

BETTER BUSINESS REGULATION – A SELF-EVALUATION FRAMEWORK AND PROCESS TO IMPROVE THE QUALITY OF REGULATORY ACTIVITIES

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ABSTRACT

Over the past three years, the Department of Justice in Victoria has developed and tested a good practice regulation framework called Better Business Regulation (BBR), aimed at helping regulators improve the quality of their regulatory activities. Better Business Regulation is a new evaluation format that uses three key approaches to increase the influence of the evaluation of regulatory activities carried out by government bodies. Firstly, the evaluation uses a best practice framework drawn from international research and locally legislated requirements for regulatory activities. Secondly, the evaluation is rapid, typically completed in three workshops of less than day each. Thirdly, people closely involved with the regulatory processes under evaluation conduct the evaluation themselves, facilitated by specialists who perform independent crosschecks on the group's assessments in between workshops.

The BBR framework was developed in the first stage of the Department of Justice project, drawing on international research on best regulatory practices and the Victorian Guide to Regulation. The framework analyses the regulatory cycle in four stages – Make, Operate, Review and Coordinate – and describes seventy-four good practices grouped by regulatory activity. Regulators assess their activities against the good practice descriptions and identify opportunities for improvement to be developed into an action plan in the self-evaluation report. After piloting the framework on two regulatory schemes, the Department developed the self-evaluation tool further and implemented it in another nine regulators.

Results and lessons learned during these self-evaluations about the framework and the evaluation process will be discussed and compared with other approaches to rapid organisational assessment such as the Australian Business Excellence Framework and the UK's Hampton Reviews. Balances between resources, time, rigour and client acceptance will be examined.

Disclaimer

The views expressed in this paper are the views of the authors, and do not necessarily reflect the views of their organisations.

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Introduction – Better Business Regulation

The Better Business Regulation (BBR) project had its origins in a research project initiated in 2005 by Consumer Affairs Victoria (CAV), a portfolio unit of the Department of Justice Victoria (DoJ).

DoJ has a budget of over \$4 billion. It includes Victoria Police, and employs more than 6000 staff. The Department has about 60 statutory entities, and 12 regulatory bodies which undertake a range of regulatory activities (Armytage 2010).

The BBR project focused on improving the practices of regulators in implementing regulation. An extensive literature search showed that while there were widely accepted principles of 'good regulation', these tended to concentrate on the process of *making* new regulations. There was little information on what constituted good regulatory *practice* (Consumer Affairs Victoria 2008). A growing interest by the state government in reducing regulatory burden led to DoJ funding development of the Better Business Regulation approach.

In the early phases of the BBR project, CAV developed a framework from principles of good practice found in the literature, then piloted the framework in two regulatory schemes in 2007. Modifications were made following a review of the pilot's outcomes and then a further nine DoJ regulators carried out evaluations against the BBR framework in 2008 and 2009.

The Department of Primary Industries Victoria (DPI) also used the BBR framework to carry out evaluations of four regulators within DPI in 2010.

This paper describes the framework and experiences gained during the rollout of the BBR self-evaluation process.

The framework

The BBR framework starts by considering regulation as a cycle of activities – making, operating, and reviewing regulations – and then adds steps required to coordinate the activities throughout the whole cycle – see figure 1, below.

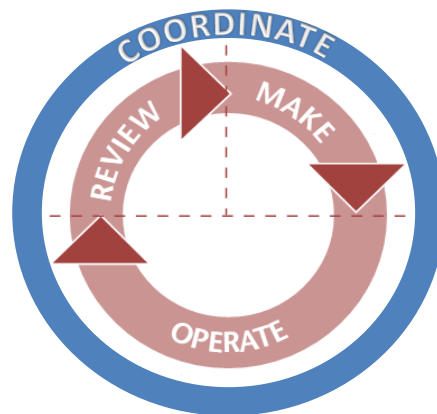


Figure 1: The regulatory cycle

The BBR project drew on the Victorian Guide to Regulation, other principles of good regulation, and experience from other jurisdictions to derive the better *practices* to which regulators should adhere. These were combined into a 'better practice' framework comprising a comprehensive set of statements about what constitutes better regulatory practice, structured underneath the four main phases of the cycle which were sub-divided into thirteen activities and twenty-nine tasks.

