

Best Practice Regulation: Principles and Assessments

February 2015



THE TREASURY
Kaitohutohu Kaupapa Rawa

New Zealand Government

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About this Report

The purpose of the regulatory management system¹ is to help ensure that regulation achieves its objectives efficiently and with minimal unintended adverse consequences. This system is administered by the Treasury and covers the processes by which regulations are developed, analysed, implemented, monitored and reformed. It centres around a set of expectations for regulatory stewardship² agreed by Cabinet in 2013, which outline principles on how departments should be designing and implementing regulatory regimes and the stewardship responsibilities that apply throughout the life-cycle of regulation.

Best Practice Regulation assessment complements this process-focused approach by looking at the quality of regulatory regimes themselves, as opposed to the processes by which they are designed and implemented. Regulatory issues are often unique, requiring a tailored response that takes into account many context-specific factors. Full appreciation requires in-depth consideration of each regime individually and on its own terms. This report does not attempt that. Bringing together summary information on a larger cross-section of regimes in a standardised format is instead intended to provide a high-level overview of the quality of regulatory regimes in New Zealand and to draw policymakers' attention to areas that may be in need of priority focus.

Best practice assessment does not in itself directly address the question of whether a regulatory regime is or is not achieving its objectives. That is the purpose of regime-specific monitoring and evaluation undertaken by departments. Nor does the assessment consider whether the objectives themselves are worthwhile and desirable, which is a matter for political and public debate.

Rather than providing any quality assurance on the state of regulatory regimes, this assessment is intended to enable a high-level check of a broad spectrum of regulatory regimes and provide an alert to where there are or may be material issues that require further analysis. A high materiality threshold has been applied in identifying areas of concern and, for example, a green rating does not mean that a regime is optimal, but rather that there are no immediate indicators of significant concern with it. If an assessment against these principles suggested that there might be a reason for concern, then a further review specific to the regime in question would need to be considered.

The synthesised results of this assessment are analysed in Section 1, which also brings together all of the assessments in summary form to provide a high-level overview of the full set of regimes. Section 2 discusses the potential use for this sort of assessment and Section 3 contains the regime-by-regime assessments themselves, including a full overview.

The Annexes contain more detail about the methodology used to develop the report. The principles and the criteria used to assess regimes against them are introduced in *Annex A: Principles of Best Practice Regulation*. *Annex B: Regulatory Regimes* explains more about how regimes were selected, defined and classified, and *Annex C: Assessment Approach* discusses how the assessments were carried out.

¹ <http://www.treasury.govt.nz/publications/guidance/regulatory>

² <http://www.treasury.govt.nz/publications/guidance/regulatory/systemreport/04.htm>

What's New?

This report follows up the 2012 report *Best Practice Regulation Model: Principles and Assessments*³ in which the Treasury identified a set of high-level Best Practice Regulation principles and assessed a number of New Zealand regulatory regimes against them. This assessment is an update of the 2012 assessment rather than a reassessment of each regime. We reconsider both the principles themselves and the New Zealand regulatory regimes in the light of developments since the 2011–2012 assessment.

Questions and feedback

We would welcome any views on whether this kind of approach is, or has the potential to be, helpful in developing departments' own approach to implementing their regulatory stewardship obligations; for example, by informing and structuring internal review processes, discussion with Ministers and with external stakeholders, and resource allocation and prioritisation. Any agency-specific questions should be addressed to your Treasury Vote team or to the Treasury's Regulatory Quality team.

General enquiries about the information contained in this guidance can be directed to regulation@treasury.govt.nz

Further information

Other useful information can be found on the Treasury's website at <http://www.treasury.govt.nz/economy/regulation>

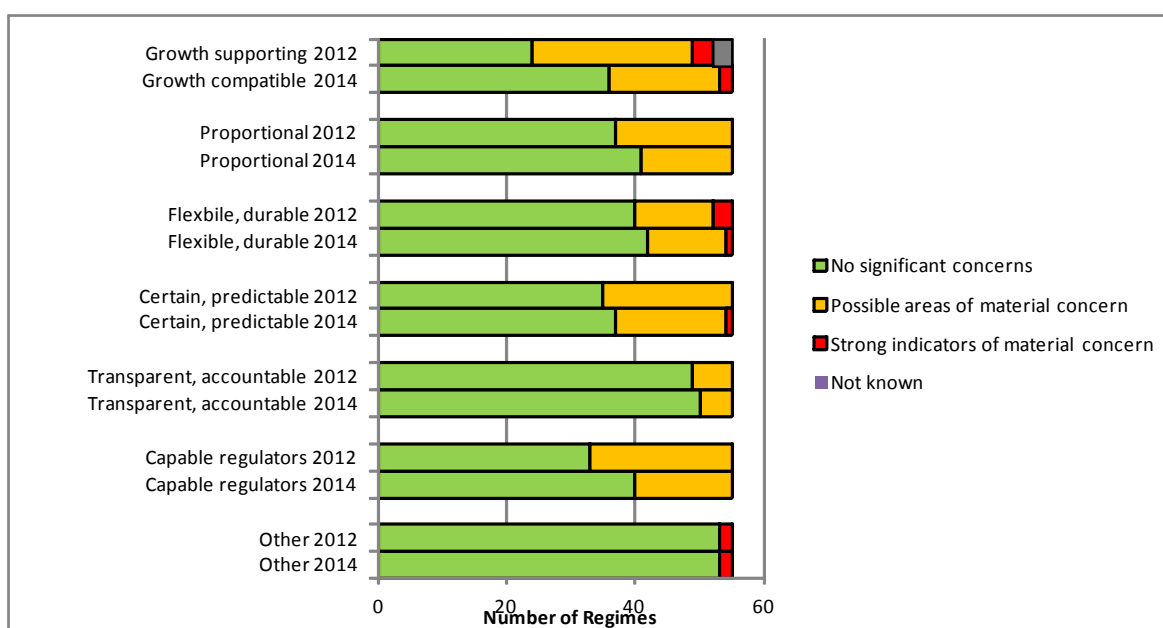
³ <http://www.treasury.govt.nz/economy/regulation/bestpractice/bpregmodel-jul12.pdf>

1 Assessment Overview

This section seeks to set out some of the overall patterns and trends that emerge from the assessments set out in the main body of the report.

Figure 1 below summarises the results under each principle by comparison to the previous assessment. It shows a continuing, but narrower (by comparison with the previous assessment) gap between where regulatory regimes are now and a best practice frontier. Across-the-board improvements could, in aggregate, have an impact on overall national welfare.

Figure 1: Comparison: Overall assessment against principles, 2011 and 2013



“Growth compatible⁴” remains the most problematic principle overall in terms of the number of red (2) and amber (18) ratings, albeit it is the principle where the greatest improvement has been made since the previous assessment. This is a question of balance between different policy priorities and it is often difficult to assess whether any growth-constraining impacts of regulation are, or are not, justified by other priorities such as harm reduction or equity increase.

All but one of the regimes that received an amber or red rating under this principle also recorded an amber or red rating elsewhere, with over half also receiving an amber or red rating under “certain, predictable”.

“Certain, predictable” received nearly as many amber (18) and red (1) ratings as “growth compatible”; however, where concerns were recorded against this principle, concerns were slightly less likely to be recorded against other principles. Four regimes with an amber or red rating under this principle did not record any other amber or red ratings.

The principle that recorded the least regime concerns remains “transparent, accountable”. Where a regime recorded a concern related to this principle, concerns were usually recorded against at least two other principles.

⁴ This Principle was called “Growth Supporting” in the 2011 – 2012 assessment. This is further discussed in Annex A

Table 1 below shows that 19 regimes, including nine where concerns were recorded in the 2012 assessment, now show a “green sweep”. This is owing to reform in a number of areas where issues of concern were previously identified, notably:

- new royalty regime and permit allocation system for minerals and petroleum
- reform of the intellectual property regime
- substantial communications and consultation activity by regulators such as the Financial Markets Authority and the Commerce Commission
- reform of the State Sector Act 1988, the Public Finance Act 1989 and the Crown Entities Act 2004, and
- better coordination by the Ministry of Justice of the approach to criminal sanctions in different regimes so as to ensure consistency and coherence.

Table 1: Regimes where no significant concerns are identified

Regime name Arrows indicate where an assessment has been revised upwards from that in the 2012 report.	Growth compatible	Proportional	Flexible, durable	Certain, predictable	Transparent, accountable	Capable regulators	Other
Commodity Levies and Boards	↑	↑					
Intellectual Property	↑					↑	
Land Registration							
Prudential							
Contract and Commercial Law							
Corporate Governance		↑					
Early Childhood Education							
Gambling							
Family Law							
Criminal Justice		↑		↑			
Civil Defence							
Public Administration System		↑	↑				
Financial Market Regulation	↑	↑		↑			
Conservation							
Minerals	↑		↑				
Petroleum	↑		↑				
Air							

Table 2, however, shows that some regimes now show more amber and red ratings than was the case in the first assessment. This may reflect events and experience revealing that issues were greater than had previously been understood; for example, the Pike River tragedy has led to a downgrading across the assessment of the Health and Safety regime (now entitled Workplace Health and Safety).

In other cases, the existence of a recent or ongoing review in itself inevitably causes uncertainty and this is reflected in reduced ratings under the “certain, predictable” principle: Telecommunications, Housing and Tenancy, Primary and Secondary Education and Employment Standards. In such cases this would be expected to improve as reviews conclude, findings are implemented and new regimes settle down.

Some revised ratings reflect comments made by stakeholders: concerns were raised by major energy users about the energy efficiency levy and by industry representatives about inconsistencies experienced in the Forestry regime, in response to the Productivity Commission’s inquiry into the design and implementation of regulatory regimes. Other areas of concern have become apparent as a result of more in-depth consideration by the lead department itself: Housing and Tenancy, Employment Standards and Primary and Secondary Education.

Table 2: Regimes where areas of concern have increased since the previous assessment

Regime	Growth compatible	Proportional	Flexible, durable	Certain, predictable	Transparent, accountable	Capable regulators	Other
Telecommunications			↓	↓	↑	↑	
Electricity Markets						↓	
Building Regulation		↓					
Housing and Tenancy			↓	↓		↓	
Primary and Secondary Education			↓			↑	
Workplace Health and Safety	↓		↓		↓		
ACC			↑	↓		↑	
Employment Standards			↑	↓		↓	
Forestry			↑	↓			
Energy Efficiency		↓					

Arrows indicate where an assessment has been revised upwards or downwards from that in the 2012 report.

Do issues relate to the nature of the regime?

By way of experiment we have in this report grouped regimes by reference to the “four capitals” of the Treasury’s Living Standards Framework;⁵ this is further explained in *Annex B: Regulatory Regimes*. Table 3 below lists the regimes in these groupings.

Table 3: Regimes covered in this report

Financial and physical capital	Human capital	Social capital	Natural capital
Radiocommunications	Early Childhood Education	Family Law	Conservation
Transport Infrastructure	Primary and Secondary Education	Criminal Justice	Resource Management
Telecommunications	Tertiary Education	Civil Defence	Minerals
Electricity Markets	Industry Training	Public Administration System	Petroleum
Gas	Immigration	Local Government	Forestry
Commodity Levies and Boards	Public Health	IRD Social Programme	Biosecurity
Building Regulation	Workplace Health and Safety	Welfare	New Organisms
Housing and Tenancy	Food Regulation	Consumer Protection	Air
Tax Administration	Gambling	Commerce Act 1986	Climate Change
Intellectual Property		Financial Market Regulation	Energy Efficiency
Land Registration		Transport Safety	Water
Overseas Investment		ACC	Fisheries
Prudential		Health Products and Markets	
Contract and Commercial Law		Quality of Health Services	
Corporate Governance		Occupational Regulation	
		Employment Standards	
		Employment Relations	
		Hazardous Substances	

Physical capital can be tangible (eg, machinery, buildings, houses, roads) or intangible (eg, computer software, intellectual property). Financial capital includes equities, assets and liabilities that have a degree of liquidity, such as bank deposits, debt and government bonds. This group therefore comprises regulations that govern the quality, management and distribution of such capitals.

Human capital is the stock of knowledge, skills, competencies and attributes embodied in individuals. It is a combination of a person’s inherited characteristics and their education and experience. As well as personal attributes that produce economic value, human

⁵ “Working Towards Higher Living Standards for New Zealanders”, New Zealand Treasury Paper 11/02 (May 2011) <http://www.treasury.govt.nz/publications/research-policy/tp/higherlivingstandards/12.htm>

capital may also include broader personal attributes and capabilities that contribute to a person's happiness and life satisfaction. This group therefore comprises regulations that facilitate and enable the protection, development and expansion of human skills, and people's physical and mental health, in New Zealand.

Social capital may be defined as the degree of trust in a society and the ability of people to work together for common purpose. Other definitions include community characteristics, networks, norms and institutions such as the rule of law and transparency of political processes. This group therefore comprises regulations that facilitate safe and secure participation, cooperation and trust between institutions and people.

Natural capital refers to the earth's natural resources and systems that support life. It encompasses both non-renewable natural resources such as land, coal, oil, gas and minerals, and conditionally-renewable resources such as forests, fish and water. It provides environmental services and amenity value. This group therefore comprises regulations that govern the exploitation, management and protection of natural resources.

The overall results for each of the groups are summarised in Tables 4–7 below. Comparison of these tables shows that there are differences between them in terms of which principles give rise to most concerns, but that these differences are not statistically significant enough to conclude that there is clear systemic correlation between the nature of a regulatory regime under this typology and the types of problems that it is likely to suffer from.

Further, the assignment of regimes to capitals is very much a matter of judgement, like the traffic-light ratings themselves. The following observations are therefore highly tentative.

- Regimes concerned with financial and physical capital show in aggregate the most widespread concern under the “capable regulators” principle, while doing better than other groups under the “growth compatible”, “proportional” and “certain, predictable” principles.
- Regimes concerned with human capital show the highest proportion of issues of concern under the “growth compatible”, “flexible, durable” and “transparent, accountable” principles.
- Regimes concerned with natural capital show the highest proportion of positive ratings under the “flexible, durable”, “transparent, accountable” and “capable regulators” principles, but also show the most widespread concerns under the “proportional” and “certain, predictable” principles.

