

# Regulatory System Report 2013

## Guidance for Departments

April 2013



**THE TREASURY**  
Kaitohutohu Kaupapa Rawa

New Zealand Government

© Crown Copyright



This work is licensed under the Creative Commons Attribution 3.0 New Zealand licence. In essence, you are free to copy, distribute and adapt the work, as long as you attribute the work to the Crown and abide by the other licence terms.

To view a copy of this licence, visit <http://creativecommons.org/licenses/by/3.0/nz/>. Please note that no departmental or governmental emblem, logo or Coat of Arms may be used in any way which infringes any provision of the [Flags, Emblems, and Names Protection Act 1981](#). Attribution to the Crown should be in written form and not by reproduction of any such emblem, logo or Coat of Arms.

ISBN: 978-0-478-40309-1 (Online)

The Treasury URL at April 2013 for this document is  
<http://www.treasury.govt.nz/publications/guidance/regulatory/systemreport>  
The Persistent URL for this document is <http://purl.oclc.org/nzt/g-rsr>

# Contents

- What's New? ..... 3
- About This Guidance ..... 4
- Overview ..... 5
- 1 Expectations for regulatory stewardship..... 6
  - 1.1 Regulatory stewardship..... 6
  - 1.2 The initial regulatory expectations..... 6
  - 1.3 Annual review of the regulatory expectations..... 7
  - 1.4 Monitoring and reporting ..... 7
- 2 Preparing your Regulatory System Report..... 8
  - 2.1 Scope of information to include..... 8
  - 2.2 Definitions ..... 8
  - 2.3 Questions for response ..... 8
- Appendix 1: Further information on New Zealand's regulatory management system..... 11



## What's New?

On 4 March 2013, Cabinet agreed to an initial set of *expectations for regulatory stewardship* (the regulatory expectations) [CAB Min (13) 6/2B refers]. The regulatory expectations outline at a high level how departments should be designing and implementing regulatory regimes and their stewardship responsibilities in administering those regimes, such as undertaking monitoring and review.

The regulatory expectations supersede the *Government Statement on Regulation: Better Regulation, Less Regulation*. The Government statement on regulation has served its purpose in setting expectations for how departments regulate. The regulatory expectations create broader expectations on departments which apply throughout the full life-cycle of regulation.

Central agencies will be monitoring and reporting progress towards the regulatory expectations over time. This year, Treasury is seeking information from departments on their current regulatory management arrangements. This will provide baseline data for future monitoring and reporting. We have adapted and broadened the Regulatory System Report that departments have provided in previous years for this purpose.

Our intention is that the regulatory expectations, and the precise information we gather from departments to assess their performance against these expectations, will evolve in subsequent years. Treasury, working with the Department of Prime Minister and Cabinet and the State Services Commission, will be responsible for the review process, and ongoing guidance and training.

# About This Guidance

This document provides guidance on the type of information departments should provide in this year's Regulatory System Report, and includes specific questions for response.

This guidance document should be read by those responsible for the development, implementation, monitoring, evaluation, and review of the regulatory regimes administered by your department.

The requirements and guidance outlined in this document apply for 2013. This document is scheduled for review in early 2014.

Further information on New Zealand's regulatory management regime and other new developments is provided in Appendix 1.

This document has been written by the Regulatory Quality team in Treasury, with input from the State Sector Performance Hub and contacts from major regulatory departments.

## Questions and Feedback

Please use this document as your first point of call for preparing your Regulatory System Report.

Enquiries about the information contained in this guidance can be directed to [regulation@treasury.govt.nz](mailto:regulation@treasury.govt.nz).

Any comments on how we could improve this guidance can be directed to [guidance@treasury.govt.nz](mailto:guidance@treasury.govt.nz).

# Overview

## Purpose of Regulatory System Report 2013

This year's Regulatory System Report asks departments to provide information on the systems and processes they have in place to manage the regulatory regimes they are responsible for administering.

The information we receive will help us improve our understanding of existing regulatory management arrangements across government and form a basis for on-going engagement with, and between, departments on progress towards the regulatory expectations.

In preparing your Regulatory System Report, your department will be provided with an opportunity to compare its own regulatory management arrangements against the regulatory expectations and identify any particular strengths, weaknesses, or risks.

## What is the role of your department?

Please complete your Regulatory System Report using the Microsoft Word template provided and email it to [regulation@treasury.govt.nz](mailto:regulation@treasury.govt.nz) by **28 June 2013**.