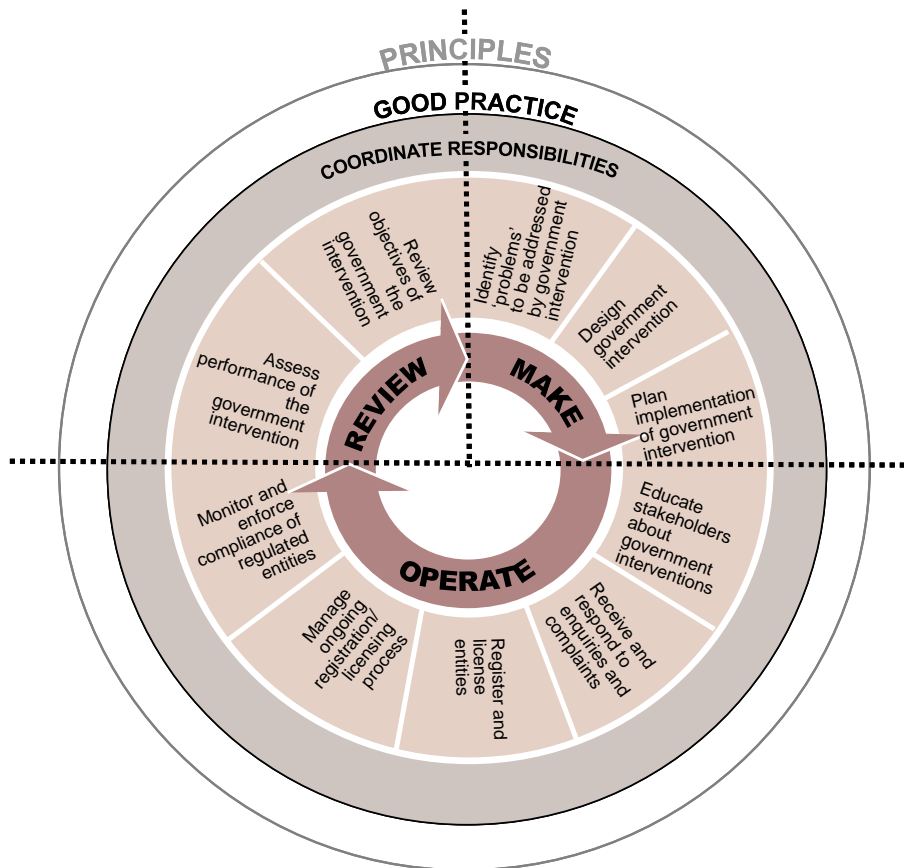


Figure 2: The BBR Framework

Table 1: BBR Phases, Activities and Tasks

Phase	Activities	Tasks
Make	Identify 'problems'	Establish policy priorities. Scan external environment. Select issue to be addressed.
	Design regulatory intervention	Develop alternatives. Evaluate alternatives. Recommend preferred alternative.
	Plan implementation	Communicate objectives to relevant agencies. Develop administrative processes to enable implementation.
Operate	Educate stakeholders	Plan educational initiatives. Deliver educational initiatives. Review educational initiatives.
	Respond to enquiries	Respond to enquiries. Review enquiries data.
	Register/license persons & entities	Process registration and licensing applications.
	Respond to complaints	Resolve complaints. Review complaints data.
	Manage continuing registration/licensing	Process annual returns and renewals. Review registration and licensing data.
	Monitor & enforce compliance	Plan monitoring and enforcement activities. Implement monitoring plans. Remediate compliance breaches. Review compliance and enforcement data.