Table 4: Summary assessments of regimes mainly concerned with physical and financial capital

	Growth compatible	Proportional	Flexible, durable	Certain, predictable	Transparent, accountable	Capable regulator	Other
Radiocommunications	Yellow	Green	Yellow	Green	Green	Yellow	Green
Transport Infrastructure	Green	Green	Green	Green	Green	Green	Green
Telecommunications	Yellow	Green	Yellow	Red	Green	Green	Green
Electricity Markets	Green	Green	Green	Green	Green	Yellow	Green
Gas	Green	Green	Green	Green	Green	Yellow	Green
Commodity Levies and Boards	Green	Green	Green	Green	Green	Green	Green
Building Regulation	Green	Yellow	Green	Yellow	Yellow	Yellow	Green
Housing and Tenancy	Green	Green	Yellow	Yellow	Green	Yellow	Green
Tax Administration	Green	Green	Green	Green	Green	Green	Red
Intellectual Property	Green	Green	Green	Green	Green	Green	Green
Land Registration	Green	Green	Green	Green	Green	Green	Green
Overseas Investment	Red	Yellow	Green	Green	Green	Green	Green
Prudential	Green	Green	Green	Green	Green	Green	Green
Contract and Commercial Law	Green	Green	Green	Green	Green	Green	Green
Corporate Governance	Green	Green	Green	Green	Green	Green	Green

Table 5: Summary assessment of regimes mainly concerned with human capital

	Growth compatible	Proportional	Flexible, durable	Certain, predictable	Transparent, accountable	Capable regulators	Other
Early Childhood Education	Green	Green	Green	Green	Green	Green	Green
Primary and Secondary Education	Green	Green	Yellow	Green	Green	Green	Green
Tertiary Education	Yellow	Green	Green	Yellow	Yellow	Green	Green
Industry Training	Yellow	Green	Green	Green	Green	Yellow	Green
Immigration	Yellow	Green	Green	Green	Yellow	Green	Green
Public Health	Yellow	Green	Green	Green	Green	Green	Green
Workplace Health and Safety	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Green
Food Regulation	Yellow	Yellow	Yellow	Yellow	Green	Yellow	Green
Gambling	Green	Green	Green	Green	Green	Green	Green

Table 6: Summary assessment of regimes mainly concerned with social capital

	Growth compatible	Proportional	Flexible, durable	Certain, predictable	Transparent, accountable	Capable regulators	Other
Family Law	Green	Green	Green	Green	Green	Green	Green
Criminal Justice	Green	Green	Green	Green	Green	Green	Green
Civil Defence	Green	Green	Green	Green	Green	Green	Green
Public Administration System	Green	Green	Green	Green	Green	Green	Green
Local Government	Green	Green	Green	Green	Green	Yellow	Green
IRD Social Programme	Green	Green	Green	Green	Green	Green	Red
Welfare	Green	Green	Red	Green	Green	Green	Green
Consumer Protection	Green	Green	Green	Yellow	Green	Green	Green
Commerce Act 1986	Green	Green	Green	Yellow	Green	Green	Green
Financial Market Regulation	Green	Green	Green	Green	Green	Green	Green
Transport Safety	Yellow	Yellow	Yellow	Green	Green	Yellow	Green
ACC	Yellow	Green	Green	Yellow	Green	Green	Green
Health Products and Markets	Yellow	Yellow	Green	Green	Green	Green	Green
Quality of Health Services	Green	Yellow	Green	Green	Green	Green	Green
Occupational Regulation	Yellow	Green	Yellow	Yellow	Yellow	Yellow	Green
Employment Standards	Green	Green	Yellow	Yellow	Green	Yellow	Green
Employment Relations	Green	Green	Green	Yellow	Green	Green	Green
Hazardous Substances	Yellow	Yellow	Yellow	Yellow	Green	Yellow	Green

Table 7: Summary assessment of regimes mainly concerned with natural capital

	Growth compatible	Proportional	Flexible, durable	Certain, predictable	Transparent, accountable	Capable regulators	Other
Conservation	Green	Green	Green	Green	Green	Green	Green
Resource Management	Yellow	Yellow	Green	Yellow	Green	Yellow	Green
Minerals	Green	Green	Green	Green	Green	Green	Green
Petroleum	Green	Green	Green	Green	Green	Green	Green
Forestry	Yellow	Yellow	Green	Yellow	Green	Green	Green
Biosecurity	Yellow	Green	Green	Green	Green	Green	Green
New Organisms	Red	Yellow	Yellow	Yellow	Green	Green	Green
Air	Green	Green	Green	Green	Green	Green	Green
Climate Change	Green	Green	Green	Yellow	Green	Green	Green
Energy Efficiency	Green	Yellow	Green	Green	Green	Green	Green
Water	Yellow	Green	Green	Yellow	Green	Yellow	Green
Fisheries	Green	Yellow	Green	Green	Green	Green	Green

2 Way Forward

This report is intended mainly to provide a high-level overview of the quality of regulatory regimes in New Zealand and to draw attention to areas that may be in need of particular focus. This has been a broad and high-level exercise in bringing together, and to a certain extent calibrating, departmental views on the state of the regulatory regimes they are responsible for, and presenting it in a standardised form. It shows that, while action has been taken to address some of the concerns identified in the previous report, there remains scope for improvement in many areas.

Departments may wish to draw on this framework to inform the delivery of their regulatory stewardship obligations; for example, in their planning of regulatory review and reform, and in seeking and evaluating stakeholder feedback on how regulatory regimes are working in practice. Even where no concerns are currently identified, vigilance remains important; circumstances may change to render regulation redundant or otherwise inappropriate, or there may be unnoticed risks or opportunity costs arising.

Stakeholders themselves may also be interested to see how far the Government shares and is aware of any concerns they may have about individual regimes. It may be helpful to them in structuring future conversations with departments and regulators and in articulating their concerns.

There is no single strategy for moving closer to best practice. In some cases it will be a case of maintaining the momentum of existing reforms; in others, a new impetus may be required. Major reviews with a focus on the legal framework remain an option in some cases, but in many areas the focus should be on improving regulatory agency performance within the existing legal framework (albeit with adjustments to the legal framework and rules as required to facilitate effective operation).

3 Regime Assessments

The assessments for each individual regime are further explained in the following pages. For each individual regime, the core of the assessments remains ratings against the principles of Best Practice Regulation. We give both the 2012 rating and a revised rating as at the end of July 2014. We summarise the reasons for the 2012 assessment, developments since then and the reasons for any change. Where actions are underway to address issues identified, this is set out by departments in paragraphs headed “Departmental comment”.

Financial and Physical Capital

This group comprises regulations that govern the quality, management and distribution of physical and financial capital.

Radiocommunications

The radiocommunications environment in New Zealand is managed, on behalf of the Crown, by the Ministry of Business, Innovation and Employment (MBIE). All legislative requirements for the management of the radio spectrum are set out in the Radiocommunications Act 1989, and its subservient regulations.⁶

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted that the legislation was not designed for regulating holders of radio spectrum and therefore constrained the regulator’s ability to manage their behaviour.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012	Orange	Green	Orange	Green	Green	Orange	Green

A review of the Radiocommunications Act 1989 has been announced and public consultation is now underway.⁷ While the regime may now be sub-optimal in view of the changing nature of the market and has scope for streamlining and rationalisation, it does not appear to be leading to adverse outcomes in practice and the management of mobile broadband has been internationally recognised.⁸

2013–2014	Orange	Green	Orange	Green	Green	Orange	Green
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Departmental comment (MBIE)

MBIE agrees with the assessment and notes that a legislative review is now underway.

⁶ <http://www.rsm.govt.nz/cms/policy-and-planning/spectrum-policy-overview/legislation/acts-and-regulations/the-radiocommunications-environment-in-new-zealand>

⁷ <http://www.rsm.govt.nz/cms/policy-and-planning/consultation/review-of-the-radiocommunications-act-1989>

Transport Infrastructure

The provision of transport infrastructure in New Zealand is regulated in various ways, according to the various institutional and ownership arrangements. Land infrastructure (largely roads, but also some public transport infrastructure) is provided via the framework set in the Land Transport Management Act 2003. In particular, the NZ Transport Agency⁹ is responsible for delivering a National Land Transport programme that gives effect to the Government's objectives.

For other modes, there is less direct regulation of infrastructure investment and its operation, apart from the regulation of competition. This includes, for example, the Commerce Commission's information disclosure requirements for New Zealand's three main airports, Auckland, Wellington and Christchurch.¹⁰

Assessment

In the 2011–2012 report this regime was assessed as follows, in line with the assessment in the National Infrastructure Plan 2011.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

A progress report on the National Infrastructure Plan was released in October 2013.¹¹ The Land Transport Management Amendment Act 2013 (LTMA) simplified and streamlined the planning and funding framework and the process for approving toll road schemes and managing public-private partnerships; and established a new framework for planning and contracting public transport services, known as the Public Transport Operating Model.¹²

2013–2014							
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Departmental comment (Ministry of Transport)

As noted, the changes to the LTMA have been made in order to simplify the existing framework. This has included, for example, ensuring better alignment between the LTMA, the Resource Management Act 1991 and the Local Government Act 2002.

The view of the Ministry is that current settings are fit for purpose for transport infrastructure investment. The Ministry is currently preparing advice for the next Government Policy Statement on Land Transport.

⁸ http://www.globalmobileawards.com/winners-2013/#cat_id31

⁹ <http://www.nzta.govt.nz/>

¹⁰ <http://www.transport.govt.nz/ourwork/keystrategiesandplans/nip2/>

¹¹ <http://www.infrastructure.govt.nz/plan/2011implementation/2011implementation/2013report>

¹² <http://www.transport.govt.nz/legislation/acts/landtransportmanagementamendmentbill/>

Telecommunications

The Telecommunications Act 2001 provides for structural separation of network and retail services provision, regulates the supply of certain telecommunications services and promotes competition in telecommunications markets in New Zealand. It is administered by MBIE and implemented by the Commerce Commission,¹³ which makes determinations in respect of designated access and specified services and undertakes costing, monitoring and enforcement activities.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted the ongoing challenge of ensuring that legislation keeps pace with technology and market development while ensuring sufficient stability to encourage investment.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012	Unknown						

The regime is delivering greater competition and choice, better quality services and reducing prices.¹⁴ However, recent regulatory decisions relating to copper pricing were not anticipated by many stakeholders and the continuing and lengthy decision-making processes are leading to ongoing uncertainty. These developments raised concerns about whether the regime is delivering on the Government’s policy objectives for the transition from the legacy copper network to the new fibre network.

A review of the Telecommunications Act 2001 is now underway.¹⁵ The Telecommunications Service Obligations are also currently under review. Both reviews will focus on the long-term interests of end-users of telecommunications services, taking into account the market structure, technology developments and competitive conditions in the telecommunications industry. The uncertainty inevitably caused by the lengthy copper pricing decision process and ongoing review is reflected in the reduced rating against the “certain, predictable” principle. This uncertainty also flows through to the amber ratings under the “growth compatible” and “flexible, durable” principles below, although concerns related to these principles are less significant.

2013–2014							
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¹³ <http://www.comcom.govt.nz/regulated-industries/telecommunications/>

¹⁴ <http://www.comcom.govt.nz/regulated-industries/telecommunications/market-monitoring-2/telecommunications-market-reports/>

¹⁵ <http://www.med.govt.nz/sectors-industries/technology-communication/communications/legislation-relating-to-the-telecommunications-sector/review-of-the-telecommunications-act-2001/consultation>

Some stakeholders appear sceptical as to whether the objectives of the regime are clear and appropriate.¹⁶ However, others have expressed confidence that the regime is well designed to meet its objectives and that the regulator now has the necessary technical expertise.¹⁷ This is reflected in the improved ratings under “transparent, accountable” and “capable regulators”.

Departmental comment (MBIE)

The objective of the review of the Telecommunications Act 2001 is to ensure that the regulatory settings provide the necessary stability and incentives to support competition, innovation and investment that will provide long-term benefits to consumers. The review process will be transparent, with the Government seeking advice from a wide range of stakeholders. It is critical that any changes to the regulatory framework improve regulatory certainty and therefore any reforms resulting from the review will be signalled well ahead of the expiry of the current ultra-fast broadband (UFB) contracts in 2019.

¹⁶ See for example <http://www.productivity.govt.nz/sites/default/files/Sub%20046%20-%20Vodafone%20New%20Zealand%20Limited%20PDF%20-%20162Kb.pdf>

¹⁷ See for example <http://www.productivity.govt.nz/sites/default/files/Sub%20045%20-%20InternetNZ%20PDF%20-%20428Kb.pdf>

Electricity Markets

The Electricity Authority (the Authority) is an independent Crown entity funded through a levy of industry participants and is responsible for the efficient operation of the New Zealand electricity market. The Electricity Industry Act 2010 states that the Authority's objective is to promote competition in, reliable supply by and the efficient operation of, the electricity industry for the long-term benefit of consumers.¹⁸ Along with the Electricity Act 1992 and relevant regulations administered by MBIE, it provides a framework for efficient operation of electricity markets, ownership separation between distribution and generation/retailing and access to transmission networks. The Authority maintains and administers the Electricity Industry Participation Code.¹⁹

As a quasi-monopoly, electricity distribution is regulated separately under Part 4 of the Commerce Act 1986. The Authority has a cooperation agreement with the Commerce Commission.²⁰

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted that the initial response to the then-new electricity regime had been positive.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The regime has continued to establish itself. The Authority has taken a proactive approach to stakeholder engagement, including publishing extensive guidance about its own interpretation of its objectives and its approach to compliance. Retail competition in the electricity market is increasing and there is no evidence of supply constraints or reliability issues arising from under-investment.

2013–2014							
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The amber rating under “capable regulators” is based on stakeholder comments in response to the Productivity Commission’s inquiry into the design and implementation of regulatory regimes. Concerns were expressed as to whether the Authority’s decisions strike the right balance between the interests of consumers and those of industry participants,²¹ and whether the Authority is sufficiently predictable, transparent and

¹⁸ <http://www.ea.govt.nz/about-us/>

¹⁹ <http://www.ea.govt.nz/act-code-regs/code-regs/>

²⁰ <http://www.comcom.govt.nz/the-commission/about-us/relationships-with-other-agencies/>

²¹ <http://www.productivity.govt.nz/sites/default/files/Sub%20025%20-%20New%20Zealand%20Council%20of%20Trade%20Unions%20PDF%20-%200404Kb.pdf>

accountable in its decision-making.²² The Authority itself noted a lack of mid-range enforcement tools, hampering its ability to respond proportionately.²³

Departmental comment (MBIE)

Many of the stakeholder concerns identified in submissions to the Productivity Commission about regulatory predictability and accountability echo considerations when the Electricity Authority and the Commerce Act 1986 (Part 4) regimes were designed. At that time, judgements were made about trade-offs between independence, accountability and cost. In MBIE's view, insufficient time has elapsed to undertake a meaningful review of those judgements. The electricity compliance and enforcement framework is, however, currently under review.

MBIE does not agree with some stakeholders' views that electricity regulation is captured by electricity suppliers, but agrees that adequate consumer participation is challenging because many of the regulatory proceedings relate to technical market rules and require specialist knowledge. This concern applies to many regulatory regimes and warrants attention.

²² <http://www.productivity.govt.nz/sites/default/files/Sub%20014%20-%20PowerCo%20PDF%20-%20254Kb.pdf>

²³ <http://www.productivity.govt.nz/sites/default/files/Sub%20050%20-%20Electricity%20Authority%20PDF%20-%200998Kb.pdf>

Gas

Part 4A of the Gas Act 1992 established the Gas Industry Co (GIC) and prescribes policy objectives that the company must take into account when recommending rules, regulations or non-regulatory arrangements to the Minister of Energy, who is in turn advised by MBIE. The main policy objective in this context is to ensure that gas is delivered to existing and new customers in a safe, efficient and reliable manner.²⁴ The GIC has a cooperation agreement with the Commerce Commission.²⁵

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted concerns about whether the regime supported optimal investment and the allocation of pipeline capacity.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

GIC has undertaken a work programme on infrastructure development and pipeline access and this has led to improvements in both areas. However, stakeholders responding to the Productivity Commission’s inquiry into the design and implementation of regulatory regime were concerned that the statutory functions of GIC do not match up to its statutory objective.²⁶ This is reflected in the continuation of the amber assessment under “capable regulators”.

2013–2014							
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Departmental comment (MBIE)

The stakeholder comments referred to above largely highlight differences in regulatory design between the gas and electricity sectors. In particular, refinements to the electricity regulatory design introduced in 2010, which sought to improve regulatory independence and role clarity, have not been similarly applied in the gas sector. However, while there is potential scope to improve the design of the gas regulatory regime (and make it more consistent with the electricity regime), there is insufficient evidence that undertaking a review of the regime would result in material net benefits. In other words, the relevant policy objectives for the sector (efficiency, reliability and safety) would not be materially improved by legislative and institutional changes for the gas regulator at this time. The Ministry continuously monitors both the gas and electricity regulatory regimes and is mindful of the impact regulatory performance can have on policy outcomes, and of opportunities to improve regulatory design if or when signs of poor performance emerge.

²⁴ http://gasindustry.co.nz/pages/about/gas-industry-company-glance#The_Gas_Act

²⁵ <http://www.comcom.govt.nz/the-commission/about-us/relationships-with-other-agencies/>

²⁶ <http://www.productivity.govt.nz/sites/default/files/Sub%20028%20-%20Minter%20Ellison%20Rudd%20Watts%20PDF%20-%20201121KB.pdf>

Commodity Levies and Boards

The Commodity Levies Act 1990²⁷ enables industries to form boards and impose levies. Levy orders expire in six years, and industry organisations have to hold a referendum of levy payers and then submit a cost benefit analysis to the Minister for Primary Industries to make the case for continuation.²⁸ The Pork Industry Board²⁹ and Deer Industry New Zealand³⁰ operate under separate Acts and do not have the same degree of accountability provisions. For instance, both have levy collection powers for as long as the two entities exist and want to collect levies, and there is no requirement to seek a mandate of levy payers to collect a levy.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury found it unclear as to whether levy orders conferred a net benefit for very small industries.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

Since then there has been some consolidation and rationalisation; for example, in the citrus fruit sector, although some other small sectors (by their own choice) remain separate. This emphasises the fact that this is a facilitative rather than a mandatory regime which enables levy payers to determine for themselves whether levies deliver net benefits. Levies are imposed only where a double majority (by number of entities and by turnover) of the industry agrees both to the level and the purpose of the levy. Administrative checks are in place to ensure that revenue is spent as intended and that the levy delivers good value for money.

