




Building Effective Regulatory Institutions and Practices

Contents

Contents	i
Why we have a regulatory management strategy	1
Foundations of the Government’s regulatory management strategy	2
Productivity Commission report on Regulatory Institutions and Practices (July 2014) ..	2
Regulatory stewardship.....	2
Key oversight roles in regulatory management	3
The Regulatory Reform portfolio	3
Government agencies with relevant oversight roles	3
Updated government expectations for good regulatory practice	4
Government expectations for good regulatory practice	4
Key stages in a simple regulatory cycle	5
Current System Tools	6
System Development: Next steps to 2018 and beyond	7



The New Zealand Government's regulatory management strategy is about **building an effective and durable set of policies, tools, practices and capabilities for the design, delivery and maintenance of high quality regulation.**

This strategy document provides

- an overview of the current regulatory management system, roles and responsibilities, and
- how the government intends to develop the system to 2018 and beyond.

Progress on implementing the strategy should be reviewed in 2018 to confirm the next steps needed to further advance the strategy.

April 2017

Further information: www.treasury.govt.nz/regulation
Send feedback or questions to: regulation@treasury.govt.nz

Why we have a regulatory management strategy



Quality policy advice is the foundation of effective government decision-making, because the laws and regulations made by Parliament and the Government have a profound effect on the performance of our economy and the well-being of all New Zealanders.

As a nation, we have a well-established reputation for our fiscal management and reporting disciplines. This is the result of considerable government investment in good financial governance and reporting systems over a long period of time.

The long term challenge we face is to build that same level of discipline around government regulation. Our success in this area will help us build a more competitive and productive economy.

We have some way to go. While we rate well in comparative international surveys of regulatory quality, there have been some high-profile and costly regulatory failures and many regulators say they work with legislation that is outdated or no longer fit-for-purpose. In particular, our current regulatory management disciplines do not give enough attention to monitoring, reviewing and reporting on the health and performance of the existing stock of regulation.

Rapid societal, market and technological changes and innovations are increasing the demand for more sophisticated and nimble regulatory solutions, strategies and regulators. Poor or inflexible regulatory choices can inhibit or distort competition, investment and innovation and can add substantial costs to the economy, which are ultimately borne by the consumer.

We recognise that the design, delivery and maintenance of high quality regulation requires a lot of skill, care and co-ordination involving many different people across government. It is therefore a whole-of-government responsibility that needs to be supported and led from the centre of government.

The government's regulatory management strategy points the way forward. The ultimate goal remains: where regulation is utilised, the result **must** be a net benefit for society.

A handwritten signature in black ink that reads "Paul Goldsmith". The signature is fluid and cursive.

*Hon Paul Goldsmith
Minister for Regulatory Reform*

Foundations of the Government's regulatory management strategy

With some significant regulatory failures highlighting the risks of a “set and forget” approach, in 2013 the Government:

- asked the New Zealand Productivity Commission to investigate how to improve the design and operation of new and existing regulatory regimes; and
- set some “initial” expectations for departments to exercise more active “regulatory stewardship”.

Productivity Commission report on Regulatory Institutions and Practices (July 2014)

The Commission's recommendations for system improvement had four main themes:

- Stronger ownership and leadership from the centre
- Greater focus on improving the quality of legislation
- Greater professionalisation of the regulatory workforce
- Better evaluation practices with feedback loops to design.

The Government responded to the report in July 2015, acknowledging the need to do more to improve and update the stock of regulation, and signalled a comprehensive work programme to address the issues that were highlighted.

www.treasury.govt.nz/regulation/nzpcresponse/response-nzpc-jul15.pdf

Regulatory stewardship

Regulatory stewardship sees regulation as an asset that needs ongoing care and maintenance to deliver effectively over time. It asks government agencies to adopt a whole-of-system view, and a proactive, collaborative approach to the monitoring and care of any regulatory system in which they hold a policy or operational role.

The initial expectations for regulatory stewardship set in 2013 dealt mainly with monitoring and review of existing regulatory systems, and the provision of analysis and advice on regulatory changes.

The regulatory stewardship message was also backed by a 2013 amendment to section 32 of the State Sector Act 1988. This has added stewardship of the legislation administered by a department to the list of a departmental chief executive's principal responsibilities.

www.treasury.govt.nz/regulation/stewardship

Key oversight roles in regulatory management

The Regulatory Reform portfolio

The **Minister for Regulatory Reform** has prime responsibility for promoting and maintaining the Government's regulatory management system. This is the key function of the regulatory reform portfolio.

The Treasury and Ministry for Business, Innovation and Employment (MBIE) provide administrative support for this Ministerial portfolio.