Phase	Activities	Tasks
Review	Assess intervention performance	Assess outcomes of the intervention. Assess administrative performance.
	Review objectives	Review and recommend modifications to the regulation.
Coordinate	Coordinate between agencies	Determine and formalise responsibilities and activities of agencies. Manage continuing relationships between agencies.
	Coordinate within agencies	Plan corporate processes and activities. Manage capacity, processes and delegations.

Seventy-three statements of 'better practice' further describe the BBR Tasks in the BBR evaluation worksheet.

MAKE REGULATIONS					
Activity	Task	Good practice / what you might see	Evidence - what we do	Opportunities for improvement	Process Maturity 1-5
M1 Identify 'problems' to be addressed by government intervention	M1.1 Establish policy priorities	Policy staff receive regular updates on policy objectives/priorities. <i>Policy staff receive regular communication on objectives and priorities from Ministerial offices and/or departmental executives.</i>			
		Policy staff receive regular updates on developments in other Australian and international jurisdictions and at national level. <i>There is regular communication on objectives and priorities from agencies in other jurisdictions.</i>			
	M1.2 Scan external environment	The agency regularly scans the environment to identify emerging issues. <i>The agency identifies emerging issues through processes such as community and stakeholder consultation, research and program evaluations.</i>			
		The agency examines data from sources such as education activities, enquiries, complaints, audit outcomes, enforcement and cross-scheme analyses. <i>Policy staff consolidate data from these activities and use it to identify emerging issues and priorities.</i>			
	M1.3 Select issue to be addressed	The issue or problem to be addressed is clearly articulated <i>The 'issue' or 'problem' and the analysis justifying the regulatory intervention is documented.</i>			
		Justification for the regulatory intervention is consistent with the framework set out in the <i>Victorian Guide to Regulation</i> . <i>Analysis justifying government intervention reflects evidence-based decision making and is consistent with the Victorian Guide to Regulation.</i>			
		Objectives for the regulatory intervention are clearly expressed prior to options being determined. <i>The objectives of the regulatory intervention are documented, enabling later assessment of the extent to which the objectives are achieved.</i>			

Figure 3: BBR evaluation worksheet (part)

The self-evaluation process

The purpose of the BBR self-evaluation is to help regulators' staff examine the effectiveness and efficiency of their regulatory processes, identify gaps between current performance and good practices, and come up with practical actions to improve performance. The regulator benefits through:

- An analysis of current practices against changing markets, technology and social conditions.
- The identification of improvement opportunities.
- Gaining improved information for planning and resource allocation.
- Promotion of a continuous improvement approach.

- Improved regulatory effectiveness in achieving policy objectives.
- Regulatory safeguards being provided more efficiently & effectively, by regulations achieving the intended results without imposing excessive burdens on individuals and businesses.

The whole process takes between one and two months, once the decision has been made to proceed. The steps are as follows.

- 1. Plan the self-evaluation.** BBR project facilitators brief senior management, explain the process and gain agreement on timing and scope of the evaluation.
- 2. Brief staff.** The regulator's management briefs staff on the BBR evaluation process and forms a small team to participate in the workshop.
- 3. Decide evaluation scope.** As regulators often are responsible for more than one regulatory scheme or market sector, and the focus of the BBR evaluation is regulatory *processes*, the regulator may choose to select one or two regulatory schemes as representative of their activities.
- 4. Determine regulatory responsibilities.** The working group discusses who does what within the regulator in each stage of the regulatory cycle and fills in the Responsibility matrix. This is done at the Task level.