2013–2014							
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²⁷ <http://www.legislation.govt.nz/act/public/1990/0127/latest/DLM226674.html>

²⁸ <http://maxa.maf.govt.nz/mafnet/rural-nz/profitability-and-economics/compliance-costs/commodity-levy-act-guide/comlev02.htm>

²⁹ <http://www.pork.co.nz/about/about-nzpork/>

³⁰ <http://deernz.org.nz/about-deer-industry/deer-industry-new-zealand>

Building Regulation

Legislation governing building work³¹ consists of the Building Act 2004 along with legislation for the occupational regulation of professionals involved in construction. Under the Building Act 2004, all building work must comply with the Building Code. Compliance with the Building Code is enforced at local government level.

A performance-based regime needs a mature sector with sophisticated stakeholders able to make judgements as to whether a proposed building solution is likely to deliver the required standard of performance. It also needs to be supported with information as to how principles can be met, particularly since the role of monitoring and enforcement falls to local regulators with variable levels of technical expertise and risk tolerance. MBIE publishes Acceptable Solutions and Verification Methods to help people comply with the Building Code. A building design solution that differs from those contained in an Acceptable Solution or Verification Method may also be accepted by a building consent authority as meeting the performance requirements of the Building Code.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted a demand for a more prescriptive approach providing for greater certainty.

	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

From 2012, only licensed building practitioners may undertake restricted building work (helping to improve the quality of residential buildings). Concerns have emerged, however, about the structural quality of non-residential buildings, which are not covered by the restriction. Such structural issues contribute to rework and delays during the construction process and building failures in earthquakes. There is scope to improve the quality of building (reducing the risk of building failures), improve consistency of building consenting decisions and reduce compliance costs. These concerns are reflected in the 2014 assessment (below).

2013–2014							
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Departmental comment (MBIE)

Work to improve the level of assurance about the structural quality of non-residential buildings includes changes in the Building (Earthquake-prone Buildings) Amendment Bill currently before Parliament,³² a review of the occupational regulation of engineers, a review of powers to manage risks in existing buildings and a review of Part B1 of the Building Code (relating to structure). Reforms proposed to be implemented that would further improve the quality of building, improve consistency and reduce compliance costs include: consumer protections, risk-based consenting and possible changes to the building consent system.

³¹ <http://www.dbh.govt.nz/building-law-and-compliance>

³² <http://www.dbh.govt.nz/epb-policy-review>

Housing and Tenancy

Several aspects of housing regulation and tenancy are included within this regime, which is administered by MBIE:

- the development of a contestable market of non-government community housing providers, further to adoption of the Social Housing Reform Act 2013.³³ This regime came into effect in April 2014
- land supply (Housing Accords and Special Housing Areas Act 2013).³⁴ This is an interim approach (effective from September 2013)
- pending longer-term solutions to land supply issues through reforms to the Resource Management Act 1991
- tenure (Residential Tenancies Act 2010, Unit Titles Act 2010, Retirement Villages Act 2003),³⁵ and
- home ownership support (KiwiSaver Withdrawal and Subsidy and Welcome Home Loans).³⁶

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury found no substantial issues.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The new assessment below records issues arising on a more in-depth consideration of individual components of the regime and also reflects new aspects of the regime. The concern recorded under the durability criterion reflects the temporary nature of the Housing Accords and Special Housing Areas Act 2013. Concerns about certainty and predictability focus on the lack of clarity around landlords' responsibilities in relation to rental property health and safety. The Government is currently trialling a rental Warrant of Fitness with Housing New Zealand which may enable an improved assessment in future.

The capability of the regulator for the new social housing market has yet to be established, and there are also concerns about a potential misalignment of incentives in the division of labour between central and local government in the management of Housing Accords.

2013–2014							
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³³ <http://www.mbie.govt.nz/what-we-do/housing/social-housing-reform>

³⁴ <http://www.mbie.govt.nz/what-we-do/housing/housing-affordability>

³⁵ <http://www.dbh.govt.nz/tenancy-index>

³⁶ <http://www.hnzc.co.nz/buying-a-house>

Tax Administration

This regime covers the Inland Revenue Department's (IRD's) administration of the tax system.

The main legislative instruments are the Income Tax Acts: the Tax Administration Act 1994; the Goods and Services Tax Act 1985; and regulations made under these Acts.³⁷

Assessment

In the 2011–2012 report this regime was assessed as follows:

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The red rating under “Other” was due to the technological challenge associated with IRD transferring from legacy information technology systems.

This remains the Treasury's assessment.

2013–2014							
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IRD still faces the technological challenge associated with transferring from legacy IT systems, though this has progressed somewhat through the Business Transformation programme to build the capability IRD needs to achieve its objectives. New Zealand's relatively simple, broad-based low-rate approach remains highly regarded internationally and means that compliance costs and deadweight losses are low by international standards.

In response to the Productivity Commission's inquiry into regulatory regime design and implementation, IRD's consultation on the sensitive and contentious issue of livestock valuation was described as “commendable”.³⁸ IRD's own customer surveys also indicate a high level of satisfaction.³⁹

³⁷ http://taxpolicy.ird.govt.nz/sites/default/files/2011-other-bim_0.pdf

³⁸ <http://www.productivity.govt.nz/sites/default/files/Sub%20011%20-%20Federated%20Farmers%20of%20New%20Zealand%20PDF%20-%20585Kb.pdf>

³⁹ <http://www.ird.govt.nz/aboutir/reports/cust-survey/>

Intellectual Property

The key objective of intellectual property policy is to have an intellectual property framework in place that maximises its support for innovation and productivity, and facilitates optimal use of intellectual property to create value across New Zealand's economy and society. The Intellectual Property Office of New Zealand (IPONZ), a business unit of MBIE, is the government agency responsible for the granting and registration of intellectual property rights, specifically patent, trade mark, design and plant variety rights.⁴⁰

Assessment

In the 2011–2012 report the Treasury was concerned that the patentability threshold might be discouraging innovation and inhibiting growth, and also at the risk of Free Trade Agreements under negotiation requiring inappropriately high standards.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The new Patents Act 2013⁴¹ is intended to provide a more proportionate and growth supporting approach, by introducing stricter patent examination standards, better aligning the law with international best practice. IPONZ is currently building up its internal capability to examine under the new Act. IPONZ has completed an overhaul of the online system for applying for and managing patents, trade marks, designs and plant variety rights which means that businesses are able to operate in real time, receiving immediate confirmation of their applications and full access to their applications and documents from the moment they are filed. The proposed Trans-Pacific Partnership may require strengthening of intellectual property protection standards, depending on the outcome of ongoing negotiations, but any impact in practice will depend on implementation.

2013–2014							
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⁴⁰ <http://www.iponz.govt.nz/cms/iponz>

⁴¹ <http://www.iponz.govt.nz/cms/patents/patents-act-2013>

Land Registration

Changes in rights to land are authorised and recorded by Land Information New Zealand (LINZ). This includes creating new titles, recording changes of ownership and interests in land (eg, mortgages) and providing access to these records. Land registration is governed by the Land Transfer Act 1952 and the Land Transfer Regulations 2002.⁴²

Assessment

In the 2011–2012 report this regime was assessed as follows.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

There has been no substantive change to the regime since the previous assessment. LINZ is currently developing a business case for a technology upgrade for advanced survey and title services, but this is not expected to be in place by the time of publication.

2013–2014							
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⁴² <http://www.linz.govt.nz/survey-titles/land-registration/land-registration-legislation>

Overseas Investment

The functions of the regulator under the Overseas Investment Act 2005 are carried out within LINZ by the Overseas Investment Office. These include receiving and processing applications for the purchase of sensitive land or an interest in sensitive land, business assets worth more than \$100 million, or fishing quota or an interest in fishing quota; consultation with relevant government departments and other agencies as appropriate; and providing information to applicants and the public generally.⁴³ The Treasury has responsibility for policy oversight.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury acknowledged that opportunities for easing restrictions on the sale of land to overseas investors were limited.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

This regime has been the subject of ongoing public and political attention further to some well publicised individual cases. Judicial review of the “Crafar farms” case has established an additional “Crafar” test⁴⁴ which has helped to improve the predictability of the process. There has also been administrative improvement which has reduced processing times. However, the Treasury continues to think the regime unnecessarily restrictive.

2013–2014							
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⁴³ <http://www.linz.govt.nz/overseas-investment>

⁴⁴ <http://www.linz.govt.nz/about-linz/news-publications-and-consultations/news-and-notice/overseas-investment-office-statement-20120420>

Prudential

The Reserve Bank of New Zealand (RBNZ) regulates banks, insurers and non-bank deposit takers (including finance companies that take deposits from the public, building societies and credit unions), for the purpose of promoting the maintenance of a sound and efficient financial system.⁴⁵

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted that the regime had been found by the Organisation for Economic Cooperation and Development (OECD) to be in line with international best practice.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The regime has been extended to non-bank deposit takers and insurers under the Non-bank Deposit Takers Act 2013 (replacing Part 5D of the Reserve Bank of New Zealand Act 1989) and the Insurance (Prudential Supervision) Act 2010 respectively. RBNZ has also consulted on a proposal to amend the Reserve Bank of New Zealand Act 1989 to improve its oversight of financial market infrastructures such as payment and settlement systems, central securities deposits, central counterparties and trade repositories, in line with international best practice.⁴⁶

2013–2014							
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Stakeholders responding to the Productivity Commission’s inquiry into the design and implementation of regulatory regimes expressed some uncertainty about the potential for overlap with the Financial Markets Authority and the extent to which the bank is subject to external scrutiny. There was also some dissatisfaction with the quality of engagement.

Departmental comment (RBNZ)

The specialist nature of RBNZ’s responsibilities makes it difficult for a tribunal or court to assess the merits of RBNZ decisions. While it is true that global re-regulation is placing a regulatory burden on financial institutions, this has desirable long-run objectives. RBNZ has made and will continue to make extensive efforts to consult, engage and explain about its regulatory decisions.⁴⁷

⁴⁵ http://www.rbnz.govt.nz/regulation_and_supervision/

⁴⁶ http://www.rbnz.govt.nz/regulation_and_supervision/payment_system_oversight/5195423.pdf

⁴⁷ For example: http://www.rbnz.govt.nz/research_and_publications/speeches/2013/5407267.html

Contract and Commercial Law

Contract and commercial law in New Zealand is subject to a number of statutes and general legal principles. This includes key contract statutes of general application which distinguish New Zealand contract law from that of other common law jurisdictions.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted a stable and well understood legal framework in this area.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

There has been no substantial reform in this area or indication that such is necessary at this time. The civil justice system continues to provide a stable framework that enforces civil obligations and contracts.

2013–2014							
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Departmental comment (Ministry of Justice)

There is, however, always scope for improvements to contract and commercial law; for example, taking steps to harmonise New Zealand’s law in this area with our trading partners.

Corporate Governance

Rules applying to the governance, registration and reconstruction of companies, and the registration of limited partnerships, are mainly contained in the Companies Act 1993 and the Takeovers Act 1993 which established the Takeovers Panel to ensure that all shareholders have a fair opportunity to participate in control-change transactions.⁴⁸ The Companies and Limited Partnerships Amendment Bill is intended to strengthen the regime.⁴⁹ The regime is administered by MBIE.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted that the Companies Act 1993 is geared towards the bigger end of the market.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

Changes to financial reporting requirements are intended (among other objectives) to ease compliance burdens for smaller companies and this is reflected in the revised rating under “proportional” below. Extensive guidance and opportunities for online compliance are available through the Companies Office.⁵⁰ Stakeholders acknowledge the Companies Office’s approach of seeking to assist compliance rather than penalising breaches.⁵¹

2013–2014							
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⁴⁸ <http://www.takeovers.govt.nz/>

⁴⁹ <http://www.med.govt.nz/business/business-law/current-business-law-work/companies-act-changes>

⁵⁰ <http://www.business.govt.nz/companies>

⁵¹ <http://www.productivity.govt.nz/sites/default/files/Sub%20038%20-%20Bell%20Gully%20PDF%20-%20094Kb.pdf>

Human Capital

This group comprises regulations that facilitate and enable the protection, development and expansion of human skills, and people’s physical and mental health, in New Zealand.

Early Childhood Education

Criteria set out under the Education (Early Childhood Services) Regulations 2008 and Education (Playgroups) Regulations 2008 state the day-to-day requirements that providers of different early childhood education (ECE) services types must meet in order to meet the regulated standards of education and care. To further assist ECE services with some practical considerations and examples, an informal fourth tier of guidance is also available.⁵² The regime is administered by the Ministry for Education.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury identified no significant issues.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

There have been no significant reforms since the previous assessment, although the Education Amendment Act 2013⁵³ supports the provision of ECE by enabling the Ministry of Education to assign a National Student Number to children at a much younger age.

2013–2014							
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Departmental comment (Ministry for Education)

The Ministry intends to review the ECE Funding “Rule Book”⁵⁴ with a view to identifying opportunities to improvements for the providers of early childhood services.

⁵² <http://www.lead.ece.govt.nz/ManagementInformation/RegulatoryFrameworkForECEServices/2008RegulatoryFramework.aspx>

⁵³ <http://www.legislation.govt.nz/act/public/2013/0034/23.0/DLM4807405.html>

⁵⁴ <http://www.lead.ece.govt.nz/ManagementInformation/Funding/FundingHandbook.aspx>

Primary and Secondary Education

Legislation that governs New Zealand’s education system includes the Education Act Amendments, the National Administration Guidelines, Nation Education Guidelines and National Education Goals,⁵⁵ administered by the Ministry for Education. The Education Review Office (ERO)⁵⁶ reports on aspects of education broadly as well as school-specific inspections. Regional offices monitor compliance, visit schools and advise on the implementation of guidelines. Informal monitoring and motivation is also provided by parental pressure. The regulation of the teacher workforce is under review as part of the Government’s ongoing Regulatory Review programme.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury found the legal framework for schools to be generally sound but was concerned that limited use was made of powers to intervene in struggling schools or to rationalise the network.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

Scope to rationalise the network remains, but in many cases the potential social and educational disruption outweighs the fiscal benefits. The Ministry for Education’s Task Force on Regulations Affecting School Performance should help to identify where ad hoc changes to legislation have left inconsistencies, duplication or over-complexity. The required format for school charters is quite prescriptive, reflected in the amber rating under “flexible, durable” below, and could be better designed to encourage and enable schools to take a strategic (as opposed to compliance-based) approach.

2013–2014							
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The Education Amendment Act 2013⁵⁷ made a number of reforms whose impact in practice is not yet assessable, including setting out the necessary legal framework for the introduction of Partnership Schools/Kura Hourua, establishing clear surrender and retention provisions for schools, allowing schools to be more flexible with their timetabling of the school day and increasing the options for alternative governance arrangements. The Government is also pursuing a wider quality teaching agenda, which encompasses a number of elements (initial teacher education, appraisal, professional learning and development and school leadership). The majority of these are not expected to involve changes to the regulatory framework.

55 <http://www.minedu.govt.nz/theMinistry/EducationInNewZealand/EducationLegislation.aspx>

56 <http://www.ero.govt.nz/>

57 <http://www.minedu.govt.nz/theMinistry/EducationInNewZealand/EducationLegislation/Education%20Amendment%20Act%202013.aspx>

Tertiary Education

The role and responsibilities of the Tertiary Education Commission⁵⁸ are set out in the Education Act 1989. The Commission gives effect to the Government’s requirements for tertiary education as outlined in the Tertiary Education Strategy 2014–19,⁵⁹ which sets out the Government’s expectations and priorities for New Zealand’s tertiary education system. The Ministry for Education has responsibility for policy oversight.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury identified concerns around clarity in legislation capability, the extent to which regulation was growth focused and the frequency with which it was adjusted.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012	Yellow	Green	Green	Yellow	Yellow	Yellow	Green

The Education Amendment Act 2011 strengthened the regulation of the tertiary education system by improving and modernising the functions and powers of the New Zealand Qualifications Authority. It also created a stronger regulatory and enforcement framework – in particular, in relation to managing private training establishments.