Please provide the most accurate information you can. We will follow-up with interviews for departments where we need a greater understanding.

## What will Treasury do with this information?

Treasury will share the information we receive with central agencies. We will also report, in aggregate, to Ministers and Cabinet on what the information tells us about the current state of regulatory management across government.

Over time, central agencies will be using information from regulatory system reports and other sources to monitor and report departments' progress towards the regulatory expectations.

## What feedback will departments receive?

Departments can expect ongoing engagement on the regulatory expectations. Our first step will be reporting back to departments on what we think about their individual system reports.

## Regulatory System Report questions

Questions for response are listed in section 2.3 of this guidance document. They elicit information on departments' current systems and processes for allocating policy oversight, policy development, implementation, monitoring outcomes, and the evaluation and review of regulatory regimes.

# 1 Expectations for regulatory stewardship

## 1.1 Regulatory stewardship

The concept of stewardship embodies active planning and management of resources or assets that are held on behalf of someone else. The formal decision rights over those assets may be held by someone else, and the assets may be held for the benefit of someone else.

In the case of *regulatory* stewardship, the formal decision rights over legislation generally rest with Ministers or Parliament, and the beneficial interests in the legislation usually rest with society as a whole. Departments have a stewardship role in the legislation they administer.

Like other assets, regulatory regimes are intended to deliver a stream of net benefits over time and should be managed with that idea in mind. Recent significant regulatory failures in New Zealand demonstrate that how well regulatory regimes are implemented, monitored, and maintained is just as important for regulatory performance as the policy design. Poor administrative management can undermine even the best regulatory frameworks.

Cabinet has agreed that the concept of regulatory stewardship be included in proposed changes to the State Sector Act 1988 in the State Sector and Public Finance Reform Bill currently before Parliament. The proposed changes would require the chief executive of a department<sup>1</sup> to be responsible to the appropriate Minister for the stewardship of the department, including the legislation administered by the department.

## 1.2 The initial regulatory expectations

On 4 March 2013, Cabinet agreed to a set of initial expectations for departments in exercising their stewardship role over government regulation [CAB Min (13) 6/2B refers].

The regulatory expectations outline at a high level how departments should be designing and implementing regulatory regimes, and their stewardship role in administering those regimes. The expectations are that departments will:

- monitor, and thoroughly assess at appropriate intervals, the performance and condition of their regulatory regimes to ensure they are, and will remain, fit for purpose
- be able to clearly articulate what those regimes are trying to achieve, what types of costs and other impacts they may impose, and what factors pose the greatest risks to good regulatory performance
- have processes to use this information to identify and evaluate, and where appropriate report or act on, problems, vulnerabilities and opportunities for improvement in the design and operation of those regimes
- for the above purposes, maintain an up-to-date database of the legislative instruments for which they have policy responsibility, with oversight roles clearly assigned within the department

---

<sup>1</sup> Or departmental agency.



- not propose regulatory change without:
  - clearly identifying the policy or operational problem it needs to address, and undertaking impact analysis to provide assurance that the case for the proposed change is robust
  - careful implementation planning, including ensuring that implementation needs inform policy, and providing for appropriate review arrangements
- maintain a transparent, risk-based compliance and enforcement strategy, including providing accessible, timely information and support to help regulated entities understand and meet their regulatory requirements, and
- ensure that where regulatory functions are undertaken outside departments, appropriate monitoring and accountability arrangements are maintained, which reflect the above expectations.

### 1.3 Annual review of the regulatory expectations

Treasury has been tasked with progressively developing more specific regulatory expectations and guidance covering key aspects of regulatory management. We will do this in close consultation with major regulatory departments.

International practice in this area is evolving so we will be learning from emerging experience on what specific approaches appear to have the most promise.

We expect that the regulatory expectations will be reviewed annually and adjusted as necessary. Treasury, working with DPMC and SSC, will be responsible for the review process, and ongoing guidance and training.

### 1.4 Monitoring and reporting

Although the regulatory expectations have never been systematically outlined and monitored, they are not new ideas. Departments undertaking good regulatory practice will already be meeting many of the expectations, although it is possible that no department will currently be meeting all of the expectations.