Stage	Activity	Task	Branch/ Agency Responsibility							
MAKE	Identify 'problems' to be addressed by government intervention	Establish policy priorities	Primary Responsibility ¹	Primary Responsibility ¹	Provides Support					
		Scan external environment	Primary Responsibility ¹	Primary Responsibility ¹	Provides Support					
		Select issue to be addressed	Primary Responsibility ¹	Primary Responsibility ¹	Provides Support					
	Design the government intervention	Develop alternatives	Primary Responsibility ¹	Primary Responsibility ¹	Primary Responsibility ¹					
		Evaluate alternatives	Primary Responsibility ¹	Primary Responsibility ¹	Primary Responsibility ¹					
		Recommend preferred alternative	Primary Responsibility ¹	Primary Responsibility ¹	Primary Responsibility ¹					
	Plan the implementation of the government intervention	Communicate objectives to relevant agencies	Primary Responsibility ¹	Provides Support	Provides Support					
		Develop administrative processes to enable implementation	Primary Responsibility ¹	Provides Support	Provides Support					
	OPERATE	Educate stakeholders about the regulation	Plan educational initiatives		Primary Responsibility ²	Primary Responsibility ²				
			Deliver educational initiatives		Primary Responsibility ²	Primary Responsibility ²				
Review educational initiatives				Primary Responsibility ²	Primary Responsibility ²					
Receive and respond to enquiries and complaints		Respond to enquiries			Provides Support			Primary Responsibility ⁴		
		Resolve complaints			Provides Support			Primary Responsibility ⁴	Primary Responsibility ⁴	
		Review enquiries & complaints data			Provides Support			Primary Responsibility ⁴	Primary Responsibility ⁴	
Register and license persons, organisations or other entities such as objects, places, animals or events.		Process registration and licensing applications	Primary Responsibility ³							
		Manage complaints regarding registration/licensing decisions	Primary Responsibility ³							
		Process annual returns and renewals	Primary Responsibility ³							
		Review registration and licensing data		Primary Responsibility ³						
Monitor and enforce compliance of regulated entities	Plan monitoring-and enforcement activities			Primary Responsibility ³						
	Implement monitoring plans			Primary Responsibility ³						
	Remediate compliance breaches			Primary Responsibility ³						
	Review compliance and enforcement data			Primary Responsibility ³						
REVIEW	Assess the performance of the government intervention	Assess outcomes of the intervention	Primary Responsibility ³	Primary Responsibility ³						
	Assess administrative performance						Primary Responsibility ³			
	Review the objectives of the government intervention	Review and recommend modifications to the regulation	Primary Responsibility ²	Primary Responsibility ²						
COORDINATE RESPONSIBILITIES	Coordinate activities between regulatory agencies	Determine & formalise responsibilities & activities of agencies			Primary Responsibility ³					
		Manage ongoing relationships between agencies			Primary Responsibility ³					
	Coordinate and plan within regulatory agency	Plan corporate processes and activities					Primary Responsibility ³			
		Manage capacity, processes and delegations					Primary Responsibility ³			

Figure 4: Responsibility matrix

- 5. Collect Data.** Data is collected from the regulator's staff through a one-day workshop. At the workshop, the project facilitators and regulator managers facilitate a discussion to fill out the evaluation guide. The workshop team discusses specific details about how each of the seventy-three practices relates to what they actually do, the evidence available to demonstrate how they match up to the better practices, and any opportunities for improvement. They also rate process maturity for each Task.

Process Maturity Guide

How mature is your process?

Consider the chart below and determine what level of process maturity best describes how you carry out your process for each of the five criteria. If there is a mixture of maturity levels according to the different criteria, then assess the process as being at the lower maturity level. Shaded cells in the table indicate that the performance description on that criterion is unchanged from the lower level.