The Education Amendment Bill (No 2)⁶⁰ aims to improve protection for students and enhance quality assurance of the education system, both here and overseas, to ensure programmes are high quality and lead to positive outcomes for students. These reforms are consistent with supporting growth, because they contribute to developing a skilled workforce. This may enable an improved rating under “growth compatible” in future assessments.

In addition, changing the legislative settings for university and wānanga governance is intended to create smaller, skilled-based university and wānanga councils and make membership more flexible. The reforms enable the councils to more easily meet the needs of a rapidly changing employment market, adapt to changing technology in teaching and learning and operate more effectively in the increasingly competitive international university environment.

2013–2014	Yellow	Green	Green	Yellow	Yellow	Green	Green
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⁵⁸ <http://www.tec.govt.nz/About-us/>

⁵⁹ <http://www.tec.govt.nz/About-us/News/TEC-Now/Tertiary-Education-Strategy-2014---2019/>

⁶⁰ <http://www.legislation.govt.nz/bill/government/2014/0193/latest/whole.html>

Industry Training

Industry training is coordinated by Industry Training Organisations (ITOs), industry-owned bodies that are recognised by the Government under the Industry Training and Apprenticeships Act 1992. ITOs receive funding from both the Government and industry but do not themselves provide training.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury identified concerns about whether regulatory settings focus industry training towards economic growth goals and around the capability of the sector to deliver government goals effectively.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The Industry Training and Apprenticeships Amendment Bill⁶¹ was passed in April 2014. It consolidated Modern Apprenticeships and other apprenticeship-type training into New Zealand Apprenticeships, clarified the roles of ITOs and improved the quality assurance framework for ITOs. In addition, changes to industry training from 1 January 2014 as a result of operational and policy reviews have improved the extent to which regulatory settings focus industry training towards economic growth goals. These changes include increased performance requirements for ITOs, and increased educational requirements for apprenticeships.

The reforms are still bedding in. However, they are expected to contribute to economic growth and this should enable an improved rating in future assessments.

2013–2014							
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⁶¹ <http://www.legislation.govt.nz/act/public/1992/0055/latest/DLM266246.html>

Immigration

The Immigration Act 2009⁶² seeks to achieve social and economic goals through the temporary and permanent movement of people and skills. This requires a focus on migrants who can demonstrate they will quickly add economic value to New Zealand. The regime is administered by Immigration New Zealand, part of MBIE.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted that the Act supported significant discretion but required effective operational processes to ensure that its objectives were achieved.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

Immigration New Zealand is undergoing a business transformation, Vision 2015, including a new Immigration Global Management computer system to enable online processing, the use of electronic documents, automation of simple tasks and significant improvements in identity management. This is not yet complete but is intended to address concerns about transparency and the ease and navigability of the process. While the rules do allow for ministerial discretion, this is used only to allow applications that would not otherwise get through the process – not to disallow applications that would. Further to the Canterbury earthquakes, Immigration New Zealand established the Canterbury Employment Hub, which front-loads the labour market test for employers wanting to employ a temporary migrant.

2013–2014							
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In response to the Productivity Commission’s inquiry into the design and implementation of regulatory regimes, stakeholders acknowledged the inevitable tension between Immigration New Zealand’s role to support economic growth and Work and Income New Zealand’s to reduce unemployment. One comment noted that the lack of a transparent and consistent framework within which the labour market check process occurs could adversely affect firm profitability and productivity, especially in cases requiring visa renewals.⁶³

Departmental comment (MBIE)

MBIE acknowledges that the large number of immigration policy settings can be confusing to applicants, and that applicants cannot always be sure about the likely outcome of their application (which will depend on their individual circumstances, and factors that require judgements to be made by immigration officers, based on the best available evidence).

62 <http://www.immigration.govt.nz/migrant/general/generalinformation/immigrationact/factsheets/summary.htm>

63 <http://www.productivity.govt.nz/sites/default/files/Sub%20019%20-%20BusinessNZ%20PDF%20-%20474Kb.pdf>

However, policy settings are transparent, in that the rules associated with them are reasonably clear, and information is freely accessible on the Immigration New Zealand website. The introduction of Immigration Online should make it easier for applicants to navigate the immigration system, but it will not give them any greater certainty about the outcome of their applications.

We endorse the comment about the tension between immigration and welfare outcomes. This is particularly the case in relation to lower-skilled work, where a lack of qualifications may be less of a barrier to entry for welfare recipients. It is particularly important that we ensure employers are adequately testing the local labour market for lower-skilled jobs. We note that, in practice, the vast majority of visa applications that require labour market tests or specific job offers are approved, so while there may be some compliance costs to employers, they will generally be able to employ a migrant worker.

Public Health

This regime covers water, sewerage, epidemics, compulsion under the Mental Health Act 1992 and the regulation of tobacco and alcohol sales. It is administered by the Ministry of Health.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury identified concerns with uncertainty of future regulation and variability in enforcement and its deterrent effect on long-term investment in tobacco and alcohol retailing.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

Further to the implementation of the Smoke-Free Environments (Controls and Enforcement) Amendment Act 2011,⁶⁴ rules on alcohol and tobacco retail are now clearer and this is likely to improve the consistency and predictability of local regulation. Training of tobacco officers focuses on encouraging consistency in inspection practice and decisions to issue infringement notices are taken centrally to ensure consistency. The Health (Health Protection) Amendment Bill currently before Parliament makes relatively minor amendments to improve management of conditions of public health significance.

2013–2014							
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Departmental comment (Ministry of Health)

Improvements have been made to improve consistency in the administration and enforcement of public health regulatory frameworks, particularly through improved guidance to regulators (such as medical officers of health and smoke-free enforcement officers) to enhance capability and support consistent decision-making. In public health, there is always an inherent tension between commercial activity and mitigating risk to public health and safety. The Public Health Bill currently before Parliament seeks to ensure that those interests are appropriately balanced and to bring public health legislation up to date.

⁶⁴ <http://www.legislation.govt.nz/act/public/2011/0053/latest/DLM3418508.html>

Workplace Health and Safety

Health and safety at work is currently governed by the Health and Safety in Employment Act 1992,⁶⁵ supported by information in Regulations, Codes of Practice and Best Practice Guidelines. The Act applies to all New Zealand workplaces and places duties on employers, the self-employed, employees, principals and others who are in a position to manage or control hazards. It is administered by MBIE, who are in the process of establishing WorkSafe New Zealand, a stand-alone Crown agent with its own governance board.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted that the performance-based regulatory framework contributed to uncertainty with respect to compliance obligations.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The Royal Commission inquiry following the Pike River tragedy confirmed that the system was not fit for purpose, noting in particular that the health and safety regulator lacked focus, resourcing and inspection capacity. An Independent Taskforce on Workplace Health and Safety was set up and a Health and Safety Reform Bill to implement its recommendations was introduced in early 2014. This law and associated regulations are expected to start coming into force in 2015. The Government established WorkSafe New Zealand on 16 December 2013 as part of the broader workplace health and safety reform process⁶⁶ and this may enable improved ratings in future assessments.

2013–2014							
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Stakeholder comment

Some stakeholders responding to the Productivity Commission’s inquiry into the design and implementation of regulatory regime expressed concerns, which may or may not be substantiated in practice, that a reformed regime might be too stringent and compliance costly.⁶⁷ However, in response to MBIE’s consultation, most stakeholders have expressed general support for the Government’s Working Safer reform package, which includes the new legislation. Most stakeholders support the need for greater transparency and certainty about requirements, which are intended to be included in regulations to support the new legislation.

⁶⁵ <http://www.business.govt.nz/healthandsafetygroup/information-guidance/legal-framework/hse-act-1992>

⁶⁶ <http://www.mbie.govt.nz/what-we-do/pike-river-implementation-plan/worksafe-new-zealand-is-being-established>

⁶⁷ <http://www.productivity.govt.nz/sites/default/files/Sub%20021%20-%20IPENZ%20Engineers%20New%20Zealand%20PDF%20-%20260Kb.pdf>

Departmental comment (MBIE)

Changes to the assessment of the health and safety system reflect a reassessment of the performance of this system following the Pike River tragedy. Implementation of the full suite of reforms should significantly improve the performance of this system and lead to improved ratings in future assessments.

Food Regulation

Food safety is currently governed by the Food Act 1981, the Animal Products Act 1999, the Wine Act 2003 and the Agricultural Compounds and Veterinary Medicines Act 1997. The Food Act 2014 was introduced on 6 June 2014 and will replace the Food Act 1981 when it comes into force in 2016. A Voluntary Implementation Programme (VIP) is in place which introduces aspects of the risk-based approach to be introduced by the new Food Act.⁶⁸ The VIP regime is administered by the Ministry for Primary Industries in partnership with a number of territorial authorities. Over and above the requirement for all food to meet domestic food standards, the Ministry for Primary Industries also provides verification and assurance for food produced for export purposes. This covers both the domestic standards and specific market access requirements. The system is intended to provide access into overseas markets, some of which would be inaccessible to New Zealand food exporters without such assurance.⁶⁹

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury found the Food Act 1981 prescriptive and costly with no real impact on food safety.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

In December 2013 the Government inquiry into the whey protein contamination incident⁷⁰ found New Zealand’s food safety regulatory model to be consistent with international principles and among the best in the world but made a number of recommendations for further strengthening. The Government accepted these recommendations.⁷¹ The Food Act 2014 is intended to ensure that the regulatory platform that applies to all food for sale, including exports, is modernised and robust and will come into force in 2016. The Food Safety Law Reform Bill will take this process further by aligning food-related legislation. Once this is implemented, future assessments should reflect this improvement.

2013–2014							
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Stakeholder comment

In response to the Productivity Commission’s inquiry into the design and implementation of regulatory regimes, industry representatives broadly confirmed concerns with the prescriptive and untransparent nature of the Food Act 1981. One was also concerned about inconsistent levels of expertise among inspectors and there was also concern that recent failings by regulators might have been owing to under-resourcing of key regulatory activities.

⁶⁸ <http://www.foodsafety.govt.nz/>

⁶⁹ <http://www.foodsafety.govt.nz/industry/exporting/>

⁷⁰ <http://www.dia.govt.nz/Government-Inquiry-into-Whey-Protein-Concentrate-Contamination-Incident>

⁷¹ <http://www.beehive.govt.nz/sites/all/files/GovtresponsetableWPC.pdf>

However, there was also appreciation for the way in which the Ministry for Primary Industries and the Commerce Commission work together and this is reflected in the improved rating under “transparent” above. Industry representatives appreciated the greater clarity of objectives and the greater regulatory discretion and wider range of enforcement tools provided for in the new Act. They also emphasised the commercial value of New Zealand food safety requirements, in that they remove significant barriers to export markets that would otherwise be imposed.

Gambling

Legislation and licence conditions focus on ensuring that the community benefits from the proceeds of gambling, and that the harm gambling can cause is minimised. The primary piece of legislation that regulates gambling is the Gambling Act 2003. The Gambling Compliance Group in the Department of Internal Affairs audits and investigates non-casino gambling activities, licenses all non-casino gambling and issues certificates of approval for casino employees. The group's casino inspectorate monitors and audits all casino gambling activities.⁷² The Gambling Commission is responsible for casino licensing.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted that the purpose of the Gambling Act 2003 was explicitly to limit the growth of gambling and to prevent and minimise the harm caused. At the same time the introduction of casinos was intended to promote employment, tourism and economic development.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012	Unknown						

The gambling regime seeks to strike an appropriate balance between growth and other objectives such as controlling growth of gambling, minimising social harm, ensuring fairness, reducing crime opportunities and maximising community benefits. There may also be growth benefits if money can be diverted away from gambling and into more productive uses.

2013–2014							
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⁷² http://www.dia.govt.nz/Web/diawebsite_historical.nsf/wpg_URL/Services-Casino-and-Non-Casino-Gaming-New-Zealand-Gambling-Laws#three

Social Capital

This group comprises regulations that facilitate safe and secure participation, cooperation and trust between institutions and people.

Family Law

The Family Court was established in 1981 as a specialist forum to help people sort out family disputes and to ensure the interests of children are represented (where children are involved). As well as formal court proceedings, the Court also provides conciliatory resolution; for example, through use of settlement conferences in some types of cases. The Court can also request a range of reports from various specialists to assist decision-making. A wide range of statutes⁷³ is involved. The Family Court Rules⁷⁴ set out different forms and processes to follow for matters relating to different family law Acts.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury identified no significant issues.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The Family Court Proceedings Reform Bill amended nine family law Acts and introduced the Family Dispute Resolution Act 2013. A small number of amendments, eg, increasing the penalty for breach of a protection order under the Domestic Violence Act 1995 and regulatory changes necessary to enable the reforms to be implemented, came into force the day after Royal Assent, 25 September 2013. Most of the reforms came into force on 31 March 2014. The remainder of the reforms (relating to amendments to the Domestic Violence Act) came into force on 1 October 2014. The reforms largely focus on reducing harm to families by encouraging out-of-court settlement of disputes about the care of children following parental separation. Family dispute resolution (FDR) enables parents to reach agreement themselves with the assistance of a trained mediator. The Family Court is still available where necessary, ie, for serious or urgent cases not suitable for FDR. Amendments to the Family Court Rules 2002 aim to improve the efficiency and effectiveness of Family Court processes for proceedings under the Care of Children Act 2004. This responds to feedback received from extensive consultation which revealed particular concern about lack of clarity and navigability of processes.

2013–2014							
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⁷³ <http://www.justice.govt.nz/courts/family-court/legislation/family-court-acts/family-court-acts>

⁷⁴ <http://www.justice.govt.nz/courts/family-court/legislation/family-court-acts/family-court-rules>

Criminal Justice

This regime was entitled “Crime” in the 2011–2012 assessment and is here used to assess the management of the pipeline that runs from the investigation of crime to arrest and prosecutions, through to courts, sentencing and sentencing management and rehabilitation.⁷⁵ The Ministry of Justice is the lead agency and works with other agencies including the New Zealand Police, the Department of Corrections, the Crown Law Office, the Serious Fraud Office and Child Youth and Family (part of the Ministry of Social Development).

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury identified concerns that criminal sanctions had become more severe without evidence of public safety improvements; and uncertainty owing to the broad band of behaviour, and discretion as to charges and penalties applicable, within each offence.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011-2012							

While the Law Commission’s recent study on maximum penalties⁷⁶ did identify a number of anomalies and inconsistencies, in practice the flexibility created by specifying maximum penalties is used to ensure that actual sentences are proportionate. The Ministry of Justice is now operating a better coordinated cross-departmental process to ensure that it has knowledge and oversight, and so can ensure consistency and coherence around the creation of new offences and sanctions. The Ministry continues to look for opportunities to implement alternative approaches to managing low-level offences.

2013–2014							
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⁷⁵ <http://www.justice.govt.nz/justice-sector/about-the-justice-sector>

⁷⁶ <http://sp21.publications.lawcom.govt.nz/uploads/NZLC-SP21-Maximum-Penalties-for-Criminal-Offences.pdf>

Civil Defence

National civil defence emergency management planning is a requirement of the Civil Defence Emergency Management (CDEM) Act 2002. National civil defence emergency management planning arrangements are set out in the National Civil Defence Emergency Management Plan Order 2005 (the Plan), and the Guide to the National Civil Defence Emergency Management Plan 2006 (the Guide).

The Plan is made by Order in Council. The Guide provides information on operational arrangements and additional information in support of the Plan, and assists agencies to achieve the Plan's purpose and objectives. The Guide is approved by Government and is issued under the authority of the Director of Civil Defence Emergency Management.⁷⁷ The Act, Plan and Guide are administered by the Ministry of Civil Defence and Emergency Management (MCDEM).