The portfolio is also supported by a **Parliamentary Under-Secretary**. Responsibilities delegated by the Minister to the Parliamentary Under-Secretary include (as at March 2017):

- Identifying superfluous and redundant legislation for repeal.
- Oversight of the implementation of the Government response to the Productivity Commission's report on regulatory institutions and practices.
- Providing advice to the Minister on the capability and performance of regulators, and working with regulatory practice leaders on how to lift the performance of regulators
- Providing advice to the Minister on how to improve the quality of Regulatory Impact Statements.

Government agencies with relevant oversight roles

The **Treasury**, through its Regulatory Quality Team, is responsible for strategic co-ordination of the regulatory management system. This includes oversight of the performance of the system as a whole, and making recommendations for changes to relevant elements of the system. The Team also provides independent QA assessments to Cabinet on Regulatory Impact Statements for significant regulatory proposals, and RIA training to departments.

The **Ministry of Business, Innovation and Employment** assesses and develops strategies to address the impact of regulation on business, and helps promote international regulatory coherence. It provides leadership and support for: the G-Reg initiative; the Government's Business Growth Agenda; and the Better Public Services' Result 9: Better for Business. It also shares responsibility with the Treasury for representing New Zealand at APEC and OECD regulatory policy fora.

The **Parliamentary Counsel Office** advises on the coherence and accessibility of New Zealand's law, which builds on its legislation drafting and publication duties. It also provides secretariat support for the advice, engagement, and guideline maintenance work of the Legislation Design and Advisory Committee (LDAC).

Updated government expectations for good regulatory practice

Government expectations for good regulatory practice

The initial expectations for regulatory stewardship set by the Government in 2013 have now been updated and extended. Two earlier government statements that also addressed good regulation or good regulatory practices – namely the 1997 Code of Good Regulatory Practice, and the 2009 Government Statement on Regulation – have now been retired, with key elements from those statements incorporated into the updated expectations.

The updated set of government expectations has two main parts:

Part A sets out the Government’s **expectations for the design of regulatory systems**, identifying the features that a good regulatory system should have.

Part B sets out the Government’s **expectations for regulatory stewardship** by government agencies, identifying the actions that regulatory agencies should take to discharge their regulatory stewardship obligations. This is divided into three sections covering:

- monitoring, review and reporting on existing regulatory systems;
- robust analysis and implementation support for changes to regulatory systems; and
- good regulator practice.

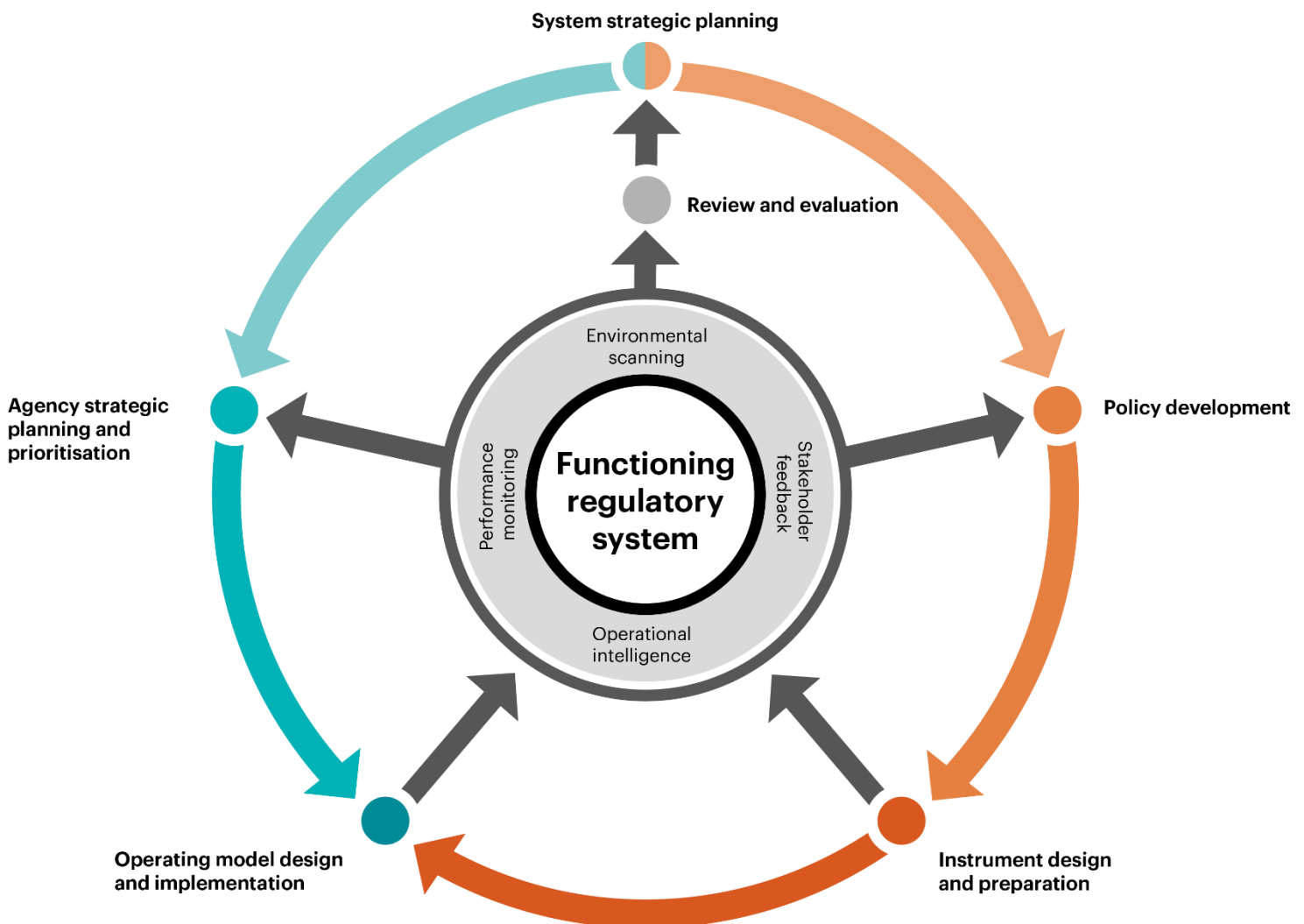
The updated expectations extend the scope of the 2013 expectations to more clearly include regulatory implementation and practice. This makes them relevant to a wider range of government regulatory agencies, including Crown entity regulators.

