forestry ensure policies and processes are up-to-date, reflective of current legislation, fit-for-purpose and are operating as intended for both its internal instructional materials and external website content.

Department of Agriculture, Fisheries and Forestry response: *Agreed.*

3.26 *The department will continue to progress the project plan it has in place for updating non-high-risk internal instructional materials and external website content to ensure appropriate legislation is referenced. These plans will be reviewed to ensure that observations made by ANAO have been addressed. The department will use its business as usual (BAU) assurance and compliance processes which is a continuous and ongoing program of work. These will ensure that policies and processes (instruction materials) remain up to date, fit-for-purpose and are operating as intended.*

Have effective external stakeholder engagement arrangements been implemented?

The department's engagement with stakeholders in the development of the revised legislation was transparent and consultative. The department did not publish feedback on its post-commencement consultation until after May 2022.

Engagement pre-commencement

3.27 Consultation on the review of the legislation commenced in July 2015 when the department released a discussion paper to stakeholders as part of its Agricultural Export Regulation Review. This review formed the department's assessment of the existing export regulation, including whether export regulation met the needs of industry and government, was flexible to respond to situations and issues, and was readable.²⁰

3.28 The consultation included:

- 80 external stakeholder views presented through workshops, one-on-one meetings and teleconferences;
- one-on-one meetings with 26 state and territory government, and Australian Government agencies;
- tours of export facilities with 13 industry stakeholders; and
- written submissions.

3.29 In May 2016, the department published summaries of stakeholders' feedback and submissions in its Agricultural Export Regulation Review Consultation Report (see Appendix 4 for key milestones).

3.30 The second stage of the reform process commenced in 2016. To support the second stage, the department developed a Stakeholder Engagement Plan (April 2016), a Communication Plan

²⁰ The review did not consider cost recovery arrangements, livestock export regulation or allocation, and administration of quotas.

(July 2016) and a Stakeholder Engagement Strategy (November 2016). The Stakeholder Engagement Plan, Strategy, and Communication Plan covered key messages, approach, activities, target audience, and implementation dates.

3.31 The department published information on its website, emailed industry advice notices, placed advertisements, produced articles, prepared presentation slides, held focus groups, and sent letters to counterparts in international agricultural departments. Two ministerial releases were also published. The department published summaries of the feedback on its website, as well as written submissions²¹, that it had received for six of the seven of consultation rounds (see Appendix 4).²²

Engagement following commencement of the revised legislation

3.32 Between February 2021 and May 2021, the department had two stakeholder engagement plans. The first plan articulated ‘how the department will communicate and engage with internal and external stakeholders to ensure the successful implementation of Australia’s new agricultural export legislation.’ The second plan was to seek feedback from stakeholders on how the department engaged with them during the development of the new legislation. The plans included key messages to be communicated to stakeholders, communication objectives, communication channels, target audiences and a survey.

3.33 The department published information on its social media platforms, website and in newspapers. In June and July 2021, the department conducted consultation sessions in Canberra, Hobart, Melbourne, Perth, Adelaide, Sydney, Brisbane and Darwin. There were 81 attendees, including industry participants, peak bodies, state and territory governments and departmental staff.

3.34 A stakeholder survey questionnaire was also conducted as part of the consultation process, for which the department received nine responses.²³ Six of nine respondents reported that the department’s communications were easy to understand and that they had gained a better understanding of legal requirements under the new export legislation.

3.35 The department published a summary of the consultation after 5 May 2022 (see paragraphs 3.29 and 3.31), noting the consultation had closed on 15 July 2021.

3.36 The department commissioned PwC to conduct a post implementation review of the revised legislative framework. The review was delivered in March 2022 and found that the department’s external stakeholder engagement post implementation was not as extensive as its engagement prior to the commencement of the revised legislation. The department accepted the review’s recommendation that it:

continue stakeholder engagement on a half yearly or yearly basis (provided there is cost and resource allocation) in relation to informing industry of the legislative amendments and understanding what the appetite is for further legislative changes.²⁴

21 Excluding confidential submissions.

22 The department received one submission for the Exposure Draft Export Control Amendment (Miscellaneous Measures) Bill 2020. The department did not publish on its website any summaries of feedback it received for the consultation round on this bill.

23 The department included a link to the survey on its social media platforms and emailed the link to registered stakeholders.

24 PwC Export Control Act Post Implementation Review – Findings Report, 18 March 2022.

Was there appropriate planning for changes to IT systems to support the legislative framework?

Planning for IT changes relating to the implementation of the revised export control framework was not fully coordinated, which resulted in the delayed implementation of IT changes. Records for work related to IT changes were not documented or maintained in a systematic and accessible form.

Planning for changes to IT systems

3.37 The department advised it has 54 IT systems which span multiple areas of the department including exports, imports, corporate and information management. Of these 54 systems, the department identified 12 systems that related to export controls as shown in Box 1.

Box 1: Systems related to export control

- **Audit Management System (AMS)** is used by staff to record audit activities in the export programs.
- **DAISY** is used to administer dairy export quotas to the US and European Union.
- **Export Documentation (EXDOC)** assists Australian exporters meet the standards for exporting. Exporters enter the details of proposed exports and the system links this to results of product inspections — if the product is eligible, EXDOC issues export permits and certificates. An export permit is mandatory for all prescribed goods exported from Australia.^a
- **Establishment Register (ER)** allows the department to ensure that the goods for export are prepared in a way that meets export requirements for Australia and the importing country's requirements. This system supports the legal requirement that the Secretary must keep a register of information about registered establishments.^b
- **Manual of Importing Country Requirements (MICOR)** is a web-based information management system that brings together importing country requirements onto one platform. It provides critical information to exporters on importing country requirements.
- **Meat Export Data Collection System (MEDC)** is for staff to record information about export meat.
- **Next Export Documentation System (NEXDOC)** is the department's new web-based export management system.
- **NEXDOC Certificate Scanner** is used by trading partners to verify exporter certification.
- **National Residue Survey Information Management System (NRS IMS)** is used to create and maintain environmental contaminant, and pesticide and veterinary medicine residue monitoring programs.
- **Plant Export Management System (PEMS)** is used to capture information about the export of plants and plant products from Australia.
- **QMS** is used to administer Japanese and Indonesian export quotas.