Assessment

In the 2011–2012 report this regime was assessed as follows.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

On 1 April, responsibility for MCDEM shifted from the Department of Internal Affairs to the Department of the Prime Minister and Cabinet. Consequential changes are now being made for the transfer of the systems that support MCDEM operating in the National Crisis Management Centre (NCMC) during emergencies.

The Plan and the Guide are currently being reviewed. The revised Plan has been referred to the Government Administration Committee and released for public consultation. The recovery provisions in the CDEM Act 2002 are also presently under review. Opportunities to strengthen the legislation, for the transition from response to recovery, were identified both before and after the Canterbury earthquakes. The legislative review is aware of the need to ensure coherence with other existing or proposed regulatory provisions, including building management and resource management. The scope of the review is emergencies of a small to moderate scale, for all hazards.

2013–2014							
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Departmental comment (MCDEM)

MCDEM is of the view that neither the review of the National Civil Defence Emergency Management (CDEM) Plan nor the review of the legislative framework for recovery, both presently underway, present material concern as to the certainty of the CDEM regulatory regime.

⁷⁷ http://www.civildefence.govt.nz/memwebsite.nsf/wpg_url/about-the-ministry-what-we-do-national-cdem-planning?opendocument

The review of the National CDEM Plan, in particular, is part of a statutorily imposed cycle of reviews to make sure the Plan is kept up to date. The reviews are part of the process for ongoing improvement of the CDEM regulatory regime and should provide greater certainty and predictability of the regime.

Public Administration System

This regime was previously called “Machinery of Government”. This new name is intended to better reflect that it includes financial as well as governance and accountability arrangements for government departments.

The State Services Commission (SSC)⁷⁸ provides leadership and oversight of the State services under the State Sector Act 1988 and also administers part of the Crown Entities Act 2004, which provides a framework for the establishment, governance and operation of Crown entities. The Treasury is responsible for establishing and maintaining controls to ensure that all government financial transactions are within statutory authority, and that all use of public money is properly recorded. This includes guidance for departments on Financial Management and Reporting by State sector entities.

Assessment

In the 2011–2012 report the Treasury identified that a lack of financial flexibility in the Public Finance Act 1989 was acting as a barrier to collaboration and innovation and role-clarity in relation to sustainable, longer-term financial management.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The requirement for due diligence and to meet Parliamentary expectations inevitably creates some level of process burden. However, amendments to the State Sector Act 1988, the Public Finance Act 1989 and the Crown Entities Act 2004 – intended to encourage and underline government expectation of stewardship and collaboration – should increase flexibility and outcome focus, and are being reinforced through chief executive performance expectations. SSC has implemented a renewed approach to chief executive performance management this year which considers regulatory stewardship as part of chief executives’ responsibilities for their core business. As this approach evolves, chief executives will experience SSC playing a bigger role in holding them to account for regulatory functions.

All core agencies have now had a Performance Improvement Framework (PIF) review, which is key to lifting performance across the system, noting the regulatory component of the PIF has recently been strengthened. Career boards are helping with senior leaders’ development, deployment and succession plans. The concept of functional leadership provides opportunities to leverage departmental resources to achieve results more efficiently. Furthermore, the focus on four-year plans is encouraging longer-term thinking,⁷⁹ and work is underway to integrate the PIF, four-year plan and executive management processes, which should encourage improvements.

2013–2014							
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⁷⁸ <http://www.ssc.govt.nz/>

⁷⁹ <http://www.treasury.govt.nz/statesector/2013reform>

Local Government

The purpose of local government, as defined in the Local Government Act 2002, is to enable democratic local decision-making and action by, and on behalf of, communities; and to meet the current and future needs of communities for good-quality local infrastructure, local public services and performance of regulatory functions in a way that is most cost-effective for households and businesses.⁸⁰

The previous assessment focused on local government’s performance of some of the many regulatory roles that are assigned to councils within other portfolio legislation, such as the building control, environmental management and food safety regulatory regimes.

This present assessment focuses instead on the legislative framework that establishes local government and “regulates” its core operations, including its governance, decision-making and accountability mechanisms (eg, planning and financial management). This is administered by the Department of Internal Affairs.

In this report, where local government implementation is a factor in the effectiveness of other regulatory regimes, this is noted in the commentary on the appropriate regime.

Assessment

In the 2011–2012 report the Treasury (taking, as noted above, a different view of the scope of the regime under assessment) noted that it is in the nature of local government that considerable variability exists in local preferences and how councils choose to pursue locally driven objectives, as well as in the capacity and capability of local authorities.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

Turning now to the local government regime proper, reforms undertaken through the Better Local Government programme,⁸¹ part of the Government’s ongoing Regulatory Review programme, are intended to ensure greater role clarity, stronger governance, improved efficiency and more responsible financial management. The Local Government Act 2002 Amendment Bill (No 3) was introduced in October 2013 to implement government decisions relating to housing affordability, the Local Government Efficiency Taskforce and the Local Government Expert Advisory Group on Infrastructure.⁸²

The Department of Internal Affairs is leading work to bring greater coordination across government on advice related to local government. Once established, this new approach should enable an improvement in the “capable regulators” assessment.

2013–2014							
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⁸⁰ <http://www.dia.govt.nz/Better-Local-Government#implementing1>

⁸¹ <http://www.dia.govt.nz/better-local-government>

⁸² http://www.parliament.nz/en-nz/pb/legislation/bills/00DBHOH_BILL12831_1/local-government-act-2002-amendment-bill-no-3

Departmental comment (Department of Internal Affairs)

This work will improve the quality and coherence of policy advice across departments and to Ministers related to local government, grow central government's capability to work with (and better understand) local government and bring more of an end-user perspective to local government policy and regulatory design.

IRD Social Programme

This regime covers the Inland Revenue Department's (IRD's) management of programmes such as KiwiSaver, Working for Families, child support and student loans.⁸³

Assessment

In the 2011–2012 report this regime was assessed as follows:

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The rating on “other” reflected the technological challenge associated with IRD's transfer from legacy information technology systems.

This remains the Treasury's assessment. IRD still faces the technological challenge associated with transferring from legacy IT systems, though this has progressed somewhat through the Business Transformation programme to build the capability IRD needs to achieve its objectives. Administrative reforms have enabled an improvement in the recovery of student loans from overseas debtors.

2013–2014							
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⁸³ <http://www.ird.govt.nz/individuals/>

Welfare

The overall structure of the benefit system is governed by the Social Security Act 1964, which has been subject to numerous amendments. Its implementation and interpretation are dependent also on a large body of case law. It is administered by the Ministry of Social Development and sits within the wider welfare system that includes transfer payments made through the tax system, New Zealand Superannuation and other services such as education, health and housing.

Assessment

In the 2011–2012 report this regime was assessed as follows. Further to the work of the Welfare Working Group⁸⁴ the Treasury identified concern about the growth impact of long-term beneficiaries unable to move from welfare to employment and about the dated and cumbersome nature of primary legislation.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

Since then, reforms have simplified benefit categories and social obligations have been introduced.⁸⁵ The legislation is now significantly simplified and rationalised for client group, and the balance between primary and secondary legislation now enables greater flexibility and responsiveness to individual circumstances. The effects of this are now becoming apparent as the valuation of the Government’s forward welfare liability has reduced. Work on wholesale revision of Social Security Act 1964 for greater clarity and durability is also underway and this would be expected to lead to an improved rating in future assessments.

2013–2014							
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⁸⁴ <http://igps.victoria.ac.nz/WelfareWorkingGroup/Index.html>

⁸⁵ <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/welfare-reform/index.html>

Consumer Protection

Consumers need to trust traders and the quality of the goods and services they supply in order to participate freely in markets. Consumer confidence is therefore essential for domestic economic activity. Consumers rely on the framework of consumer protection laws because it is difficult (and inefficient) for consumers to make purchasing decisions in a low-trust environment. In particular, consumer confidence is important for consumers to spend their money on new or innovative goods or services without feeling they are taking undue risks. Legal protections enhancing consumer confidence also underpin effective competition in consumer markets because traders who compete honestly are protected from unscrupulous or dishonest competitors.

Several different laws, administered by MBIE, contribute to this overall objective. Notably, the Fair Trading Act 1986 makes it illegal for traders to mislead consumers, give them false information or use unfair trading practices; while the Consumer Guarantees Act 1993 (CGA) sets out guarantees that goods and services must meet when sold by someone in trade. Guidance for businesses is available online.⁸⁶

The Consumer Law Reform package passed in December 2013⁸⁷ revises and updates both Acts, and also repeals four outdated Acts. The Credit Contracts and Financial Services Law Reform Bill has received its second reading, and it steps up consumer protection in the area of credit, particularly by introducing responsible lending and providing for strengthened regulation of credit repossession.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted gaps in coverage, a misalignment with overseas practice and concerns about prescriptive requirements restricting the regulator’s ability to take action.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012	Yellow	Green	Yellow	Yellow	Green	Green	Green

Given the difficulty of placing a value on consumer protection, it is inevitably difficult to assess whether the costs of consumer protection requirements are justified by the benefits. The recent legislative reforms⁸⁸ address gaps on unfair contract terms, fringe lending and internet trading and provide the Commerce Commission with a wider range of enforcement tools⁸⁹ which should enable it to take a more flexible and responsive approach. This is reflected in improved ratings under “growth supporting/compatible” and “flexible, durable” below.

2013–2014	Green	Green	Green	Yellow	Green	Green	Green
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⁸⁶ <http://www.consumeraffairs.govt.nz/for-business/compliance>

⁸⁷ <http://www.consumeraffairs.govt.nz/legislation-policy/policy-development/consumer-law-reform>

⁸⁸ <http://www.consumeraffairs.govt.nz/legislation-policy/changes-to-consumer-laws/what-businesses-need-to-know/about-the-consumer-law-reform>

⁸⁹ <http://www.productivity.govt.nz/sites/default/files/Sub%20044%20-%20Commerce%20Commission%20PDF%20-%20200Kb.pdf>

Departmental comment (MBIE)

Consumer laws are generally amended infrequently and they form a stable group of laws over time. There will be some uncertainty as new legislation comes into force and is bedded in over time, but the medium-term goal following the current reform phase is for a stable regime.

Commerce Act 1986

The framework provided by the Commerce Act 1986⁹⁰ is a set of generic competition laws that focus on promoting competitive market behaviour and structure. The Act prohibits contracts or arrangements by firms that could lead to a substantial lessening of competition, the use of substantial market power to deter or eliminate competition and mergers or acquisitions that would substantially lessen competition. It is administered by the Commerce Commission, an independent Crown entity monitored by MBIE.

Part 4 of the Act gives the Commission the role of regulating the price and quality of goods and services in markets where there is little or no competition and little prospect of future competition.⁹¹ electricity lines services, gas pipeline services and specified airport services. The Commission has cooperation agreements with both the Gas Industry Company and the Electricity Authority.⁹²

Assessment

In the 2011–2012 report the Treasury noted a lack of data on competition in New Zealand, which made it difficult to assess whether the competition regime is appropriately calibrated for this economy. The Treasury noted also that recent changes both to the Act and to the tools with which the Commerce Commission was exercising its powers suggested that stakeholders could not yet view the regime’s operation as certain or predictable.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012	Unknown						

It remains the case that competitive intensity appears to be lower in New Zealand compared with other OECD economies, but this could be driven by geographical rather than regulatory factors. New Zealand’s competition laws are highly rated among international benchmarks.⁹³ Since the last assessment, the Commerce Commission has continued to increase its efforts in education, guidance and compliance advice as well as enforcement. Previous uncertainty relating to Part 4 has reduced and the regime’s key elements are now well established. These developments support revised ratings against both the “growth compatible” and “capable regulators” principles.

However, there have been increasing concerns about the regime’s effectiveness in deterring unilateral exclusionary conduct (section 36). This is the main focus of a forthcoming review, leading in turn here to the retention of the amber rating against the “certain, predictable” principle.

2013–2014							
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⁹⁰ <http://www.legislation.govt.nz/act/public/1986/0005/latest/DLM87623.html>

⁹¹ <http://www.comcom.govt.nz/regulated-industries/fact-sheets-2/part-4-of-the-commerce-act/>

⁹² <http://www.comcom.govt.nz/the-commission/about-us/relationships-with-other-agencies/>

⁹³ Alemani, E. *et al.* (2013) “New Indicators of Competition Law and Policy for OECD and non-OECD countries”, *OECD Economics Department Working Papers* No 1104, OECD Publishing <http://dx.doi.org/10.1787/5k3ttg4r657h-en>

Several stakeholders responding to the Productivity Commission's inquiry into the design and implementation of regulatory regimes⁹⁴ focused on Part 4, signalling continuing uncertainty about the overlap between the Commerce Commission and other regulators and also a lack of clarity about certain processes and methodologies.

In response,⁹⁵ the Commerce Commission noted that the setting of input methodologies had increased predictability and that market analysts had been able to predict Commission decisions on the basis of publicly available information. However, they also acknowledged that regulatory certainty was a work in progress and that it may take several regulatory periods to achieve the kinds of certainty that regulated suppliers would ideally like.

Departmental comment (MBIE)

To ensure New Zealand's generic competition law continues to promote the long-term interest of consumers to the greatest extent possible, the Government will be reviewing the misuse of market power prohibition and related matters in the Commerce Act 1986. The principal objective of this review will be ensuring the law promotes competition and the wellbeing of consumers. In line with the Government's ongoing focus on improving regulatory certainty, a well-targeted prohibition should provide complying businesses with clear guidance about what constitutes contravening conduct, while providing for effective enforcement for harmful conduct.

As part of its Business Growth Agenda, the Government is also progressing the Commerce (Cartels and Other Matters) Amendment Bill to bring New Zealand's cartel laws into line with overseas jurisdictions by criminalising serious cartel behaviour, and to clarify the law in relation to pro-competitive collaborative arrangements.

94 <http://www.productivity.govt.nz/view/submissions/1788>

95 <http://www.productivity.govt.nz/sites/default/files/Sub%20044%20-%20Commerce%20Commission%20-%20Supplement%20PDF%20-%2011090Kb.pdf>

Financial Market Regulation

This regime was entitled “Securities Markets” in the previous assessment, but included the regulation of financial services providers more broadly. The new name reflects this.

The Financial Markets Authority (FMA) is the Crown entity that regulates New Zealand’s financial markets. It oversees securities, financial reporting and company law as they apply to financial services and securities markets.⁹⁶

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted the uncertainty arising from the newness of the regulator and its systems and capability, and also concerns that increased emphasis on consumer protection might inhibit innovation and increase moral hazard risks.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

FMA has achieved wide recognition as a capable, credible and professional regulator.⁹⁷ Extensive compliance information and guidance are available.⁹⁸ Concerns about ways in which some of FMA’s powers could potentially be used to impose disproportionate costs on business⁹⁹ appear to be theoretical only.

2013–2014							
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⁹⁶ <http://www.fma.govt.nz/about-us/who-we-are/role-and-purpose/>

⁹⁷ <https://www.fma.govt.nz/media/1916023/fma-progress-review-oliver-wyman.pdf>

⁹⁸ <https://www.fma.govt.nz/help-me-comply/>

⁹⁹ <http://www.productivity.govt.nz/sites/default/files/Sub%2024%20-%20ANZ%20PDF%20-%2020891Kb.pdf>

Transport Safety

The Minister of Transport is empowered by the Land Transport Act 1998, Civil Aviation Act 1990 and the Maritime Transport Act 1994 to make transport rules on issues covering land transport, civil aviation, maritime safety and marine protection. In general, rules govern the construction and maintenance of vessels, vehicles and aircraft, their operation and the licensing and certification of those who operate them or provide services in relation to their operation.¹⁰⁰ Aviation and maritime rules are implemented and enforced by the Civil Aviation Authority¹⁰¹ and Maritime New Zealand¹⁰² respectively.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted the potential disconnect between the aims of economic growth in New Zealand and appropriate safety oversight in other countries, in the absence of international guidance.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012	Yellow	Yellow	Red	Green	Green	Yellow	Green

The Ministry of Transport has adopted a more systematic and strategic approach to its regulatory programme.¹⁰³ However, it remains the case that international safety regulations, particularly in aviation, are sometimes highly prescriptive and often not appropriate for the New Zealand context. The Ministry aims to use as much flexibility as possible to ensure that implementation takes New Zealand circumstances into account but this is constrained by the need to remain consistent with international commitments.