	Informal Best practice				
	Process Maturity Level 1	Process Maturity Level 2	Process Maturity Level 3	Process Maturity Level 4	Process Maturity Level 5
Purpose	Purpose is not known, or is not clearly stated, or is understood differently by different people.	Purpose is identified but may be only partly communicated.	The purpose of the tasks within the process is identified and stated clearly in a form available to all who need it.	The purpose of the tasks within the process is identified and stated clearly in a form available to all who need it.	The purpose of the tasks within the process is identified and stated clearly in a form available to all who need it.
Approach	No single approach is identifiable, or the approach is determined by individuals in an ad-hoc way.	The approach may be approved and understood by some key individuals but is not widely known.	The approach is known, documented to the extent that it needs to be, and understood by all involved.	The approach is known, documented to the extent that it needs to be, and understood by all involved.	The approach is known, documented to the extent that it needs to be, and understood by all involved.
Implementation	Tasks are carried out in a variable way.	Tasks are carried out with some consistency but are dependent on individual skills and knowledge.	Tasks are carried out consistently, in accordance with procedures that are documented to the extent necessary to achieve quality outcomes.	Tasks are carried out consistently, in accordance with procedures that are documented to the extent necessary to achieve quality outcomes.	Tasks are carried out consistently, in accordance with procedures that are documented to the extent necessary to achieve quality outcomes.
Results	Results might be achieved but no measurements are available to enable this to be assessed.	Results are thought to be achieved but no measurements are available to enable this to be assessed.	Results are believed to be regularly achieved but measurements are unreliable or inconsistent.	A comprehensive performance measurement framework is in place. Performance is monitored and reported consistently and regularly.	Performance is monitored and reported consistently and regularly, and action is taken in response to improve the process.
Improvement	There is no improvement process active.	There is no improvement process active.	Improvement processes are ad-hoc and undocumented.	Improvement processes may be in place but are not consistently followed or are incompletely implemented.	A formal process for improvement is in place that systematically searches for both incremental improvement and larger innovations.

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Figure 5: The BBR Process Maturity Guide

6. Consolidate workshop results. The project facilitators consolidate the data from the workshop into a set of initial findings. They then crosscheck key findings by examining documentation from the regulator and/or interviewing selected staff in depth.

7. Analyse and evaluate data. The facilitators prepare an analysis of the data collected at the workshop and provide an evaluation report.

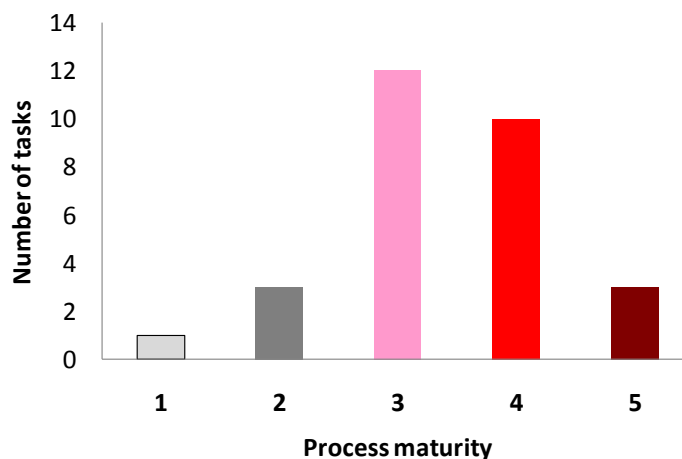


Figure 6: A typical spread of process maturities for a regulator with well-defined processes

8. Confirm the evaluation. The workshop participants, or a sub-group, gets together again for a half-day meeting where the facilitators present the draft report of findings. This is reviewed, revised and provisionally endorsed by the staff, who also draft a set of high level actions to be added to the report in the form of a strategic action plan.

9. Present final report. The final report and strategic action plan is presented to the regulator's management team at the end of the project.

The strategic action plan then becomes the responsibility of the regulator’s management, who decide the specific details of how and when to carry it out.