- **SARA** is used to administer US and European Union export quotas and produce global export statistics for red meat.
- **TRACE** is used to manage notices of intention to export livestock by sea and air.

Note a: See paragraph 2.37 for a list of prescribed goods regulated by the *Export Control Act 2020* and the Export Control Rules 2021.

Note b: This is a requirement under section 148 of the *Export Control Act 2020*. An establishment that is registered by the department to prepare goods for export is called a registered establishment. For example, freight forwarders, manufacturers, and storage facilities are registered establishments if they prepare goods for export.

3.38 The department advised the Australian Government in 2015 that IT business requirements would be determined during the development of the revised legislative framework.

3.39 In May 2016, the Deputy Secretary approved planning documents for the improvements to the export legislation. This project plan noted that the development of improved legislation may have flow on implications for the relevant IT systems. The plan identified that changes to business requirements would be fully scoped between November 2015 and December 2017.

3.40 In the project plan, the department intended to scope IT business requirements between June 2016 and December 2016, with IT costings to be completed between January and February 2017. The department did not complete scoping by the end of 2016 and did not have a list of required IT changes until March 2021, which led to the implementation of two IT changes after the revised legislation commenced (see paragraph 3.45).

Coordination activities

3.41 A timeline of coordination activities is shown at Figure 3.1 These activities focused on changes to the departmental IT systems.

3.42 Different parts of the department ran coordination activities. The Export Legislation Taskforce (see paragraph 2.12) requested divisions to identify existing IT systems and whether these systems would require adjustments upon commencement of the revised legislation. It was also discussed at ASWG meetings that each division was responsible for providing to the IT area its requests for IT changes required before the commencement of the revised legislation. Reporting to the ASWG noted that the Taskforce, the Agricultural Trade Group (see paragraph 2.8) and the department's corporate function, identified required IT changes:

- the Taskforce identified three terminology changes;
- the Exports and Veterinary Services Division identified required changes to EXDOC and ER (in addition to three terminology changes);
- the plant export area identified 14 critical IT enhancements and system administration matters; and
- the Finance Division identified that business systems where the department administers fees and charges need to be updated.²⁵

3.43 The IT systems related to exports are also used by external stakeholders such as other government entities and industry stakeholders (see Box 1). The department included consultation

²⁵ Papers submitted to the ASWG in February 2021 note that some divisions (such as Biosecurity Operations Division, Compliance Division and Forestry Division) did not require any changes. Documentation was not available for other commodity areas to determine whether specific IT changes were required or implemented.

on technology systems when it consulted external stakeholders before and after the revised legislation commenced (see paragraphs 3.27 to 3.36). There is no evidence that the department considered the feedback it had received during consultation when identifying required IT changes. Feedback received by the department included improving departmental systems and services to make them flexible, easier to use and responsive to commercial requirements.

Implementation of changes to IT systems

3.44 The department was not able to provide assurance on the number of required IT changes that were implemented. The department's system for IT change management may not have captured all changes in the implementation of the revised legislation.

3.45 The Export Legislation Taskforce advised the ANAO that there were three changes to IT systems, which were minimal and limited to 'terminology' changes. For example, changing *Export Control Act 1982* to *Export Control Act 2020*. For the department's implementation of IT changes identified by the Export Legislation Taskforce, the ANAO noted that:

- recordkeeping was not in accordance with the department's requirements for making IT changes. Recordkeeping was poor for one change and did not exist for two of the changes;
- despite project planning commencing in 2016, one change was classified as an 'emergency change' and another one was categorised as an 'urgent change' by the department. These classifications reduce the level of standard testing and controls expected of 'normal' IT changes²⁶; and
- two of the changes were made after the legislative commencement date.

3.46 The department's change management guide states that 'all changes will have a requisite set of documentation that describe the change, the business reason for the change, the risk, the solution design, the test plans and test results.' The ANAO noted that for changes made by the Export and Veterinary Service Division, and the plant export area, records for work related to IT changes were not maintained in a systematic and accessible way. The IT changes required by these areas were not identified in the system as being changes related to the revised export control legislation. This impacted the retrievability of documentation to support that the requested IT changes were implemented.

26 A 'normal change' is required to go through the full change management process, which has a lead time of 15 days to undertake 'appropriate and adequate risk assessment, peer review, resource scheduling, and endorsement.' Endorsement for this type of change can be provided by the Change Advisory Board who has the responsibility of advising executives on whether the change should be endorsed. An 'urgent change' takes four to five days from the time the request is made. An 'emergency change' accelerates the time to implementation. Urgent and emergency changes impact risk management as they leave less time to review the impacts of the change.