2013–2014	Yellow	Yellow	Yellow	Green	Green	Yellow	Green
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Stakeholders responding to the Productivity Commission’s inquiry into the design and implementation of regulatory regimes¹⁰⁴ confirmed the continuing challenge of implementing international standards in a New Zealand-appropriate way, and of balancing economic growth and safety objectives. Respondents also noted the need for a high level of technical expertise in regulators and the small pool of individuals with the appropriate skills and capabilities in the New Zealand context.

Departmental comment (Ministry of Transport)

While the current transport regulatory framework has secured a strong contribution to raising safety across the transport modes it still needs improvement to ensure it meets best practice regulatory principles. The concerns raised by stakeholders are therefore acknowledged by the Ministry.

¹⁰⁰ <http://www.transport.govt.nz/ourwork/betterqualityregulation/>

¹⁰¹ <http://www.caa.govt.nz/index.html>

¹⁰² <http://www.maritimenz.govt.nz/>

¹⁰³ <http://www.transport.govt.nz/assets/Import/Documents/Transport-Regulatory-Policy-Statement-2012-Edition-Issued-4-May-2012.pdf>

¹⁰⁴ <http://www.productivity.govt.nz/view/submissions/1788>

There continues to be tension between New Zealand meeting its international obligations and the specific needs of the New Zealand transport environment (aviation and maritime sectors in particular) but progressively we are implementing non-regulatory responses so there is more flexibility in the system than in the past. New Zealand can file a difference if it does not support adopting international standards, but this can come at a significant economic cost to our trade and passenger movements.

As the changes brought about by the Transport Regulatory Policy Statement and Regulatory Development and Rules Production Handbook become increasingly embedded, we expect the assessment to improve. A more rigorous policy development process across the government transport sector will improve the proportionality, flexibility and durability of transport safety regulation.

The Ministry continues to identify opportunities for regulatory reform including assessing how “fit for purpose” the civil aviation regulatory regime is as part of the Civil Aviation Act 1990 review.

The Ministry is also focusing on addressing regulation that hinders the efficient operation of markets and is undertaking research to identify where regulations, or their application, may be exacerbating market inefficiencies.

ACC

The Accident Compensation Corporation (ACC) is funded by levies paid by businesses, motor vehicle owners and employees to provide comprehensive, no-fault personal injury cover for all New Zealand residents and visitors to New Zealand. It is governed by the Accident Compensation Act 2001. Because of the wide range of help available from ACC after an injury, individuals (including visitors from overseas) cannot sue for personal injury in New Zealand, except for exemplary damages.¹⁰⁵

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury was concerned about a lack of emphasis on financial stability and affordability compared to other objectives.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012	Yellow	Green	Yellow	Green	Green	Yellow	Green

ACC's financial position has continued to improve over recent years owing to ACC claims and investment performance, which enabled a reduced levy in 2014/15. However, ACC's financial performance has historically been volatile and highly responsive to changing political and management direction, creating uncertainty about whether strong performance will be sustained over the long term. Coverage may also be tested or expanded at the margins by population factors (such as ageing and co-morbidity) and court decisions. Further, in recent years Government has often set levy rates that are different from those recommended by ACC, thereby reducing certainty and predictability. Work is underway to improve the consistency and transparency of the levy-setting process.

2013–2014	Yellow	Green	Green	Yellow	Green	Green	Green
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Departmental comment (MBIE)

ACC's financial position is now strong with two of the levied accounts reporting over 130% of reported liabilities and the Motor Vehicle Account reaching 100%.

A scheme such as ACC will always have boundary issues where some people are on the outside of the boundary. It is important to address areas of inconsistency in eligibility within the scope of the scheme when legislative opportunities arise. An Amendment to the Accident Compensation Act is being developed to address some of these issues.

¹⁰⁵ <http://www.acc.co.nz/about-acc/legal/legislation/index.htm>

Health Products and Markets

The Medicines Control and Medsafe teams within the Ministry of Health issue licences and authorities, undertake drug abuse containment activities and monitor compliance with legislation; in particular, the Medicines Act 1981, Medicines Regulations 1984, the Misuse of Drugs Act 1975 and the Misuse of Drugs Regulations 1977.¹⁰⁶

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury identified concern with compliance costs and ease of export objectives, and also a lack of proportionality in regulatory decisions by district health boards.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The Medicines Amendment Act 2013¹⁰⁷ is intended to modernise the regime by amending the medicines approval process to make the legislation less prescriptive, leaving details to be specified in regulation; amending the prescribing framework to name nurse practitioners and optometrists as authorised prescribers; and adding a new prescribing category of “delegated prescriber” who will be allowed to prescribe under a “delegated prescribing order” issued by an authorised prescriber.

The law is intended to be reviewed and updated again as part of the establishment of the Australia and New Zealand Therapeutic Products Agency. These measures should enable improved ratings in future assessments. For example, enabling licences to cover multiple activities and/or locations, or multi-year licences, may enable greater flexibility than the current system of annual licences, multiple licences for the same location and for individual premises.

2013–2014							
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Departmental comment (Ministry of Health)

Improvement in regulation of health products and markets is largely dependent on further legislative reform. There is legislation before Parliament to reform the regulation of therapeutic products and natural health products, as well as policy work planned to commence in the 2014/15 year for reform of the Misuse of Drugs Act 1975.

¹⁰⁶ <http://www.health.govt.nz/our-work/regulation-health-and-disability-system/medicines-control>

¹⁰⁷ <http://www.legislation.govt.nz/act/public/2013/0141/latest/DLM4096106.html>

Quality of Health Services

The purpose of the Health and Disability Services (Safety) Act 2001 is to promote the safe provision of health and disability services to the public, and enable the establishment of standards for providing health and disability services to public safely. Within the Ministry of Health, HealthCERT is responsible for ensuring hospitals, rest homes, residential disability care facilities and fertility providers provide safe and reasonable levels of service for consumers, as required under the Act.¹⁰⁸

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted concern about a disproportionate focus on risk mitigation relative to other objectives.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

A review of Health Practitioners Competence Assurance Act¹⁰⁹ is underway. The Ministry of Health is also reviewing its oversight of residential facilities and the certification regime for health facilities. This may enable an improved rating in future assessments.

2013–2014							
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Departmental comment (Ministry of Health)

Given the risks to public health and safety arising from poor-quality health services, any regulatory regime relating to the quality of health services is always likely to have a strong focus on risk mitigation. Ongoing work of the Health Quality and Safety Commission is focused on lifting the standard and quality of health services without the need for additional regulation. There is also an action plan in place for the Ministry to address issues arising from the Russell report¹¹⁰ relating to issues in the quality of care for disabled persons receiving residential care.

¹⁰⁸ <http://www.health.govt.nz/our-work/regulation-health-and-disability-system/certification-health-care-services>

¹⁰⁹ <http://www.health.govt.nz/our-work/regulation-health-and-disability-system/health-practitioners-competence-assurance-act>

¹¹⁰ <http://www.health.govt.nz/publication/review-disability-support-services>

Occupational Regulation

Occupational licensing broadly aims to protect the public from the risks of an occupation being carried out incompetently or recklessly. This might include specifying minimum educational and professional qualifications that people must have in order to work in the occupation, specifying the types of services that a licensed provider can engage in and setting and enforcing codes of conduct.

A policy framework¹¹¹ to guide government agencies and departments involved in regulating occupations or reviewing the way in which occupations are regulated was formally agreed to by the Government in August 1998. The framework identifies the circumstances where occupational regulation is required to achieve protection of the public; defines methods of occupational regulation to fit particular situations; and lists the principles and processes for effective occupational regulation by statute.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury identified concerns with inconsistent approaches, questionable capability and motivation in some regulators, poor accountability and inappropriate standards with the overall effect of restraining trade, especially for migrants.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The large number and wide disparity of regulated occupations, and of regulating organisations, makes this a large and unwieldy proposition for reform. The regime is included as a “watching brief” in the Government’s ongoing Regulatory Review programme.

2013–2014							
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Departmental comment (MBIE)

MBIE is developing a common approach to occupational regulation across areas it is responsible for, and has several regimes currently under active review. It has brought together delivery responsibility for several regimes, with a view to establishing a centre of delivery excellence, and achieving greater consistency and efficiencies in delivery. However, delivering significant change in this area is likely to be a long process.

¹¹¹ <http://www.med.govt.nz/business/better-public-services/regulatory-reform/information-for-policy-makers/policy-framework-for-occupational-regulation>

Employment Standards

This regime was previously entitled “Minimum Wage” but is here expanded to include all regulations¹¹² that specify minimum rights and obligations that apply to employees and employers, including, for example, break and annual leave entitlements as well as minimum pay. MBIE has a Labour Inspectorate whose officers can investigate and take action for breaches of these laws.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury identified uncertainty arising from the “sleepovers” legal case and also noted that the minimum wage, relative to average wages, was high by OECD standards. Concern was also raised over a possible link to high youth unemployment.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012	Amber	Green	Red	Green	Green	Green	Green

The process under which the level of the minimum wage is reviewed has been overhauled and is now more streamlined. It includes an assessment of the likely impacts on economic growth, recognising the balance that needs to be found between protecting the lowest paid and minimising job losses. A starting out wage has been introduced in order to reduce barriers to entry to the labour market for new workers, but it is too early to tell whether it is having the effect intended. These changes are reflected in the improved rating under the “flexible, durable” principle. The improved rating under “growth compatible” reflects the broader range of indicators that assess whether an appropriate weighting is given to economic growth compared to other regulatory objectives.

A preliminary judgment of the High Court relating to the Equal Pay Act 1972 has created uncertainty about how to implement employment standards in relation to pay equity issues, particularly in female-dominated sectors. This is reflected in the amber rating against the “certain, predictable” principle.

The Labour Inspectorate has limited resources, faces significant issues in relation to breaches of employment standards with the Canterbury rebuild and is seeing more systemic and serious breaches generally. It is therefore working to improve its effectiveness, including working with IRD and Immigration to build up intelligence capability and target more effectively. In light of the review of the employment standards framework (discussed below), an amber rating is provided against the “capable regulators” principle.

2013–2014	Green	Green	Amber	Amber	Green	Amber	Green
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¹¹² <http://www.dol.govt.nz/er/minimumrights/index.asp>

Departmental comment (MBIE)

MBIE has also been reviewing the employment standards framework, with a focus on whether the regulatory system and regulator are effective. This will consider whether labour inspectors and others within the regulatory system (including the Employment Relations Authority and the Employment Court) have the functions, powers and resourcing needed to enforce employment standards. It will also consider whether lower-level breaches are handled appropriately (for instance, through advice and education, and MBIE's Contact Centre).

Employment Relations

There is no single set of requirements governing the relationship between employees and employers because every workplace is different. This regime refers to the governance of employers' and unions' duty to act in good faith towards each other at all times under the Employment Relations Act 2000.¹¹³ As well as information about best practice¹¹⁴ available from MBIE, guidance for collective bargaining is set out in a Code of Good Faith in Collective Bargaining, and the Act also places limits on the tactics parties to such negotiations may employ to further their objectives.

Assessment

In the 2011–2012 report the Treasury found the regime relatively fit for purpose but identified concerns with uncertainty and inconsistency arising from provisions specifically for the film industry.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The Employment Relations Amendments Bill,¹¹⁵ currently before Parliament, is intended among other things to rebalance collective bargaining provisions and extend workers' ability to request flexible working arrangements and this may, once established, enable greater stability.

2013–2014							
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¹¹³ <http://www.legislation.govt.nz/act/public/2000/0024/latest/DLM58317.html>

¹¹⁴ <http://www.dol.govt.nz/infozone/collectivebargaining/index.asp>

¹¹⁵ http://www.parliament.nz/en-nz/pb/legislation/bills/00DBHOH_BILL12107_1/employment-relations-amendment-bill

Hazardous Substances

Controls under the Hazardous Substances and New Organisms Act 1986 and associated regulations are intended to prevent or manage the adverse effects of hazardous substances. They cover, for example, packaging and labelling requirements, the use of protective clothing, signage and secondary containment at storage sites. Controls vary according to the hazard classification of substances and type of hazard.¹¹⁶ An online toolbox¹¹⁷ is available for the assistance of employers. The Ministry for the Environment has the lead policy responsibility.

Assessment

In the 2011–2012 report the Treasury identified concerns with a high level of prescription, compliance costs and low compliance levels, overlaps of regulation and enforcement and potential opportunity costs.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

A comparative study¹¹⁸ undertaken for the Ministry for the Environment indicates that compliance costs are not out of line with international practice, suggesting that less costly approaches may not be obvious or readily available; this is reflected in the amended rating under “growth compatible” below. However, compliance¹¹⁹ remains poor owing to problems with implementation and enforcement capability. Changes are being introduced in the context of workplace health and safety reform, including the assignment of responsibility to WorkSafe New Zealand, and this should enable a better targeted and risk-based approach to monitoring and enforcement; but this is yet to take effect. The regime is included as a “watching brief” in the Government’s ongoing Regulatory Review programme.

2013–2014							
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Departmental comment (Ministry for the Environment)

The Ministry worked with MBIE to introduce the Health and Safety Reform Bill early in 2014. Included are tools to enable hazardous substance rules to be more flexible, easily updated to reflect best practice and be better targeted towards user needs. The new rule-making process will, among other things, require engagement with industry and the consideration of compliance costs.

The establishment of WorkSafe New Zealand on 16 December 2013 with greater funding and a stronger mandate should improve compliance rates and enforcement capability. The Environment Protection Agency will also receive more funding in 2014/15 to simplify hazardous substances and new organisms controls.

¹¹⁶ <http://www.epa.govt.nz/hazardous-substances/about/HSNO-controls/Pages/HSNO%20controls.aspx>

¹¹⁷ <http://www.hazardoussubstances.govt.nz/>

¹¹⁸ <http://www.mfe.govt.nz/publications/hazardous/HSNO-indicators.html>

Natural Capital

This group comprises regulations that govern the exploitation, management and protection of natural resources.

Conservation

The majority of responsibilities and roles of the Department of Conservation are set out in the Conservation Act 1987. There is also specific legislation for such things as wildlife, reserves and national parks. Subject to that, the Department works to a range of plans, strategies and agreements that set out goals, actions and strategic directions.¹²⁰

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury did not identify any significant issues.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

In 2013, the Department completed a restructuring exercise that streamlined the Department’s former 11 conservancy districts into six new conservation delivery regions. It also created two teams across the country: one focused on delivering the Department’s recreation, historic and biodiversity field work, and another working to develop new conservation initiatives in partnership with other organisations. The Department also undertook a review of Conservation Boards with a view to better complementing the new structure.

2013–2014							
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119 <http://www.epa.govt.nz/about-us/monitoring/Pages/Monitoring-reports.aspx>

120 <http://www.doc.govt.nz/about-doc/role/legislation/>

Resource Management

The Resource Management Act 1991 (usually called the RMA) seeks to ensure the sustainable management of resources, and encourages communities and individuals to plan for the future of the environment. Particular responsibilities are allocated to regional, city and district councils and unitary authorities under the supervision of the Ministry for the Environment. The Ministry also collaborates with other government agencies to ensure a strategic, integrated and aligned approach to natural resource development and management.¹²¹

In addition, the Environmental Protection Authority (EPA) processes nationally significant proposals,¹²² while the actual decisions are made by a board of inquiry or the Environment Court. The Department of Conservation has a particular role under the RMA to oversee the way the coastal environment is managed, and the Parliamentary Commissioner for the Environment investigates emerging environmental issues and may also examine concerns raised by the public.¹²³ Details about the enforcement of the Act are collected and published every few years.¹²⁴

Assessment

In the 2011–2012 assessment the Treasury identified concerns about the balance between economic and non-economic objectives, and about inefficiency and uncertainty in implementation. Uncertainty can arise from the discretion available to local authorities to decide on their own approaches. While local priorities and preferences legitimately differ from area to area, unclear guidance may mean that differences are not always soundly based.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The Ministry is in the process of developing specific systems for monitoring local authorities' implementation of the RMA with a view to collecting more detailed, nationally consistent and comparable information. In 2009, the Government began a substantial reform of the RMA as part of its Regulatory Review programme. Amendment Acts were passed in 2009 and 2013, which alter various parts of the Act. Further reforms have also been proposed, but the timeframe for enacting further changes is unclear.