The regulatory expectations are a starting point that signals the direction we need to take to improve regulatory performance in New Zealand. Ministers recognise that it is likely to take departments some time to develop a more systematic and comprehensive approach to the management of existing regulation, particularly under resource pressure. In some cases it may require revised capabilities, processes, and information systems.

Central agencies will be monitoring and reporting progress towards the expectations over time. Reporting will be integrated as far as possible with existing agency reporting and central agency oversight arrangements, and will be developed over time alongside the regulatory expectations.

This year Treasury is seeking information through the Regulatory System Report that departments have provided in previous years on current regulatory management arrangements. This information will provide useful baseline data for future monitoring and reporting against the regulatory expectations.

The regulatory expectations and system report also complement the ongoing development of the Performance Improvement Framework. The regulatory component of this assessment tool is scheduled to be updated and expanded in late 2013.

# 2 Preparing your Regulatory System Report

## 2.1 Scope of information to include

In responding to the questions below, please include information covering all of the regulatory regimes, and associated legislation, administered by your department. Responses should not be limited to the regulatory regimes covered in the *Best Practice Regulation* regime list, or to regulatory regimes that are considered higher priority than others.

We are interested in the systems and policies formally established by your department, rather than ad hoc arrangements. These systems are likely to be well documented and have visibility with, and support from, organisational leadership above manager-level.

## 2.2 Definitions

### Legislation

The term 'legislation' includes primary, secondary, and tertiary legislation.

### Regulatory regime

For the purposes of this system report, a 'regulatory regime' covers all elements required to address a particular regulatory goal, including but not limited to:

- legislative and non-legislative instruments
- supporting capabilities and functions (policy, back-office, enforcement, and service delivery), and
- organisational culture.

## 2.3 Questions for response

### Allocating policy oversight

1. Does your department use the regulatory scanning database set up by the Treasury and hosted in CFISnet for keeping track of the legislation that it administers?
2. Does your department maintain a comprehensive database for keeping track of the legislation it administers, *other than* the database hosted in CFISnet? If so, please provide a copy or sample from that database.
3. Has your department clearly assigned policy oversight roles and responsibilities for each of the regulatory regimes it administers? (Clear assignment means an individual or team is fully aware of their responsibility for the regulatory regime). In answering this question, for each regulatory regime please provide details on:
  - a. Is the oversight assignment visible within the organisation (e.g. to senior management, or reception/telephonist staff) and outside the organisation?

- b. Has the department clearly described the nature of, or set out minimum expectations for, this policy oversight role? If so, how?
4. Does the policy oversight role drive cross-agency collaboration or encourage feedback loops between departments? If so, how?

### **Policy development**

5. Does your department's regulatory impact analysis (RIA) quality assurance (QA) process involve:
  - a. an independent QA panel
  - b. a designated independent person or persons, or
  - c. other (please explain).
6. Does your department's quality assurance review cover:
  - a. final assessment of preliminary impact and risk assessments (PIRAs) and regulatory impact statements (RISs) only
  - b. comments on drafts, and final assessment, of PIRAs and RISs
  - c. comments on drafts, and final assessment, of PIRAs, RISs, and discussion documents, or
  - d. other (please explain).

### **Implementation**

7. For each of the regulatory regimes administered by your department that impose obligations on members of the public or businesses, does your department, or any other agency with responsibilities under that regime, have a documented compliance strategy?<sup>2</sup>

If so, please provide a copy or sample from each documented compliance strategy.

8. For each of the regulatory regimes administered by your department *but implemented (in full or part) by another entity*<sup>3</sup>, does your department maintain any specific systems for monitoring the approach taken to implementation, monitoring, and enforcement by that entity? If so, what are those systems?

### **Monitoring outcomes**

9. Does your department have any systems or processes for *encouraging* feedback from the regulated community on the impact of regulation?

---

<sup>2</sup> A compliance strategy may cover activities ranging from providing information and support through to directing persons to comply or enforcement.

<sup>3</sup> For example an independent crown entity or non-governmental organisation.

10. Does your department maintain any systems for collecting and recording information on:
- a. difficulties or problems in implementing legislation administered by the department (whether they are problems for the implementing agency or the regulated community), and
  - b. errors or potential problems identified during implementation in the way legislation administered by the department has been drafted.
11. For each of the regulatory regimes administered by your department, does your department maintain any systems or processes for collecting and recording information on its regulatory impacts (positive and negative, intended or otherwise)? If so, what are those systems or processes?
12. For each of the regulatory regimes administered by your department that impose obligations on members of the public or businesses, does your department maintain any systems or processes for collecting and recording information on:
- a. levels of compliance by the regulated community
  - b. the drivers or determinants of compliance levels, and
  - c. the costs incurred by the implementing/administering agency to encourage or ensure compliance, including information provision and enforcement activity?