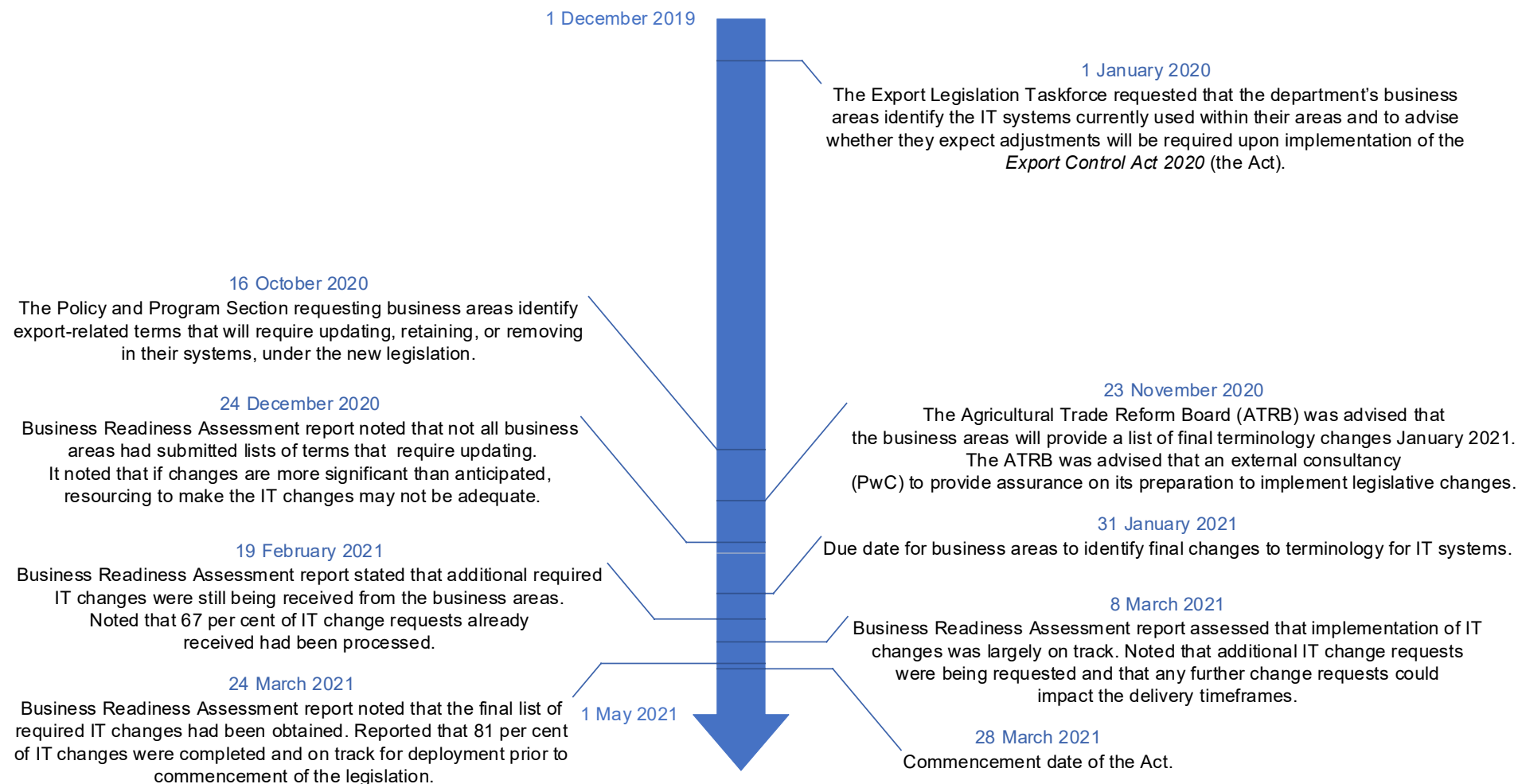
Recommendation no. 4

3.47 The Department of Agriculture, Fisheries and Forestry establish relevant policies, plans and supporting assurance arrangements to ensure IT project changes are appropriately coordinated, documented and monitored.

Department of Agriculture, Fisheries and Forestry response: *Agreed.*

3.48 *The department will update and review its policies, plans and assurance arrangements relating to IT project changes.*

Figure 3.1: Summary of coordination activities for IT system changes



Source: ANAO analysis of departmental documentation.

4. Performance monitoring and reporting

Areas examined

This chapter examines whether the department developed appropriate arrangements to manage its performance as a regulator of agricultural exports.

Conclusion

Arrangements to monitor and measure the intended benefits of the legislative framework were not established by the commencement date of the revised legislation. There were performance measures in the department's corporate plan and annual report relating to export controls. The department reported under the regulator performance framework that it has areas for improvement.

Area for improvement

The ANAO made one recommendation aimed at improving benefits management and realisation.

4.1 This chapter examines whether the department has developed appropriate arrangements to demonstrate whether the intended outcomes have been achieved and if reporting arrangements have been established.

4.2 A benefits realisation framework is important to ensure there are strategies that describe the measures, baselines, targets — qualitatively or quantitatively — of the benefits under the revised legislation. The ANAO assessed whether a benefits realisation framework has been implemented and whether the intended benefits of the legislative change have been realised.

4.3 Ongoing monitoring and reporting of regulatory performance contributes to a better understanding of whether the revised export control legislative framework is performing as intended and achieving its objectives.

Have arrangements been established to monitor and measure the intended benefits of the legislative framework?

Arrangements to monitor and measure the intended benefits of the legislative framework were not established by the commencement date (28 March 2021). Post commencement, there were documents outlining the department's approach to benefits management. Milestones have not been established to support the monitoring and reporting of benefits realisation.

Expected benefits of the legislative framework

4.4 In November 2015, the department sought Australian Government approval for 'improvements to agricultural export legislation.' It advised the Australian Government that the changes will lead to a more flexible and effective legislative framework and included the following benefits:

- streamlined and consolidated existing legislation;
- maintaining the current baseline for regulating exports, allowing for continuity on a number of commodity specific administrative issues and the setting of standards for export related matters;

- improved management for export certifications;
- clearer powers for verification activities such as audits and inspections;
- a broader range of monitoring, investigation and enforcement powers; and
- the ability to manage consequential and transitional matters arising from the enactment of the improved legislation.

4.5 The department's submission to the Australian Government noted that the revised legislative framework would lead to a reduction of regulatory burden due to improved business processes. In its submission to the Australian Government, the department stated that as the revised legislative framework was developed, further reductions in regulatory burden 'will be identified' and 'will be quantified' as part of the final regulation impact statement (RIS).²⁷

4.6 The department released two draft RISs during the stakeholder consultation periods — one for each of the draft Export Control Bills in 2017 and 2019. The contextual information in both draft RISs changed slightly and the benefits of the proposed legislative changes were broadly the same.