The reform has been subject to extensive consultation and focuses on ensuring that decision-making reflects net benefits of resource use, reducing costs and delay and removing complexity. However, it is too soon to assess whether reforms are having this effect and so the assessment remains unchanged in this report.

2013–2014							
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¹²¹ <http://www.mfe.govt.nz/about/natural-resources-sector.html>

¹²² <http://www.epa.govt.nz/Resource-management/about-rm/Pages/default.aspx>

¹²³ <http://www.mfe.govt.nz/publications/rma/everyday/overview/index.html>

¹²⁴ <http://www.mfe.govt.nz/publications/rma/rma-prosecutions-08-12/rma-prosecutions-2008-2012.html>

Minerals

Within MBIE, New Zealand Petroleum and Minerals manages the New Zealand Government's oil, gas, mineral and coal resources, known as the Crown Mineral Estate. Through the Crown Minerals Act 1991, the Minerals Programme and associated regulations they oversee the management of Crown Minerals resources in order to encourage the development of Crown-owned minerals and ensure coordination of regulatory agencies to implement health, safety and environmental standards in exploration and production activities.¹²⁵

Assessment

In the 2011–2012 report the Treasury found the minerals regime to be internationally competitive but noted scope for improvement in the review that was then underway.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

A new Crown Minerals Act/Royalty regime and permit system came into force in May 2013, streamlining and simplifying the regime with a view to enabling a more flexible and robust response to future developments. Implementation is supported by an education programme for staff and clients and new information and communications technology tools.

2013–2014							
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In response to the Productivity Commission's inquiry into the design and implementation of regulatory regimes, some stakeholders¹²⁶ perceived a progressive blurring of the boundary between the Crown Minerals regime and the health and safety regime (targeted at the prevention of harm to all persons at work) and thought this likely to contribute to the creation of a confusing and overlapping patchwork of regulatory requirement that will ultimately prove counterproductive. This indicates a continued need for open and transparent communications between regulators and with industry.

¹²⁵ <http://www.nzpam.govt.nz/cms/minerals>

¹²⁶ <http://www.productivity.govt.nz/sites/default/files/Sub%20019%20-%20BusinessNZ%20PDF%20-%20474Kb.pdf>

Petroleum

Since 2009, the Government has delivered the Petroleum Action Plan¹²⁷ to ensure New Zealand is able to maximise the gains from safe and environmentally responsible development of these Crown-owned resources for the benefit of all New Zealanders. A key focus of the Government’s work programme been the strengthening of the regulatory regime governing petroleum development, to ensure New Zealand has a robust regime based on international best practice. The regime is administered within MBIE by New Zealand Petroleum and Minerals.

Assessment

In the 2011–2012 report the Treasury found the regime internationally competitive but saw scope for improvements in clarity and permit allocation.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

Since then a new permit allocation system has been introduced and processes have been streamlined and simplified in order both to encourage development and better coordinate health, safety and environmental standards. The establishment of tier 1 and tier 2 activities enables a focus on areas of most risk for health and safety and environmental purposes and a less onerous process for smaller-scale activity. However, three separate official bodies have responsibility for the management of catastrophic risk in the petroleum industry and this indicates an ongoing need for effective coordination.

2013–2014							
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¹²⁷ <http://www.med.govt.nz/sectors-industries/natural-resources/oil-and-gas/petroleum-action-plan>

Forestry

The Ministry for Primary Industries administers the Government’s interests in commercial forestry through the Crown Forestry unit, representing forestry leases on Māori land, residual Crown forest assets and a portfolio of Forestry Encouragement Loans. The Forest Act 1949 requires permits for cutting down indigenous forests on private land and bans the export of certain woods in order to encourage domestic rather than overseas processing.¹²⁸

The sector is also governed by regulation on health and safety, biosecurity and climate change which are covered separately.

Assessment

In the 2011–2012 report this regime was assessed as follows.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

Scope was identified for minor indigenous forestry provisions to be more permissive. Since then there has been a shift away from regulations and towards the provision of grants on a contractual basis so as to streamline and improve the cumbersome grant process which had been hindering the maximum uptake of grants. This is reflected in the improved rating under “flexible, durable”. Nevertheless, the Forests Act is seen as administratively cumbersome both for regulator and regulated industry and does not appear to be achieving its objective of encouraging domestic processing. This may be inhibiting economic growth in the indigenous forestry sector.

Concern about certainty and predictability reflects comments in response to the Productivity Commission’s inquiry into the design and implementation of regulatory regimes, where one stakeholder expressed concern that “sustainable management” of forestry operations is interpreted differently by different regulators.

2013–2014							
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Departmental comment (Ministry for Primary Industries)

The Ministry for Primary Industries believes there is significant potential for improvement and intends a full review of this regime. The East Coast Forestry project¹²⁹ and the Permanent Forest Sink Initiative¹³⁰ are already under active review.

¹²⁸ <http://www.mpi.govt.nz/forestry>

¹²⁹ <http://www.mpi.govt.nz/environment-natural-resources/funding-programmes/east-coast-forestry-project>

¹³⁰ <http://www.mpi.govt.nz/forestry/funding-programmes/permanent-forest-sink-initiative>

Biosecurity

The protection of New Zealand’s economy, environment and people’s health and social and cultural wellbeing from pests and diseases, includes both preventing new pests and diseases from arriving, and eradicating or controlling those already present. The Ministry for Primary Industries is tasked by the Government with a “whole of system” leadership role, encompassing economic, social, cultural, health and environmental outcomes.

Biosecurity outcomes are jointly agreed by the Ministry for Primary Industries, the Ministry of Health, Department of Conservation and Te Puni Kōkiri, which are the leading government agencies responsible for biosecurity.¹³¹ Biosecurity regulation is fundamentally important to economic growth, as it both protects the health of our primary production systems and provides the basis for assuring trading partners that our primary product exports are free of pests and diseases.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted that the then Biosecurity Reform Bill sought a balance between protection and enabling trade, streamlining processes and information sharing.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The Biosecurity Law Reform Act 2012 has enhanced the regulatory framework by enabling the Ministry for Primary Industries to better target resources to risks. In particular, Government Industry Agreements will allow the Ministry to engage industries in identifying the biosecurity risks of greatest concern to them, and to jointly invest with industries in preparing for and responding to those risks. Getting these agreements operational may enable an improved rating in future assessments.

2013–2014							
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¹³¹ <http://www.biosecurity.govt.nz/biosec/sys/strategy/biostrategy>

New Organisms

The main law regulating new and genetically modified organisms in New Zealand is the Hazardous Substances and New Organisms Act 1996, which sets the general framework for managing risks from such organisms¹³². The Ministry for the Environment is responsible for policy oversight with the Environmental Protection Authority (EPA) being responsible for administration. Other laws, administered by the Ministry for Primary Industries, may also apply; notably, the Biosecurity Act 1993 and the Food Act 1981.¹³³

Assessment

In the 2011 – 2012 report the Treasury identified concerns with the prescriptive and high cost nature of the regime, opportunity costs and potential impact on New Zealand's competitiveness and innovation.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The rating remains unchanged as the regime has not undergone any reform since the last assessment. A study¹³⁴ undertaken for the Ministry for the Environment suggests that market and economic factors have as large an impact on business decisions to use new organisms as the regulatory regime, indicating that a more growth compatible regime might not improve growth.

2013–2014							
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The EPA Board delegates decision making on new organisms to a specialist decision-making committee that is required by the HSNO Act to have expertise in the subject matter of the application(s) before them. Decisions to approve or decline new organism applications are guided by the HSNO Act that sets the information requirements and the need for caution in managing adverse effects where there is scientific and technical uncertainty about those effects. However, Treasury's assessment is that as the committee covers a range of technical areas across both hazardous substances and new organisms, there is potential for limited expertise on the specific applications to lead to risk averse decision making. The EPA believes that in practice there is limited evidence to support this view, particularly in light of a recent Court decision which suggested that the EPA should have been more cautionary in its interpretation of the regulations. While no applications for GMOs have been declined in the past 12 years, stakeholders have commented that the risk averse nature of the legislation and/or the regulator is discouraging applications from being lodged.

¹³² <http://www.epa.govt.nz/new-organisms/Pages/default.aspx>

¹³³ <http://www.mfe.govt.nz/issues/managing-environmental-risks/organisms/regulation/nz-laws.html>

¹³⁴ <http://www.mfe.govt.nz/publications/organisms/factors-influencing-decisions-to-innovate-with-new-organisms.html>

Departmental comment (Ministry for the Environment)

Although not reflected in the above criteria, the Ministry considers that the regime is effective in managing risks associated with the introduction and management of new organisms. However, it considers that there are opportunities to improve the efficiency of the regime.

Air

National Environmental Standards for Air Quality (NES) under the Resource Management Act 1991 set threshold concentrations for certain air pollutants including particulate matter less than 10 microns in diameter (PM₁₀). They are intended to help protect public health whilst providing equitable compliance costs.¹³⁵ The Ministry for the Environment is responsible for policy oversight while EPA is responsible for administration.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted that changes in 2011 to the NES were aimed at reducing the imbalance where business bore a disproportionate share of the cost of improving air quality.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

There has been no further reform to the regime since the last assessment.

2013–2014							
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¹³⁵ <http://www.mfe.govt.nz/laws/standards/air-quality/index.html>

Climate Change

The Government’s principal policy response to climate change is the New Zealand Emissions Trading Scheme (ETS). The ETS introduces a price on greenhouse gas emissions to provide an incentive for people to reduce those emissions and plant forests to absorb carbon dioxide.¹³⁶ As well as the Ministry for the Environment, a number of other agencies are also undertaking a range of measures contributing to reducing New Zealand’s greenhouse gas emissions.¹³⁷

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury noted that changes to the regime were expected further to a review of the ETS and also the context of international uncertainty.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

The review of 2012 retained costs on emitters at previous levels and maintained the exclusion of agriculture from the ETS, but uncertainty remains around how activity in New Zealand fits into whatever internationally agreed framework may emerge.

2013–2014							
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¹³⁶ <http://www.mfe.govt.nz/issues/climate/policies-initiatives/>

¹³⁷ <http://www.climatechange.govt.nz/reducing-our-emissions/who-does-what.html>

Energy Efficiency

The Energy Efficiency and Conservation Authority (EECA) is a Crown entity, established under the Energy Efficiency and Conservation Act 2000. It promotes energy efficiency, energy conservation and the use of energy from renewable sources. In partnership with the private sector, community groups, industry associations and central and local government, it provides people in business and at home with the information, tools and support they need to make knowledgeable decisions about their energy use. The current New Zealand Energy Strategy and New Zealand Energy Efficiency and Conservation Strategy¹³⁸ were released on 30 August 2011. MBIE is responsible for policy oversight.

Assessment

No significant issues were identified in the 2011–2012 assessment.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

A set of energy efficiency performance standards has been developed and implemented jointly with Australia so as to facilitate trade. An analysis by Motu found that the Insulation Fund was effectively delivering energy saving and warmer homes.¹³⁹

2013–2014							
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In response to the Productivity Commission’s inquiry into the design and implementation of regulatory regimes, some business users expressed concern about the requirement for them to fund EECA through a levy when they already have clear commercial incentives to use energy efficiently anyway. This is reflected in the revised assessment under “proportional” above.

Departmental comment (MBIE)

The use of an electricity levy to recover the costs of promoting electricity efficiency was, at its introduction, considered to be consistent with Treasury guidelines. The main beneficiaries of energy efficiency measures were, and still are, deemed to be electricity consumers, as a result of the impact of energy efficiency on electricity prices (based on an assumption of rising forward prices). The portion of EECA’s budget to be recovered by levy is determined each year by the Minister of Energy and Resources, as part of the Budget process.

¹³⁸ <http://www.eeca.govt.nz/node/13339>

¹³⁹ http://www.motu.org.nz/files/docs/NZIF_Energy_report_Final.pdf

Water

Water and wastewater are governed by regional and unitary councils under the Resource Management Act 1991 (RMA), the Local Government Act 2002 and the Health Act 1956. Under the RMA, councils are responsible for making decisions on the allocation and use of water within their boundaries and for managing water quality. Central government can guide and direct regional councils under the RMA using tools such as national policy statements and national environmental standards.¹⁴⁰ The Ministry for the Environment has oversight for the national component, while retaining specific support and monitoring roles for decisions made by councils at the local level.

Assessment

The previous Best Practice Regulation report identified a need for greater central government direction, the setting of limits to manage both quality and quantity and improved Māori involvement in freshwater management.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012	Orange	Green	Green	Orange	Green	Orange	Green

This is a complex area involving stakeholders with widely differing interests. The National State of Infrastructure report “Infrastructure 2013”¹⁴¹ noted that the regulatory environment contributes to increased cost and uncertainty for long-term infrastructure projects, citing regulation on water use in particular.

The Government is proposing to reform RMA associated regulatory instruments, such as the National Policy Statement for Freshwater Management 2011 (NPS-FM). Along with other non-regulatory initiatives, this is intended to support the creation of a water management system that allows for more transparent, better targeted and informed decisions, enabling more certainty for businesses and water users.¹⁴² The effect of these reforms will be evaluated over time which may lead to an improved rating in future assessments.

2013–2014	Orange	Green	Green	Orange	Green	Orange	Green
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Departmental comment (Ministry for the Environment)

The foundation elements of the freshwater reforms developed in 2013 (collaborative planning processes, National Objectives Framework and associated changes to the National Policy Statement, and freshwater accounting) target the matters identified in the previous Best Practice Regulation assessment, and are likely to improve durability, certainty and regulatory capability. While the reforms are expected to improve the various regimes, and ultimately the aggregate assessment at the local level, this will take considerable time to become evident as plans are developed through to the 2025 deadline in the amended NPS-FM, and implemented through consenting and user actions.

¹⁴⁰ <http://www.mfe.govt.nz/issues/water/>

¹⁴¹ <http://www.infrastructure.govt.nz/plan/2011implementation/2013report>

Fisheries

The Fisheries Act 1996 provides the legislative basis for the Quota Management System (QMS) in New Zealand. The QMS provides commercial fishers with secure, transferable harvesting rights and helps achieve the sustainable management of New Zealand fisheries. The Fisheries Act 1996 is intended to be growth-supporting balanced with sustainability and so takes economic considerations by allocating resource to highest value use. Controls on commercial, recreational and customary fishing may include size, methods, area to achieve sustainable biomass and manage impacts of fishing (eg, reduce by-catch such as marine mammals, seabirds). There are also a number of regulations, both pre-QMS and post-QMS, that set out management controls for commercial, recreational and customary fishing activities.¹⁴³ The regime is administered by the Ministry for Primary Industries.

Assessment

In the 2011–2012 report this regime was assessed as follows. The Treasury found the QMS to be a sound regulatory approach, but was concerned that pre-QMS legislation might be creating rigidities and costs with unclear benefits.

Principle	Growth supporting/ compatible	Proportional	Flexible, durable	Certain, predictable	Transparent	Capable regulators	Other
2011–2012							

In response to the Government’s Better and Less Regulation initiative, the Ministry of Fisheries scanned a large number of regulations in the period of 2009 to 2011. Following this, a number of regulations were revoked, amended and consolidated as required. All the Fisheries Plans – inshore, deepwater, highly migratory and fresh water – are now in place. These have been developed in collaboration with relevant stakeholders. These plans set objectives and action points for managing fisheries while minimising the adverse impact of fishing. There are a number of operational standards and policies, both regulatory and voluntary, in place. In addition, the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014¹⁴⁴ is intended to support the growth of the New Zealand commercial fishing industry and the sustainable management of New Zealand fisheries.

In October 2013, the Ministry for Primary Industries released its 2013 summaries¹⁴⁵ of the Status of New Zealand’s Fisheries, confirming that most New Zealand fisheries are performing well.