The expectations, and regulatory stewardship in particular, lie at the core of the Government’s regulatory management strategy. The Government therefore expects that all government regulatory agencies will have regard to, and give appropriate effect to, the principles and responsibilities set out in the expectations within the bounds of their mandates.

The full set of government expectations for good regulatory practice can be found at: www.treasury.govt.nz/regulation/expectations

Key stages in a simple regulatory cycle

A regulatory system is a set of **rules, norms and sanctions**, supported by the actions and practices of designated agencies, **to shape people's behaviour** in pursuit of a broad policy goal or outcome. The regulatory cycle indicates how that system changes and evolves.



Current System Tools

Stage	Current System Tools	Purpose and Function
System strategic planning	<p>Departmental regulatory stewardship strategies including assessments and plans for their regulatory systems</p> <p>(First published by 6 major regulatory departments in 2016)</p>	<p>Published strategies cover the department's approach to regulatory stewardship, the condition of their important regulatory systems, and plans for improving those systems in the year ahead.</p> <p>These are intended to encourage a department to focus on its stewardship obligations, and allow stakeholders to provide feedback on the department's assessment, priorities and plans.</p> <p>www.treasury.govt.nz/regulation/fitforpurpose/stewardship-strategies</p>
Policy development	<p>Impact analysis requirements including regulatory impact statements</p> <p>(First introduced in the late 1990s, and periodically strengthened)</p>	<p>If regulatory change is an option to respond to a policy issue, departments need to identify, analyse and test the policy problem and practical regulatory policy options. A regulatory impact statement (RIS) summarises the analysis for Cabinet to support Cabinet policy decision-making.</p> <p>www.treasury.govt.nz/regulation/regulatoryproposal/ria</p>
Instrument design and preparation	<p>Expert advice and support on legislative drafting and design</p> <p>via the Parliamentary Counsel Office and the Legislation Design and Advisory Committee (LDAC)</p>	<p>PCO provides instructing departments with specialized legislative drafting and design support. The LDAC provides departments with advice on legislative design issues early in the process when changes can be made more easily. The LDAC's published guidelines help departments provide drafting instructions that conform to accepted legal and constitutional principles.</p> <p>www.pco.govt.nz and www.ldac.org.nz</p>
Instrument design and preparation	<p>Disclosure statements for government-initiated legislation</p> <p>(for Government Bills and Supplementary Order Papers)</p>	<p>A disclosure statement provides factual information on the policy background to the proposed legislation, the quality assurance work undertaken in developing the legislation, and whether the legislation contains significant or unusual provisions.</p> <p>These are intended to better inform Parliamentary and public scrutiny of proposed legislation and encourage more consistent good practice in the development of legislation.</p> <p>www.treasury.govt.nz/regulation/policyintolegislation/disclosurestatements</p>
Operating model design and implementation	<p>The Government Regulatory Practice Initiative (G-REG)</p> <p>including developing national qualifications for regulatory practice</p>	<p>A network of central and local government regulatory agencies working collaboratively on actions to improve leadership, culture, regulatory practice and workforce capability in regulatory organisations and systems.</p> <p>Within its wider work programme, the initial priority has been developing nationally recognised qualifications to help professionalise and lift the capability of regulatory compliance practice.</p> <p>www.psi.govt.nz/home/communities/government-regulatory-practice-initiative/</p>