4.7 As part of the 2019 consultation on the proposed legislative changes, the department advised stakeholders that 'we are improving Australia's agricultural export legislation. This is part of our wider initiative to strengthen and grow Australian agricultural exports and market access.'

4.8 In the 2019 RIS, the department noted complexity, duplication and inflexibility as 'problems' with the previous export legislative framework that would be addressed by the revised legislation.

4.9 In both RISs, the department identified two aspects of the new legislation that would reduce regulatory costs: streamlining the 'fit and proper person' test; and the appointment of authorised officers.²⁸ The combined reduction in regulatory burden to businesses for these two items, was estimated at \$0.38 million per year or \$3.88 million over 10 years.

4.10 The 2019 RIS stated that 'A benefits realisation plan will be developed for the implementation phase. It will describe the benefits and how they will be realised, measured and reported.'

4.11 The department did not have a benefits realisation plan in place before the commencement of the revised legislative framework. In July 2021, the Agricultural Trade Reform Board (ATRB) was provided with the Portfolio Benefits Management Strategy (benefits management strategy) for noting. The purpose of the strategy was to explain how the department will demonstrate value creation for external customers and stakeholders via standard measures. The strategy was for the department's Agricultural Trade Group and was not specific to the implementation of the revised legislation. The benefits management strategy outlined two measures for benefits realisation:

27 Any regulatory policy proposal by the Australian Government must be accompanied by a RIS.

Australian Government, *Australian Government Guide to Regulatory Impact Analysis* [Internet] available from <https://obpr.pmc.gov.au/sites/default/files/2021-06/australian-government-guide-to-regulatory-impact-analysis.pdf> [accessed May 2022].

Export control legislation is considered regulation as 'Any rule endorsed by government where there is an expectation of compliance' is regulation, p 10.

28 The Department of Prime Minister and Cabinet's Regulatory Burden Measurement Framework provides a guide to regulatory impact analysis, which is required in the preparation of regulation impact statements. This framework considers two main regulatory costs: compliance costs and delay costs. Compliance costs are costs incurred by the regulated entity to primarily demonstrate compliance with the regulation, or to deliver outcomes sought under the regulation. Delay costs are due to an application delay or an approval delay.

programs delivered on planned business improvements and a \$24.1 million in efficiencies for exporter fees by 2023–24.

Benefits management after commencement

4.12 Arrangements to monitor and report benefits are underpinned by the following documents, which were developed after commencement of the revised export legislative framework:

- Benefits Realisation Plan, Export Legislation Reform Project (benefits realisation plan), September 2021;
- Portfolio Benefits Management Strategy, November 2021; and
- Benefits and Performance Indicators of the *Export Control Act 2020* (performance indicator guide), January 2022.

Benefits realisation plan

4.13 The purpose of the benefits realisation plan was to explain how the realisation of benefits from the revised export legislation would be monitored and reported. Reporting of benefits would be monitored by the ATRB. The plan identified two quantitative benefits stemming from the revised export control legislation, which were in the 2019 RIS.

- Reduced cost of compliance burden by streamlining approval of third party authorised officers. The department estimated that the financial benefit from increased efficiency of regulatory processes and reduced operational costs for businesses to be \$0.286 million. The plan noted that this benefit was realised after the deed of obligation was removed under the revised legislative framework.
- Reduced cost of regulation for businesses by streamlining the export licence application relating to fit and proper person test. The department estimated that the financial benefit for businesses would be \$0.102 million. The plan noted that this benefit was not realised as it did not adequately capture the additional workload required by department staff in preparing the relevant reports under the revised legislative framework.

4.14 The benefits realisation plan also noted that ‘improved customer regulator experience’ was a non-financial benefit of the revised legislative framework, and that this benefit would be measured ‘by repeatable surveys’. The department has yet to conduct these surveys.

Portfolio benefits management strategy

4.15 The portfolio benefits management strategy:

explains how the portfolio will demonstrate value creation for external customers and stakeholders and DAWE [the department] by monitoring and reporting benefits via identified standard measures throughout the life of the Trade Reform Portfolio.

4.16 The strategy focuses on measuring the benefits of the export legislative reform, as well as other trade reforms the department is responsible for, such as the \$328.4 million Busting Congestion 2020 budget measure. The strategy provides broad guidance to projects and programs within the trade reform area of the department on the principles, reporting and measuring of benefits.

4.17 The portfolio benefits management strategy also advised that baselines for reporting on benefit improvements will be established where there has been a change in business process. A revised updated benefits management strategy will be considered by ATRB post July 2022.

4.18 The portfolio benefits management strategy also outlines that case studies will be used to illustrate benefits realised. No methodology was identified to select case studies. Consequently, there is the potential for bias in reporting of benefits realisation.

Performance indicator guide

4.19 The performance indicator guide outlines the benefits from the revised export control framework and how they will be measured. The plan identified six anticipated benefits from the revised legislative framework by:

- reducing regulatory duplication;
- supporting the export of a broader range of agricultural exports;
- providing for regulatory changes to be made much more quickly to support changes in importing country requirements, industry practice, technology and regulatory requirements;
- encouraging the uptake of innovation by farmers and exporters to meet regulatory requirements;
- supporting automated decision making in some circumstances; and
- providing a suite of enforcement mechanisms to deter breaches of the legislation.

4.20 The six anticipated benefits would be measured through 18 performance indicators. The performance indicators are all quantitative, covering aspects, such as the number of legislative instruments consolidated, number of guidelines and training materials developed, and the number of automated decisions implemented. None of the performance indicators have targets or specify when the benefit will be achieved.