2013–2014							
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¹⁴² <http://www.mfe.govt.nz/publications/water/freshwater-reform-2013/>

¹⁴³ <http://www.mpi.govt.nz/fisheries>

¹⁴⁴ http://www.parliament.nz/en-nz/pb/legislation/bills/00DBHOH_BILL11820_1/fisheries-foreign-charter-vessels-and-other-matters-amendment

¹⁴⁵ <http://fs.fish.govt.nz/Page.aspx?pk=113&dk=23424>

Departmental comment (Ministry for Primary Industries)

Currently, the Ministry for Primary Industries is consolidating a number of area-based recreational and commercial fishing regulations into one set of national regulations for each category. This will remove duplications and inconsistencies. The Ministry also reviews its fisheries regulations when issues and/or opportunities arise and addresses them as part of its annual regulatory plan.

Annex A: Principles of Best Practice Regulation

The Best Practice Regulation principles were originally developed in response to a request from the Minister of Finance and then Minister for Regulatory Reform in late 2010. The Minister of Finance challenged the Treasury to answer three questions:

- What is a best practice regulation?
- How close are we to the frontier?
- What can we do to get closer?

The principles were drawn from our experience and cross-checked against OECD, Asia-Pacific Economic Cooperation (APEC) and World Bank principles, comparable jurisdictions such as the UK, Australia and the US, and earlier New Zealand principles (in particular the Code of Good Regulatory Practice endorsed by Cabinet in 1997). They were published in August 2011¹⁴⁶ and subsequently endorsed by Ministers.¹⁴⁷

Table 8 and Table 9 below set out the principles as they now stand, along with illustrations of the kinds of indicators that might signal potential cause for concern in a regime. They have been slightly amended in view of emerging Treasury thinking.

In line with the Living Standards thinking, the principle previously entitled “growth supporting” has been retitled “growth compatible” and the indicators expanded to include reference to other aspects of living standards. Much regulation does not have economic growth as its primary objective; as discussed earlier, regulation may instead be focused primarily on managing risks, increasing equity, improving the quality of social institutions or the sustainable management of resources. The concern in this principle is that regulation should give the *appropriate* weighting to economic growth; that is, it should seek to achieve objectives in the least growth-distorting way and so not *unnecessarily and unintentionally* restrict economic growth in a way that is not justified by the primary objective.

146 Peter Mumford (2011), Best Practice Regulation: Setting Targets and Detecting Vulnerabilities, in *Policy Quarterly* vol 7 issue 3 (August 2011).

147 <http://www.beehive.govt.nz/release/better-economic-performance-through-better-regulation>

Table 8: Attributes and indicators of best practice regulation

Attribute	Principle	Indicators
Growth compatible	Economic objectives are given an appropriate weighting relative to other specified objectives, including other factors contributing to higher living standards	<p>Identifying and justifying trade-offs between economic and other objectives – for example, the pursuit of other dimensions of living standards – is an explicit part of decision-making</p> <p>The need for firms to make long-term investment decisions is taken into account in regulatory regimes where appropriate</p> <p>Open and competitive domestic and international markets including minimising barriers to, and maximising net benefit from, cross-border flows are explicit objectives</p>
Proportional	The burden of rules and their enforcement should be proportional to the benefits that are expected to result	<p>A risk-based, cost-benefit framework is in place for both rule-making and enforcement</p> <p>There is an empirical foundation to regulatory judgements</p>
Flexible, durable	Regulated entities have scope to adopt least cost and innovative approaches to meeting legal obligations. The regulatory system has the capacity to evolve in response to changing circumstances	<p>The underlying regulatory approach is principles or performance-based, and policies and procedures are in place to ensure that it is administered flexibly</p> <p>Non-regulatory measures, including self-regulation, are used wherever possible</p> <p>Feedback systems are in place to assess how the law is working in practice including well-developed performance measurement and clear reporting</p> <p>The regulatory regime is up to date with technological and market change, and evolving societal expectations</p>
Certain, predictable	Regulated entities have certainty as to their legal obligations, and the regulatory regime provides predictability over time	<p>Safe harbours are available and/or regulated entities have access to authoritative advice</p> <p>Decision-making criteria are clear and provide certainty of process</p> <p>There is consistency between multiple regimes impacting on single regulated entities where appropriate</p>
Transparent, accountable	Rules development, implementation and enforcement should be transparent	Regulators must be able to justify decisions and be subject to public scrutiny
Capable regulators	The regulator has the people and systems necessary to operate an efficient and effective regulatory regime	<p>Capacity assessments are undertaken at regular intervals and subject to independent input and/or review</p> <p>Implementation of the regime is efficiently achieving its objectives, with compliance and enforcement practices that reflect the capability and incentives of regulated parties</p>

Table 9: Indicators of concern

	Strong indications of material concern (complete absence of indicators)	Possible areas of material concern (little evidence of indicators)
Growth compatible	Clear and significant barrier to improvement in living standards Clear and significant barrier to investment, innovation, exports, productivity growth, competitiveness, or imposes significant opportunity costs, not justified by other policy objectives	Economic underperformance (eg, low productivity, little competition) in this area not obviously explained by exogenous factors
Proportional	Benefits grossly outweighed by administrative and compliance costs; risk not taken into consideration	Cost-benefit uncertain or marginal; inconsistent or patchy coverage; excessive risk aversion
Flexible, durable	Means of achieving required ends are highly prescriptive and mandated in primary legislation; no evaluation-feedback process in place	Technically capable of being updated by secondary or tertiary legislation, but no systematic review process to ensure that this capability is used
Certain, predictable	Overall objective not clear; regulated entities have no means of being sure to comply; inconsistent rulings not explained; inconsistency/conflict with analogous regimes; performance requirements not supported by adequate guidance; compliance not consistently monitored or enforced	Regime under review or under political or international pressure; new regime with little track record; knowledge of other material (eg, case law) required to ensure compliance
Transparent, accountable	No appeals process; no public scrutiny or accountability; regulatory decisions not explained or supported with evidence; no consultation around rule changes	Appeals process costly and complex; stakeholder feedback possible, but not systematically and consistently sought
Capable regulators	Regulator(s) facing conflicting or unclear objectives; lacking the necessary resource, enforcement tools, discretion and/or expertise to implement the regime	One of the “strong indications of material concern”

The assessments also include space for “Other” to enable recording of concerns that did not clearly fit into any of the specified principles. A green rating does not mean a regime is optimal under this criterion, but rather that there are no indicators of significant concerns with it.

Assessment against these criteria does not in itself directly address the question of whether a regulatory regime is or is not achieving its objectives. That is the purpose of regime-specific monitoring and evaluation undertaken by departments. Nor does the assessment consider whether the objectives themselves are worthwhile and desirable, which is a matter for political and public debate.

The principles do, however, reflect that once a given objective has been adopted, it can be approached in different ways, some better than others. They propose also that objectives are more likely to be met through regulation that has these characteristics than where these characteristics are lacking.

This assessment is therefore intended to enable a high-level check of a broad spectrum of regulatory regimes and provide an alert to where there are or may be material issues that require further analysis. If an assessment against these principles suggested that there might be a reason for concern, then a further review specific to the regime in question would need to be considered.

Annex B: Regulatory Regimes

For the purpose of undertaking these assessments, the Treasury categorises regulatory instruments into “regimes” focused on a common outcome, activity or sector. This reduced the assessments to a manageable number and made more sense than assessing thousands of statutes and regulations individually.

What is a Regime?

The term “regime” here is used in the sense of “a system or ordered way of doing things”. The regimes assessed here may be labelled by reference to:

- legislation (eg, “Commerce Act 1986”)
- a policy objective (“Transport Safety”)
- the activity (“Radiocommunications”), object (“Hazardous Substances”) or entity (“Local Government”) that is to be administered, or
- the entity that does the administering (“ACC”).

However, none of these factors on its own constitutes a “regime”. That has been defined as encompassing “standard setting (identifying the regulatory goal or target), monitoring compliance with the regulatory standard, and enforcement where there is non-compliance”¹⁴⁸ any of which may be formalised in legislation (primary or otherwise).

Many activities and regulated entities are subject to the requirements of several different regimes. This report seeks to keep regimes separate so as to better focus on individual regime-specific issues. We acknowledge that this means the potential for incoherence – when individual entities find themselves required to do inconsistent or duplicative things by different regimes – is not systematically explored in this format.

One example of this is in the area of local government, where several different regimes are brought together. The Department of Internal Affairs is establishing a new role focused specifically on bringing about greater coordination across government on advice in this area. Another concerns the supply of land for residential housing, where the Productivity Commission,¹⁴⁹ in its 2012 report “Housing Affordability”, noted the cost, complexity and uncertainty arising from the interaction between the Local Government Act 2002, the Resource Management Act 1991 and the Land Transport Management Act 2003. The Housing Accords and Special Housing Areas Act 2013 subsequently introduced another component into this mix.

As well as separating regimes that are in practice operated as one, an approach based on regimes can also involve bringing diverse regulations together. For example, the “Public Health” regime includes sewerage, epidemics and compulsion under the Mental Health Act 1992. Particularly in such cases, the assessments are necessarily quite high level, and so

¹⁴⁸ Hood, C., Rothstein, H., & Baldwin, R. (2001) *The government of risk: Understanding risk regulation regimes*. Oxford, United Kingdom: Oxford University Press.

¹⁴⁹ <http://www.productivity.govt.nz/inquiry-content/1509?stage=4>

indicators of concern might be more relevant to some aspects of the regimes than others. This is set out in the individual assessments where appropriate.

Regimes under Consideration

The scope of individual regimes is briefly set out in the regime-specific pages in Section 3. Some adjustments to the previous categorisation have been made, notably:

- The regime entitled “Local Government” previously considered issues of variable practice in the administration of a variety of central government regulations **by** local government, and so risked duplication with the assessment of other regulatory regimes where local government plays a part, such as resource management, building standards and food safety. This report focuses instead on the regulation **of** local government.
- The regime entitled “Minimum Wage” has been expanded to cover other standard-setting regulation in employment and is now called “Employment Standards”.
- The regime previously entitled “Securities Law” has been retitled “Financial Market Regulation”.
- The regime previously entitled “Machinery of Government” has been retitled “Public Administration System”.
- Two regimes previously covered separately, “Food Regulation (Export)” and “Food Regulation (Domestic)”, are now covered as a single “Food Regulation” regime, on the basis that the regulation of food for export is identical in substance to that of food for domestic consumption.

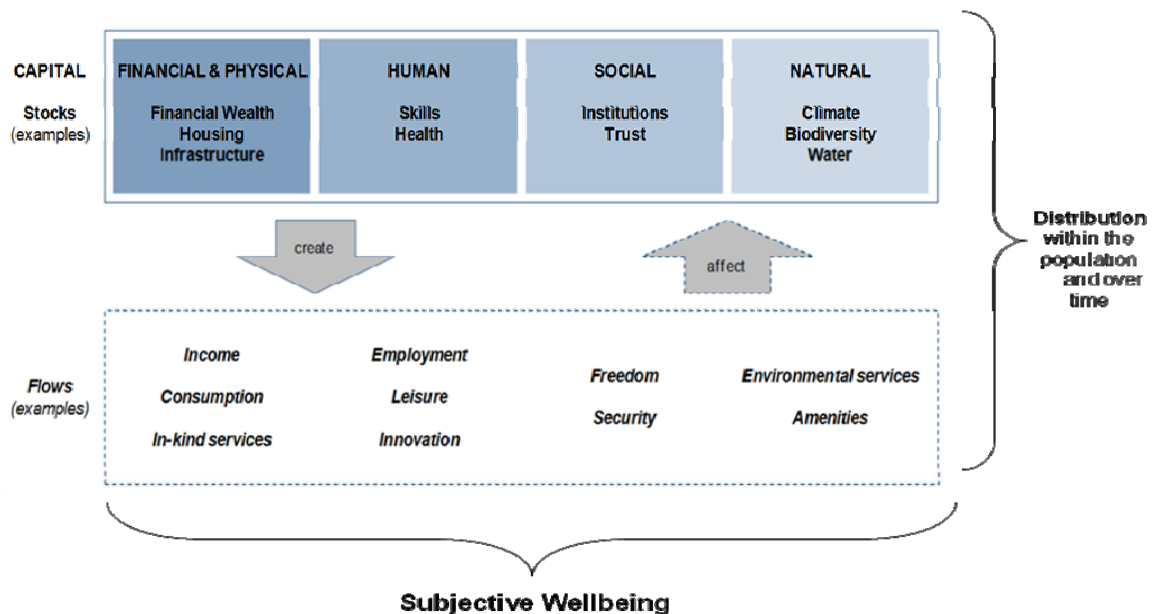
No new regimes have been included in this report, but there may in future be a case for expanding the list. For example, the Government is in the process of setting up a regulatory regime for the governance of the Exclusive Economic Zone and this may be a candidate for inclusion in future reports.

Four of the regimes covered here – Resource Management, Local Government, Primary and Secondary Education (under the title “Teacher Workforce”) and Workplace Health and Safety – are currently, or have been, the subject of more in-depth consideration under the Government’s ongoing Regulatory Review programme. Findings and developments resulting from this process are briefly summarised on the regime-specific pages in Section 3 and references to further information are included where appropriate.

Typology

The Treasury’s paper “Working Towards Higher Living Standards for New Zealanders”¹⁵⁰ described four types of capital that are integral to current and future living standards. Definitions for each type of capital are provided in Section 2 above.

Figure 2: The Treasury’s Living Standards Framework



As discussed earlier, regulation is one of the means by which Government may seek to build up the stocks and influence the flows of these different types of capital. This report accordingly groups regulatory regimes by reference to these capitals. In many cases a regime has relevance to more than one “capital” and so a judgement has to be made about which is the primary objective. We are interested in views as to whether this approach has the potential to be of interest and in other possible ways of grouping regimes for this kind of purpose.

¹⁵⁰ <http://www.treasury.govt.nz/publications/research-policy/tp/higherlivingstandards>

Annex C: Assessment Approach

As noted earlier, a “regime” is more than just legislation. As such, these assessments aim to consider both the Acts and regulations themselves, and how they are implemented in practice. Thus, for example, in considering the “growth compatible” indicators, the assessments would look at both the extent to which the regulatory regime as reflected in the Act and regulations takes economic objectives into account, and the extent to which the regulator in applying the regime does so.

Further, this assessment does not start from a zero base. Broadly, the approach has been to start from the baseline set by the 2011–2012 report and change assessments only where there has been a clear change in fact, such as legal or administrative reform. The aim is to seek to avoid changing assessments simply on the basis that different assessors take different views of what is basically the same information.

The assessments outline the Treasury’s view of regime performance compared to the BPR principles and are primarily based on discussion with departments about their experience with the regimes that they administer. Stakeholder views have not been sought directly in this context but departmental input is expected to be informed by interaction with stakeholders. Further, the Treasury has drawn on other external evidence – such as our own contact with stakeholders in other contexts, Statistics New Zealand’s Business Operations Survey¹⁵¹ and stakeholder responses to the Productivity Commission’s inquiry into the design and implementation of regulatory regimes¹⁵² – to inform discussion and challenge departmental analysis as appropriate.

The following points are relevant in interpreting the assessments:

- Assessments cover regulation only, and not other ways in which Government seeks to achieve policy objectives such as tax, spending and information; for example, administration of the tax regime but not the level at which taxes are set.
- A high materiality threshold has been applied in identifying areas of concern. A green rating does not mean that a regime is optimal, but rather that there are no immediate indicators of significant concerns with it.
- The assessments reflect a snapshot of information available on regimes at a point in time, so may change quite quickly as new information comes to hand.
- Assessments are necessarily subjective, making it difficult to achieve standardisation in assessments.
- The principles are not absolutes; the extent to which any of them is important to the effectiveness of the regime, how they are to be reflected in practice and how they are to balance with each other and with other regulatory objectives, depends on the specific circumstances of the individual regime.

¹⁵¹ http://www.stats.govt.nz/browse_for_stats/businesses/business_growth_and_innovation/BusinessOperationsSurvey_HOTP2012.aspx

¹⁵² <http://www.productivity.govt.nz/inquiry-content/1788?stage=2>