Self-evaluation report

The contents of the evaluation report are:

- Executive summary
- Background
- Results
 - Responsibility matrix
 - Good practices
 - Process maturity
 - Opportunities for Improvement
- Strategic Action Plan
- Attachment: Workshop data

Table 2: Findings and improvement opportunities for a task rated ‘1’ for process maturity

Activity: O1 Educate stakeholders about the regulation
Task: O1.1 Plan educational initiatives
Findings <ul style="list-style-type: none"> • Articulate the objectives of education and information programs. <ul style="list-style-type: none"> – Some documentation of objectives, but not consistent. – No plans documented (some exist in ad hoc form, e.g. <i>Scheme ‘M’</i>) • Design appropriate initiatives. <ul style="list-style-type: none"> – Comprehensive documentation for <i>Scheme ‘C’</i>. – Some documented for <i>Scheme ‘P’</i>. – No other schemes with formal descriptions of educational initiatives
Improvement plan <ul style="list-style-type: none"> • Develop an integrated education plan across all the regulator’s schemes, to achieve: <ul style="list-style-type: none"> – Better targeted educational programs; more efficient use of resources; more appropriate and effective modes of delivery. – Better coverage of potential licensees by information delivery. – Better informed applicants. – Better quality applications.

Table 3: Findings and improvement opportunities for a task rated ‘4’ for process maturity

Activity: O4 Respond to complaints
Task: O4.1 Resolve complaints
Findings <ul style="list-style-type: none"> • All complaints are resolved or referred to the appropriate party for resolution according to formal rules, within specified times. • Complaints about granting, denial or revocation of a registration or licence: <ul style="list-style-type: none"> – All decision letters advise complainants of the review/appeal processes. – Appeal or reviews to: <i>the Regulator</i>; appeal hearings; Supreme Court. – Persons not legally represented are helped by <i>Regulator</i> lawyers. – Pre-hearings explain the process informally and inform the applicant clearly. – Every attempt is made to contact attendees. – Interpreters provided for ESL attendees.

Improvement plan

- Strengthen complaint resolution by developing a complaints charter:
 - Establish complaints charter and publish publicly.
 - Publicise the complaints process and response times to interested parties.
 - Make explicit all roles, rights, responsibilities and response times.

Table 4: An action from a strategic action plan

Action 1	Improve Review and Evaluation Performance.
Justification	Review practices could use strengthening across the regulatory cycle. Practices are only rated as 'partially do' in the REVIEW part of the cycle and Process Maturity is only rated at 1 to 3.
Responsibility	Director of Policy and Licensing
Target Completion Date	By mid-2011
Addresses	R1.1 Assess outcomes of the intervention. R1.2 Assess administrative performance.
Outcome	Staff competent in review and evaluation techniques. Improved process efficiency and organisational outcomes as a result of opportunities for improvement identified from review and evaluation activities that are fit for purpose.

Lessons learned in the BBR project

A number of lessons were learned during the rollout phase of the project across nine DoJ and four DPI regulators. Several important lessons were found through two post-project evaluations.

Firstly, the BBR framework that was developed and piloted in the early phases of the DoJ project was considered by the pilot participants to be rather complex. For subsequent use, the language in the evaluation instrument was significantly simplified. The process maturity assessment tool was also expanded, to enable better differentiation between various levels of process performance.

Several different approaches to the self-evaluation process itself were tested in the rollout:

- (i) an initial briefing, followed by the regulator's staff filling in the evaluation instrument;
- (ii) an initial briefing, followed by a half-day workshop, then the regulator's staff filling in the evaluation instrument; and
- (iii) an initial briefing, followed by a full-day workshop where the regulator's staff filled in the evaluation instrument completely.

In each case the facilitators returned to review the staff's evaluations, review documents and other evidence, and discuss potential improvement actions.

The full-day workshop was found to be the most effective way of carrying out the evaluation, as the day ends with a complete first draft of the assessment. This means it is immediately available for staff to start following up, checking evidence and verifying or modifying the assessments they have made in the workshop. The two other methods for carrying out the evaluation both resulted in the evaluation becoming drawn-out, with participants sometimes leaving the task to one side for some time after the workshop and having to re-familiarise themselves with the framework and evaluation instrument before eventually completing it.

Also, as the review is a *self*-evaluation, there can be a potential for participants' judgements to err, on either the positive or negative side, depending on their bias. While the use of objective criteria in the framework's statements of 'better practice' means that the range of interpretation is somewhat restricted, nonetheless it can come down to a matter of the evaluation team's opinion. The facilitators of the self-evaluation can moderate the team's assessments to some extent by explaining the practices' intent or other details of the framework but they do not act as assessors in the evaluation.