4.21 The department has benefits reporting for meat exports. The Excel-based worksheet outlines the measures, forecasts and methodology of benefits realisation, with specific reference to the revised export control legislation and the six anticipated benefits identified in the performance indicator guide. Similar reporting did not exist for other commodities.

Recommendation no. 5

4.22 The Department of Agriculture, Fisheries and Forestry:

- (a) develop milestones to ensure that the intended benefits of the revised legislative framework can be measured and monitored; and
- (b) fully implement its benefits management arrangements.

Department of Agriculture, Fisheries and Forestry response: *Agreed.*

4.23 a) *The department has already documented and provided to the ANAO the Portfolio Benefits Management Strategy which provides Trade Reform Target Benefits. The department will establish milestones/indicators to assist with monitoring and reporting of benefits realisation over long-term.*

b) *The Agricultural Trade benefits management arrangements are fully implemented. The department will continue to update and improve this process as a BAU activity.*

Are external monitoring and reporting arrangements effectively supporting the legislative framework?

The department has export-related performance measures in its corporate plan and annual reporting, most of which relate to the objects of the Act. It has reported an ‘emerging’ maturity level under the regulatory performance framework.

4.24 The Act sets out the overarching legal framework for the regulation of exported goods, including food and agricultural products from Australia.²⁹ The objects of the Act include:

- to ensure that goods that are exported meet the relevant importing country requirements, comply with government or industry standards, or other requirements relating to the goods exported from Australia;
- to ensure goods that are exported are traceable and, if necessary, can be recalled;
- to ensure the integrity of the goods;
- to ensure that trade descriptions of the exported goods are accurate; and
- to give effect to Australia’s rights and obligations under international agreements (in relation to the goods that are exported), to which Australia is a party.³⁰

4.25 The department has reported on the export legislative framework in its corporate plans, annual reports and self-assessments. This reporting mostly addresses the objectives of the Act. Since the commencement of the Act in March 2020, the department has published three corporate plans (2019–20, 2020–21, and 2021–22), and two annual reports (2019–20 and 2020–21) under the Commonwealth performance framework.

²⁹ Department of Agriculture, Fisheries and Forestry, *Improved agricultural export legislation* [Internet], Department of Agriculture, Water and the Environment, available from <https://www.awe.gov.au/biosecurity-trade/market-access-trade/improved-export-legislation> [accessed June 2022].

³⁰ Subsections 3(a)–3(d) of the *Export Control Act 2020*.

Corporate plans and annual reports

4.26 The Commonwealth performance framework requires entities to report on their purposes and performance measures to assess their performance in achieving their purposes.³¹ The Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) requires that the entity's purposes, key activities and performance measures must be included in the entity's corporate plan. The PGPA Rule also requires that the entity's performance measures relate directly to one or more of the entity's purposes or key activities. To provide accountability to Parliament and the public, results against these performance measures are required to be reported in the entities' annual performance statements.

2019–20 corporate planning and annual reporting

4.27 The Department of Agriculture's 2019–20 Corporate Plan³², identified two strategic risks related to export legislation, including that the department does not:

- identify or influence opportunities to open, improve or maintain export markets; and
- develop and implement effective regulatory frameworks and practice.³³

4.28 The Department of Agriculture stated its purposes³⁴, three strategic objectives, and six functions in its 2019–20 Corporate Plan. To underpin its purposes, objectives and functions, it identified six performance measures related to exports, shown in Table 4.1. This plan identified the implementation of the Act as one of the department's 2019–20 priorities in its regulation and service delivery function. The Act was subject to passage of legislation during 2019–20.

4.29 In the 2019–20 Annual Report, the department reported against these performance measures.³⁵ Four of the six performance measures used by the department in 2019–20 directly related to the objects of the Act (see Table 4.1).

4.30 In 2019–20 Annual Report, the department reported that the Act would come into effect in March 2021 and that the legislation would underpin the department's reputation as a supplier of safe and reliable food and other products.

31 Section 8 of the *Public Governance, Performance and Accountability Act 2013* outlines that the purposes of a Commonwealth entity includes the objectives, functions or role of the entity.

32 On 1 February 2020, the Department of Agriculture and the environment functions of the then Department of the Environment and Energy merged to create the Department of Agriculture, Water and the Environment. Australian Parliament House, *New structure of Government departments*, [Internet], APH, available from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F7064930%22> [accessed May 2022].

33 Department of Agriculture, *2019–20 Corporate Plan* [Internet], available from https://www.transparency.gov.au/sites/default/files/reports/arg_corporate-plan-2019-20.pdf, [accessed June 2022].

34 The Department of Agriculture stated that its purposes was that 'We work with national and international governments and industry to grow the value of agricultural trade and reduce risk to Australian agriculture.'

35 Department of Agriculture, Water and the Environment, *2019–20 Annual Report* [Internet], available from https://www.awe.gov.au/sites/default/files/documents/annual-report-2019-20-awe-oct-2020_0.pdf, [accessed June 2022].

Table 4.1: Export-related performance measures for 2019–20

Description of objectives and functions	Performance criterion	Performance measure	Reported results	Did the performance measure relate to the objects of the Act?
Increase, improve and maintain markets (strategic objective).	The trend in value of agricultural exports increases in real terms over time.	The real value of agricultural commodity exports (adjusted for inflation) exceeds the average real value of the previous 10 years.	Achieved	Not directly related to the objects. It did relate directly to the department's purpose ^a and key activities. ^b
Regulation and service delivery (function) — such as certifying goods for export and providing a licensing system for exporters.	Effective intervention to ensure compliance.	Rates of compliance with regulations administered by the department are maintained or improved.	Achieved	Yes
	Continuous improvement in regulatory practices.	The department implements its Regulatory Practice Framework.	Partially achieved	Not directly related to the objects. It did relate directly to the department's purpose ^a and key activities. ^c
	Business processes and services are improved through the better use of modern technology and improved work practices.	Agreed standards are met.	Partially achieved	Yes
Trade and market access (function) — providing opportunities for primary producers to export their products, including through negotiations with other countries to establish trade agreements.	Increased access to overseas markets generates more export opportunities for Australian primary producers.	The number of export markets that are gained, maintained or improved.	Achieved	Yes
		New or improved markets show an increase in export volumes and values in trend terms.	Achieved	Yes

Note a: See subsections 3(a)–3(d) of the *Export Control Act 2020*.

