



Government Expectations

for Good Regulatory Practice

Government expectations for good regulatory practice

Regulation significantly shapes the everyday lives of New Zealanders. It recognises and protects their wide-ranging rights and interests, and can assist them to interact with others and with the state on clear, fair and efficient terms.

But regulation can also impose costs, limit freedoms, stifle innovation, and give rise to other unintended consequences. The well-being of all New Zealanders therefore vitally depends on the quality of our regulatory design and practice.

Good regulatory design and practice requires considerable attention, skill, and collaboration. It must accommodate diversity in people and organisations. It may also need to operate in complex environments in which values, social conditions, markets or technologies may be evolving rapidly, and the behavioural responses are difficult to predict in advance.

Recognising the challenges, the government has, over time, developed some general rules of thumb about what makes a good regulatory system and what is good stewardship practice for a regulatory agency. These are collated and presented below for the reference of government regulatory agencies.

The government expects that government regulatory agencies, both in the public service and the wider state sector, will have regard to, and give appropriate effect to, these good regulation principles and regulatory stewardship responsibilities, within the bounds of their agency resources and mandates.

April 2017

Note: This statement of government expectations succeeds and replaces previous government statements of regulatory expectations including:

- *the 1997 Code of Good Regulatory Practice,*
- *the 2009 Government Statement on Regulation, and*
- *the 2013 Initial Expectations for Regulatory Stewardship.*

About these Expectations

For the purpose of these expectations:

- a regulatory system is a set of formal and informal rules, norms and sanctions, given effect through the actions and practices of designated actors, that work together to shape people's behaviour or interactions in pursuit of a broad goal or outcome
- a regulated party is a person or organisation that is subject to behavioural expectations, obligations and/or sanctions within a regulatory system, and
- a regulatory agency is any agency (other than courts, tribunals and other independent appeal bodies) that has any of the following responsibilities for the whole or part of a regulatory system: monitoring; evaluation; performance reporting; policy advice; policy and operational design; legislative design; implementation; administration; information provision; standard-setting; licensing and approvals; or compliance and enforcement.

In setting these expectations, the government is mindful that:

- a regulatory system will often impact on, or be impacted by, another regulatory system or the wider legal system, and will sometimes share common or overlapping components, and
- there will usually be more than one government regulatory agency with responsibilities within a given regulatory system, and sometimes local government bodies as well.

As a consequence, all regulatory agencies need to pay close attention to their regulatory environment, and be alert to the likely need to work with other agencies to properly discharge their stewardship responsibilities for the regulatory systems they work within.

The government will keep these expectations under review, and may amend them from time to time. Questions, comments or suggestions concerning these expectations can be sent to regulation@treasury.govt.nz

This document can be found at www.treasury.govt.nz/regulation/expectations

Part A: Expectations for the design of regulatory systems

The government expects any regulatory system to be an asset for New Zealanders, not a liability.

By that we mean a regulatory system should deliver, over time, a stream of benefits or positive outcomes in excess of its costs or negative outcomes. We should not introduce a new regulatory system or system component unless we are satisfied it will deliver net benefits for New Zealanders. Similarly, we should seek to remove or redesign an existing regulatory system or system component if it is no longer delivering obvious net benefits.

The government believes that durable outcomes of real value to New Zealanders are more likely when a regulatory system:

- has clear objectives
- seeks to achieve those objectives in a least cost way, and with the least adverse impact on market competition, property rights, and individual autonomy and responsibility
- is flexible enough to allow regulators to adapt their regulatory approach to the attitudes and needs of different regulated parties, and to allow those parties to adopt efficient or innovative approaches to meeting their regulatory obligations
- has processes that produce predictable and consistent outcomes for regulated parties across time and place
- is proportionate, fair and equitable in the way it treats regulated parties
- is consistent with relevant international standards and practices to maximise the benefits from trade and from cross border flows of people, capital and ideas (except when this would compromise important domestic objectives and values)
- is well-aligned with existing requirements in related or supporting regulatory systems through minimising unintended gaps or overlaps and inconsistent or duplicative requirements
- conforms to established legal and constitutional principles and supports compliance with New Zealand's international and Treaty of Waitangi obligations
- sets out legal obligations and regulator expectations and practices in ways that are easy to find, easy to navigate, and clear and easy to understand, and
- has scope to evolve in response to changing circumstances or new information on the regulatory system's performance.