System Development: Next steps to 2018 and beyond

Regulatory Management System Development: Next steps to 2018 and beyond		Roles
Updated government expectations for good regulatory practice	<ul style="list-style-type: none"> • Ensure the updated expectations are appropriately picked up in departmental chief executive performance expectations, and in the regulatory stewardship element of the Performance Improvement Framework (PIF) agency model • Promote active attention to the updated expectations by major non-departmental regulatory agencies, starting with those agencies supporting the G-Reg initiative 	Led by the Treasury, working with the SSC and G-Reg members as appropriate
Departmental regulatory stewardship strategies and plans	<ul style="list-style-type: none"> • Adopt more consistent and comparable presentations of regulatory system assessments • Increase coordination to ensure the system assessments incorporate other agency views • Obtain and incorporate external stakeholder feedback into the system assessments • Get more departments to prepare and publish a regulatory stewardship strategy and plan • Start to look across the different regulatory system assessments to identify linkages and themes that could benefit from a cross-agency, cross-system approach 	<p>Led by the 7 major regulatory departments and facilitated by the Treasury</p> <p>Led by the Treasury, working closely with PCO and major regulatory departments</p>
Impact analysis requirements	<ul style="list-style-type: none"> • Test and implement changes to the scope, timing, process, content and format of the Cabinet RIA requirements (to prompt more robust and focussed impact analysis that is also better aligned with wider policy development tools and reporting processes, such as CBAX and DPMC Policy Project tools) • Introduce tailored templates for the analysis of proposals to introduce or amend statutory fees or levies for cost-recovered regulatory activities 	Led by the Parliamentary Under-Secretary and the Treasury, in consultation with departments and the DPMC Policy Project
Exposure drafts of legislation	<ul style="list-style-type: none"> • Produce guidance for Ministers and government agencies on the kinds of legislation where it would be useful to publish and consult on an exposure draft 	Led by the Treasury and PCO, working with the LDAC
Regulatory charters	<ul style="list-style-type: none"> • The development and publication of further regulatory charters for MBIE regulatory systems • Evaluate the MBIE trial of regulatory charters, to identify areas for improvement and provide guidance to other agencies 	<p>Led by MBIE</p> <p>Led by the Treasury, working with MBIE.</p>

Regulatory Management System Development: Next steps to 2018 and beyond		Roles
Statutes Repeal Bills, Regulatory Systems Bills, Revision Bills and Rewrite Bills	<ul style="list-style-type: none"> • Pass the current Statutes Repeal Bill and MBIE-led Regulatory Systems Bills • Identify further potentially redundant Acts or parts of Acts, and encourage departments to do the work required to confirm redundancy, for inclusion in a future Statutes Repeal Bill • Encourage other departments to look at the opportunity provided by a Regulatory Systems Bill for minor repairs and maintenance to their key regulatory systems, as identified by their regulatory stewardship work • Identify opportunities for further Revision Bills and Rewrite Bills, to improve the structure and accessibility of New Zealand legislation 	Facilitated by the Treasury and the PCO, working with government regulatory agencies.
Disclosure statements for government-initiated legislation	<ul style="list-style-type: none"> • Revise the disclosure statement templates and guidance to reduce the cost of statement preparation and the risks of inaccurate or incomplete disclosures • Pass and implement a Legislation Amendment Bill that includes an obligation on departments to produce disclosure statements for government-initiated legislation 	Led by the Treasury, working with the PCO
A comprehensive source of New Zealand legislation	<ul style="list-style-type: none"> • Increase the number of instruments available on the New Zealand Legislation website • Finalise the business case for further development of the NZ Legislation website to provide authoritative and fully searchable access to all subordinate instruments • Draft and introduce a Bill to enable the government to give effect to the preferred publication solution • Identify the preferred IT solution, funding needs and develop an implementation plan and timetable • Implement and roll out the new system, including opportunities for common training and sharing of drafting resources, more standardised drafting templates and tools, and the automated publication and presentation of instruments to Parliament 	Led by the PCO, as part of its Access to Subordinate Instruments Project (ASIP)
The Government Regulatory Practice Initiative (G-REG)	<ul style="list-style-type: none"> • Further develop and deliver the regulatory practice qualification framework, in partnership with the Skills Organisation, an accredited industry training organization • Take forward other 2017/18 work programme initiatives including: developing case studies on using information to support regulatory functions; sharing best practices on implementing regulatory stewardship; and conducting feasibility studies of a possible continuing professional development programme for regulatory practitioners and a possible process for peer assessments of a regulator's organisational capability and systems 	Led by central and local government regulatory leaders, supported by a secretariat hosted in MBIE