Note b: This performance measure relates to the department's key activities of tackling trade challenges and market access.

Note c: This performance measure relates to one of the department's key activities focused on improving export regulation.

Source: ANAO analysis of departmental documentation.

2020–21 corporate planning and annual reporting

4.31 The department's 2020–21 Corporate Plan reported that its strategic priorities included improving market access and opportunities for agricultural exports, and transforming the export regulatory system. The 2020–21 Corporate Plan had five objectives to ensure that its work supported its purposes, including one objective focused on agriculture: 'to assist industry to grow a \$100 billion agricultural sector by 2030.'³⁶ Two performance measures related to exports were established under this objective.³⁷ These measures were reported on in the department's 2020–21 Annual Report, as shown in Table 4.2.³⁸

4.32 One of the two performance measures related directly to the objects of the Act. The 2020–21 Annual Report also outlined the department's continuing consultation on implementing the Act.

Table 4.2: Export-related performance measures for 2020–21

Performance criterion	Performance measure	Reported results	Did the performance measure relate to the objects of the Act?
Increase, improve and maintain markets	Growth in agricultural commodity exports in markets for which the department has negotiated improved market access exceeds average export growth.	Partially achieved	Yes
	Number of disruptions to existing export markets resolved through the department's negotiation and advocacy work.	Achieved	Not directly related to the objects. It did relate directly to the department's purpose ^a and key activities. ^b

Note a: See footnote 37.

Note b: This performance measure relates to one of the department's key activities focused on negotiating free trade.

Source: ANAO analysis of departmental documentation.

2021–22 corporate planning

4.33 The department's 2021–22 Corporate Plan reported its purposes and objectives³⁹, including one objective focused on agriculture: 'Assist industry to accelerate growth towards a \$100 billion agricultural sector by 2030.'⁴⁰ Under the agriculture objective, the 2021–22 Corporate Plan included five performance measures relating to exports (see Table 4.3). The department's performance measures in 2021–22 supported monitoring and reporting on the objects of the Act.

36 Department of Agriculture, Water and the Environment, *2020–21 Corporate Plan* [Internet], available from https://www.awe.gov.au/sites/default/files/documents/dawe-corporate-plan-2020-21_0.pdf, [accessed June 2022].

37 The department's purpose in the 2020–21 Corporate Plan is 'Partnering and regulating to enhance Australia's agriculture, unique environment and heritage, and water resources.'

38 Department of Agriculture, Water and the Environment, *2020–21 Annual Report* [Internet], available from <https://www.transparency.gov.au/annual-reports/department-agriculture-water-and-environment/reporting-year/2020-21>, [accessed June 2022].

39 The department's purpose in the 2021–22 Corporate Plan is 'Enhancing Australia's agriculture, environment, heritage and water resources through regulation and partnership.'

40 Department of Agriculture, Water and the Environment, *2021–22 Corporate Plan* [Internet], available from https://www.awe.gov.au/sites/default/files/documents/dawe-corporate-plan-2021-22_0.pdf, [accessed June 2022].

Table 4.3: Export-related performance measures for 2021–22

Performance measure ^a	Did the performance measure relate to the objects of the Act?
Value of potential trade achieved through new and improved market access arrangements.	Yes
Value of potential exports facilitated through dispute resolution.	Yes
Decrease in number of point of entry failures from agricultural exports.	Yes
Reduction of \$21.4 million in the department's regulatory costs for agricultural exporters by 2024.	Yes ^b
Reduction in costs of compliance burden for agricultural exporters.	Yes ^b

Note a: As at June 2022, the department has not yet published its annual report for 2021–22 on the five performance measures. The department expects to publish its annual report in October 2022.

Note b: The department explained in its 2021–22 Corporate Plan that 'This measures core outcomes of the government's package of reforms for Australian agricultural exporters. We seek to make it faster and cheaper for farmers to get their product to market. Reducing regulatory costs and costs of compliance contributes to this goal.'

Source: ANAO analysis of departmental documentation.

4.34 The department's 2021–22 performance measures partly met the requirements for using sources of information and methodologies that are reliable, verifiable and unbiased. The ANAO's Performance Statements Audit examined the department's performance reporting information for the five performance measures⁴¹, relating to exports, that were included in the department's 2021–22 Corporate Plan. The ANAO's Performance Statements Audit's interim findings included that:

- all five performance measures related directly to the department's key activities or purposes;
- four of the five performance measures had a clear target to measure against and all were measurable over time⁴²;
- the ANAO could not determine whether the five performance measures used sources or information that were reliable and methodologies that were verifiable; and
- none of the five performance measures provided an unbiased basis for the measurement and assessment of the department's performance.

4.35 In February 2022, the Minister for Agriculture signed a statement of expectation. The department advised that this statement of expectation was not published as it was waiting for the statement of intent to be finalised.

Regulator Performance Framework

4.36 Under the Act, the department has regulatory powers: compliance powers (including monitoring and investigation) and enforcement powers (including applying for civil penalty

41 Performance statements audit contributes to the ANAO's purpose to support accountability and transparency in the Australian Government sector through independent reporting to Parliament.

42 There was one measure without a target. The department is establishing a new baseline using 2021–22 values.

provisions or injunctions, issuing of infringement notices, and entering into enforceable undertakings).