Part B: Expectations for regulatory stewardship by government agencies

The government expects regulatory agencies to adopt a whole-of-system view, and a proactive, collaborative approach to the care of the regulatory system(s) within which they work.

This regulatory stewardship role includes responsibilities for:

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

Monitoring, review and reporting on regulatory systems

The government expects regulatory agencies to work collaboratively to:

- monitor the ongoing performance and condition of a regulatory system and the regulatory environment in which it operates
- review the system at appropriate intervals to determine whether it is still fit-for-purpose, and likely to remain so in the medium to longer-term
- test existing operating assumptions, and consider the perspective and experience of regulated parties and others directly affected by the regulatory system's rules and practices, when undertaking their monitoring and review work
- periodically look at other similar regulatory systems, in New Zealand and other jurisdictions, for possible trends, threats, linkages, opportunities for alignment, economies of scale and scope, and examples of innovation and good practice
- use available monitoring and review information to proactively identify and assess, and then report or address, problems, vulnerabilities, and opportunities for improvement in the design and operation of that regulatory system, and
- pay particular attention to requirements that appear unnecessary, duplicative, ineffective or excessively costly.

Robust analysis and implementation support for changes to regulatory systems

Before a substantive regulatory change is formally proposed, the government expects regulatory agencies to provide advice or assurance on the robustness of the proposed change, including by:

- assessing the importance of the issue in relation to the overall performance and condition of the relevant regulatory system(s), and how it might fit with plans, priorities or opportunities for system improvement already identified
- clearly identifying the nature and underlying cause of the policy or operational problem it needs to address, drawing on operational intelligence and available monitoring or review information
- undertaking systematic impact and risk analysis, including assessing alternative legislative and non-legislative policy options, and how the proposed change might interact or align with existing domestic and international requirements within this or related regulatory systems
- making genuine effort to identify, understand, and estimate the various categories of cost and benefit associated with the options for change
- identifying and addressing practical design, resourcing and timing issues required for effective implementation and operation, in conjunction with the regulator(s) who will be expected to deliver and administer the changes,
- providing affected¹ and interested parties with appropriate opportunities to comment throughout the process and, in the right circumstances, to participate directly in the regulatory design process (co-design), and
- use of “open-book” exercises to allow potential fee or levy paying parties to scrutinise the case for, and structure and level of, proposed statutory charges.

Before a substantive regulatory change is formally made, the government expects regulatory agencies to:

- allow regulated parties reasonable time to get familiar with new requirements before the change comes into force (unless this would compromise the outcome sought)
- test key operational processes required to implement the change
- anticipate and plan for the possibility of unintended consequences or the potential need for contingency measures, and
- provide for any appropriate changes to system monitoring arrangements.

¹ Affected parties include people and organisations whose obligations, rights or powers will be directly affected by the proposed change

Good regulator practice

Where appropriate to their role, the government expects regulatory agencies to:

- maintain a transparent compliance and enforcement strategy that is evidence-informed, risk-based, responsive, and proportionate to the risks or harms being managed
- provide accessible, timely information and support to help regulated parties understand and meet their regulatory obligations
- provide simple and straightforward ways to engage with regulated parties and hear and respond to their views
- maintain and publish up-to-date information about their regulatory decision-making processes, including timelines and the information or principles that inform their regulatory decisions
- develop working relationships with other regulatory agencies within the same or related regulatory systems to share intelligence and co-ordinate activities to help manage regulatory gaps or overlaps, minimise the regulatory burden on regulated parties, and maximise the effective use of scarce regulator resources
- provide their frontline regulatory workforce with the necessary knowledge, skills, tools and support to be able to discharge their responsibilities with integrity, review and improve their professional practice, and report back on issues they may encounter in the course of their work
- contribute to wider regulator capability building initiatives within the state sector where there are common interests and benefits from collective action and leadership
- alert relevant Ministers and monitoring agencies to organisational capability or resourcing issues, or problems with legislation, that may be significantly compromising the agency's ability to discharge its responsibilities to a reasonable or expected standard, and
- at the time of the alert, provide advice on the nature of the resulting system performance risks and proposed or possible mitigating strategies.