If so, please provide information about those systems or processes.

13. Do those responsible for policy oversight have ready access to the information provided by the systems and processes discussed in questions 10 to 12 above? How is this access facilitated?

### **Evaluation and review**

14. What, if any, requirements does your department have for periodically formally reviewing and reporting on the performance of each of the regulatory regimes it administers?

Please provide information on both external and internal requirements<sup>4</sup> (e.g. what are those regimes and requirements? What is the trigger point? What happens to the resulting report? Do certain regulatory regimes have no requirements for review, and why?).

15. Does your department, or any other agency, maintain any policies or processes (not already covered) for identifying, assessing, or testing possible vulnerabilities or performance risks for any of the regulatory regimes it administers? Please provide details.

---

<sup>4</sup> External requirements may be set by Cabinet, NZ legislation or international obligations. Internal requirements may be corporate or team policies, or established norms.

# Appendix 1: Further information on New Zealand's regulatory management system

The Treasury is responsible for managing and monitoring New Zealand's regulatory management system. We report to both the Minister of Finance and the Minister for Regulatory Reform, who share the ministerial responsibility for the regulatory reform portfolio. Our system role is complemented by the State Services Commission and State Sector Performance Hub's focus on overall state sector performance.

## Where we have come from

The government has had some form of regulatory impact analysis (RIA) requirement on the flow of regulation since 1998. The RIA system has developed and evolved over time. It now has broad coverage and is widely accepted by departments, and expected by Ministers. The best departments have incorporated RIA into their standard policy approach, both improving the quality of their advice and reducing the compliance burden of the regulatory impact statement (RIS) process. The Treasury offers both ad hoc assistance and formal training to departments to help lift capability.

Formal regulatory stock management requirements are a more recent development. Since the early 1990s, there has been a number of compliance cost reduction initiatives run by the former Ministry of Economic Development, including omnibus bills to remove red tape, but no systematic requirement on departments to undertake on-going reviews of their regulatory stock. Since the Treasury gained the regulatory management oversight function in 2008, we have begun to build a stock management system which now consists of:

- Best Practice Regulation assessments of key regulatory regimes
- regulatory scanning of existing legislative instruments on an ongoing basis
- annual regulatory plans of expected new regulation, or review of existing regulation
- Regulatory Review Programme, and
- Omnibus Reform Bills.

The development of this system is characterised by experimentation and learning. Working in consultation with departments, we try approaches to see if they work and adjust as we go to improve effectiveness. There is an on-going challenge to strike the right balance between developing an effective stock management system while managing the compliance costs we impose on departments.

## New developments

The new initiatives agreed by Cabinet on 4 March 2013 complement our existing approaches to improving regulatory performance. The *expectations for regulatory stewardship* set a direction for lifting our performance and provide a benchmark for measuring capability and outcomes, such as through departments' annual Regulatory System Reports.

The proposed legislative disclosure requirement, also agreed by Cabinet on 4 March, will indicate the key quality assurance processes that a piece of legislation has been subject to in its development, and highlight features or impacts that warrant particular scrutiny. The requirement for a disclosure statement will be implemented by administrative means ahead

of the enactment of the legislation, in order to inform the passage of legislation. The new obligation is likely to apply to all Bills submitted to LEG Committee for approval from July 2013. Treasury will be issuing guidance on preparing disclosure statements in May 2013.

In addition, Treasury is currently updating the Regulatory Impact Analysis (RIA) Handbook, and a revised version will be released by 1 July 2013. Changes to the Handbook will address areas where improvements in RIA analysis are needed and support agencies in meeting the new disclosure requirements.

In light of the above Cabinet decisions, Ministers will no longer need to certify compliance with the commitments in the *Government Statement on Regulation: Better Regulation, Less Regulation* in papers containing regulatory proposals. The agency disclosure statement included in RISs also no longer needs to indicate whether any of the policy options are likely to have effects that may not align with the commitments in the government statement.

The diagram below illustrates how the *expectations for regulatory stewardship* and the new disclosure requirement fit within existing approaches for improving New Zealand's regulatory performance.