4.37 The Department of Prime Minister and Cabinet's Regulator Performance Framework, released in October 2014, requires Australian Government regulators to publish annual self-assessments on their performance against six performance indicators.⁴³

4.38 The department published a self-assessment report for 2020–21 and reported against the six performance measures, as required by the Regulator Performance Framework.⁴⁴ In 2020–21, it used a maturity scale for reporting on its regulatory performance, as shown at Figure 4.1. The department self-assessed its regulatory performance at an overall maturity level of 'emerging'. The 'emerging' maturity level is below the benchmark of 'mature'. The department reported that it had six regulatory function areas, one of which was exports.⁴⁵ For its regulatory function specific to exports, the department reported an 'emerging' maturity level for each of the six performance indicators. The department's self-assessment noted its implementation of the *Export Control Act 2020*, development of IT systems, and processes as factors for its emerging maturity level.

Figure 4.1: Maturity scale for reporting regulatory performance in 2020–21

Maturity level	Characteristics
Opposed	There are barriers or opposition to practice; people are fearful or hostile; people believe that it could never come about
Absent	No sign of practice, but this is for 'benign' reasons e.g. it is not thought of as required
Limited	Practice is occurring but it may be flawed and/or frustrating
Emerging	Practice is happening, but only in some of the areas or instances where it should. Practice may contain errors, inefficiencies and inconsistencies
Mature (benchmark)	Practice is operating regularly, consistently and well as measured against relevant Outcome Indicators
Leading	Practice is recognised as a benchmark by others; innovative; pushing the boundaries of best practice; helping establish new or stronger professional standards

Source: Department Regulator Performance Framework Self-Assessment Report 2020–21.

4.39 In July 2021, the Department of Prime Minister and Cabinet released a Regulator Performance Guide, replacing the 2014 Regulator Performance Framework, and integrating

43 The performance indicators relate to: reducing regulatory burden, communication, risk-based approaches, streamlined and coordinated monitoring, transparency, and continuous improvement.

Department of the Prime Minister and Cabinet, *Regulator Performance Framework*, October 2014.

44 Department of Agriculture, Water and Environment, *Regulator Performance Framework Self-Assessment Report 2020–21*, [Internet] available from https://www.awe.gov.au/sites/default/files/documents/2020-21_regulator_performance_framework_report.pdf, [accessed June 2022].

45 The department's six regulatory reporting functions covering agricultural levies, biosecurity environment, imported foods, the Water Efficiency Labelling and Standards Scheme, and exports.

regulator performance reporting as part of reporting obligations under the PGPA Act.⁴⁶ In its 2021–22 Corporate Plan, the department stated that its 2021–22 reporting of regulation performance information will occur under the October 2014 Regulator Performance Framework for the last time, and it will transition to the July 2021 Regulator Performance Guide for its 2022–23 annual report. This audit did not assess the department’s performance against the 2021 Regulator Performance Guide as the measures will not come into effect for the department until 2022–23.

Other reporting

4.40 The department provides other external reporting for industry stakeholders that is not required by the legislative framework. This includes market access advice notices and industry notices.

4.41 Market access advice reports are drafted to advise stakeholders and departmental staff of changes to export trade conditions. Market access advice reports focus on defining changes to import country requirements, notifying stakeholders of a key food or product safety event, or defining changes to the department’s policy and procedures related to export market access. The department prepares the advice to support the broad objectives under the legislative framework.

4.42 Industry notices are drafted to advise stakeholders and departmental staff of general issues or changes to operational requirements. The department advised that these are prepared for stakeholders to ensure compliance with the legislative framework more generally, as opposed to specific requirements of importing countries.

4.43 For dairy, eggs and fish related products, both market access advice and industry advice notices are prepared, using the same template. Meat, organic and plant commodities have their advice prepared under separate templates.

4.44 Both market access advice and industry notices are published on the department’s website. All commodities (excluding meat) published an industry advice notice notifying stakeholders of the changes under the revised legislative framework.



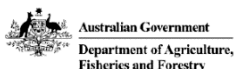
Grant Hehir
Auditor-General

Canberra ACT
18 October 2022

46 Department of the Prime Minister and Cabinet, *The Regulator Performance Guide* [internet], available from <https://deregulation.pmc.gov.au/priorities/regulator-best-practice-and-performance/regulator-performance-guide> [accessed May 2022]. The Department of Prime Minister and Cabinet stated that ‘The new reporting requirements are designed to increase accountability and transparency of regulator performance, by bringing regulator performance clearly within the scrutiny of Parliament through the tabling of Annual Reports’.

Appendices

Appendix 1 Department of Agriculture, Fisheries and Forestry response



CINDY BRISCOE
ACTING SECRETARY

23 September 2022

Mr Grant Hehir
Auditor-General for Australia
GPO Box 707
Canberra ACT 2601

Dear Mr Hehir,

Thank you for your email of 24 August 2022 regarding the Australian National Audit Office's proposed audit report 'Implementation of the Export Control Legislative Framework' and for the opportunity to respond to the report.

Pursuant to section 19 of the *Auditor-General Act 1997*, the Department of Agriculture, Fisheries and Forestry (the department) has prepared a response to the report.

The report concludes that the department established a governance framework that was largely appropriate to implement the revised export control legislation and our engagement with stakeholders were transparent and consultative.

The department is committed to continuing to improve its work practices and performance in order to deliver strong environmental, social and economic outcomes through administration of efficient and effective regulation. The report provides useful feedback on key learnings for risk management, assurance activities and benefits management. The department's response sets out the actions the department will take to improve processes supporting implementation of the revised Export Control Legislation.

Please find enclosed with this letter the department's summarised response to the report and response to the recommendations.

Best wishes

A handwritten signature in black ink, appearing to read 'Cindy Briscoe'.