All the regulators that participated found the evaluation to be worthwhile to some extent. All of them came out of the process with an evaluation report and an improvement action plan. The greatest benefits were gained by those regulators that had ensured participation of a broad range of staff and had strong top management support and participation in the process.

On the other hand, it is fair to say that some regulators were, at least initially, uncertain about the extent to which the BBR framework applied to their circumstances. The nature of government regulation varies from one regulator to the next, and one industry sector to the next. Sometimes a regulator might view themselves as more of a facilitator of an industry than a regulator of it. This perception may just be because of the history of the sector, or the relationship that has developed between the regulator and the regulated. When regulators carefully examined their activities, they were always able to relate to significant elements of the BBR framework. Often the only issue was that the regulator had little or no policy development role and consequently thought they were not involved in making or reviewing regulatory activities. For that reason we found it useful to open the detailed discussion in the self-evaluation workshop with the 'Operate' phase.

The BBR evaluation process was designed deliberately to be a rapid organisational self-assessment. Balances were sought between the resources and time required, the rigour of the process and acceptance by the regulators.

Comparison with alternative approaches

Other generic excellence frameworks can be used as a basis for assessing organisational processes and practices, for example the Australian Business Excellence framework (ABEF), the EFQM Excellence Model or the Baldrige Performance Excellence Program framework. These frameworks are all generic organisational 'best practice' frameworks that are not specifically focused on any one industry or sector. The value of a framework like Better Business Regulation is that it works directly to a structure and process that is common across all the organisations that could potentially use it. The regulatory cycle and the better practices that relate to each phase of it are well-established by research and can be readily understood by any knowledgeable person.

Other sector-based frameworks for organisational self-evaluation have been developed in recent years, including the Being the Best We Can (BTBWC) framework developed by the State Library of Victoria and the Public Libraries Victoria Network for public libraries (State Library of Victoria 2011). Like the BBR process, BTBWC is a voluntary process of self-evaluation against a specific 'better practice' framework. The framework adopts a structure and language that has been adapted from a model originally used by the Scottish Libraries and Information Council and tailored specifically to the needs of Australian public libraries on the basis of local research and consultation. Nine public libraries have used the BTBWC framework so far and more are beginning the self-evaluation process in a new phase of the rollout of that project.

Being the Best We Can uses a process of moderation by peer reviewers to enhance the self-evaluation approach. After a library service completes its draft self-evaluation in an initial one-day workshop, the review team then goes through an evidence gathering and verification phase and writes a draft report that they then send for review to two independent library managers. The peer reviewers later visit the library service and spend a day going through the self-evaluation report with the review team, reviewing evidence and visiting several library branches. The peer reviewers work with the review team and agree on a set of performance ratings against the elements of the BTBWC framework. After the peer reviewers' visit, the library service finalises its report and improvement action plan and reports the results to staff, management and the community, as appropriate. The peer reviewing acts as an important moderating process, ensuring over time that performance ratings are consistent between libraries.

The Hampton Implementation Reviews (HIRs) in the UK provide a comparison with both BBR and BTBWC. Similar to the BBR reviews, HIRs were an initiative to improve how regulators go about doing what they are doing. They were also based on regulatory principles and a model of 'better practice' regulation processes (Better Regulation Executive 2008). The reviews were conducted by independent outsiders, including some 'peer' reviewers. They were more comprehensive, and consequently more resource-intensive, than BBR or BTBWC, because they included consultations with those who are regulated and with inspection officers in the field.

Conclusion

The Better Business Regulation self-evaluation process has proved itself to be a robust and practical rapid evaluation method for government regulatory agencies. When regulators embark upon the process with the intention of finding better ways of carrying out their regulatory activities, they can rely on it to deliver some useful improvement ideas.

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