Cindy Briscoe

Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.
2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's 2021–22 Corporate Plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.
3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:
 - strengthening governance arrangements;
 - introducing or revising policies, strategies, guidelines or administrative processes; and
 - initiating reviews or investigations.
4. In this context, the below actions were observed by the ANAO during the course of the audit. It is not clear whether these actions and/or the timing of these actions were planned in response to proposed or actual audit activity. The ANAO has not sought to obtain assurance over the source of these actions or whether they have been appropriately implemented.

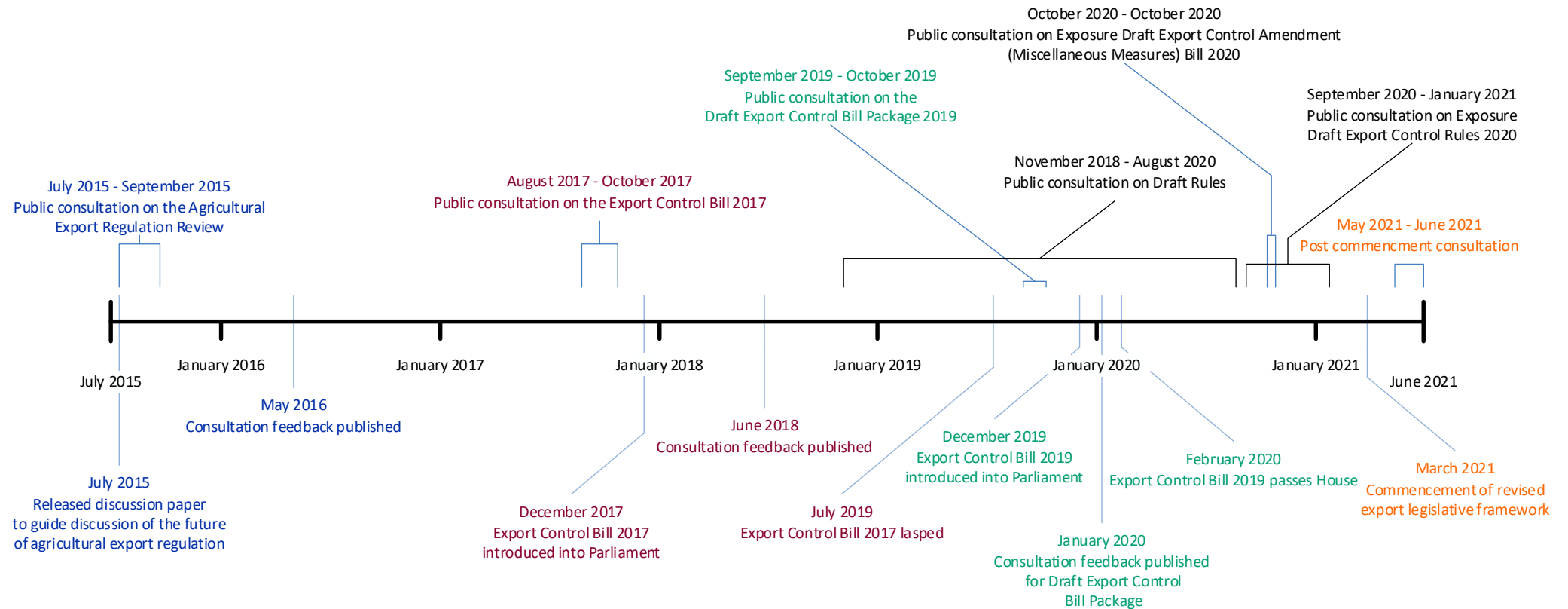
Report paragraph no.	Improvements observed during the course of the audit
2.33	The department's Enterprise Risk Management Framework and Policy (ERMFP) was under review and an updated policy is expected to be implemented in 2022. The new ERMFP aims to address shortcomings in the current policy.
2.51	The department is undergoing a broad long-term review of its compliance and assurance business processes. It expects that the review and subsequent changes will flow onto to how policies and procedures relating to the export controls will be structured, documented and streamlined.
3.23	The department has developed a project plan to ensure contents on its external website are reflective of the revised export control legislative framework.

Appendix 3 Rules in the revised export control legislative framework, May 2022

Rule title	Commencement date
Export Control (Fees and Payments) Rules 2021	28 March 2021
Export Control (Miscellaneous) Rules 2021	28 March 2021
Export Control (Milk and Milk Products) Rules 2021	28 March 2021
Export Control (Rabbit and Ratite Meat and Rabbit and Ratite Meat Products) Rules 2021	28 March 2021
Export Control (Poultry Meat and Poultry Meat Products) Rules 2021	28 March 2021
Export Control (Eggs and Egg Products) Rules 2021	28 March 2021
Export Control (Wild Game Meat and Wild Game Meat Products) Rules 2021	28 March 2021
Export Control (Plants and Plant Products) Rules 2021	28 March 2021
Export Control (Fish and Fish Products) Rules 2021	28 March 2021
Export Control (Wood and Woodchips) Rules 2021	28 March 2021
Export Control (Meat and Meat Products) Rules 2021	28 March 2021
Export Control (Organic Goods) Rules 2021	28 March 2021
Export Control (Animals) Rules 2021	28 March 2021
Export Control (Animals) Amendment (Northern Hemisphere Summer Prohibition) Rules 2022	6 April 2022
Export Control (Tariff Rate Quotas – General) Rules 2021	13 April 2022
Export Control (Tariff Rate Quotas – Feed Grain Export to Indonesia) Rules 2021	28 March 2021
Export Control (Tariff Rate Quotas – Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021	28 January 2022

Source: Federal Register of Legislation, Export Control Act series, available from <https://www.legislation.gov.au/Series/C2020A00012/Enables> [accessed 4th May 2022].

Appendix 4 Timeline of stakeholder consultation



Notes: Milestones shown above the timeline represent consultation rounds. Milestones shown below the timeline represent the development or publishing of key documents related to the consultation rounds.

Each colour denotes consultation rounds and its related documents.

Source: ANAO analysis of departmental documentation.