Regulatory
Stewardship

Starting out with regulatory stewardship: A resource

Te Kāwanatanga o Aotearoa
New Zealand Government

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Contents

About this resource

Purpose

This resource has been prepared by the Treasury and endorsed by the Regulatory Stewardship Chief Executives Group for use by government agencies with regulatory stewardship responsibilities.

It outlines a series of topics with questions that agencies can investigate to help them:

• develop their regulatory stewardship practice

• review aspects of the operation of regulatory systems within which they have roles.

Who is this resource for?

This resource should be of interest to all government agencies. Almost all government agencies have regulatory stewardship responsibilities. Those that may not will likely welcome opportunities to feed into the regulatory stewardship work of the rest, as it relates to their areas of interest.

Regulatory stewardship responsibilities are not limited to agencies that administer legislation. Consistent with the Government's expectations for regulatory stewardship by government agencies, any government agency that exercises a substantive role in a regulatory system also shares some responsibility for the stewardship of that system. This includes any agency involved in the monitoring, evaluation, reporting, policy development, operational design, implementation, administration, assurance or enforcement of a regulatory system. Since regulatory stewardship is a shared responsibility, it requires active collaboration between the different agencies involved.

The topics included in this resource are relevant to a range of different regulatory systems. In addition, the resource has been developed with agencies still new to regulatory stewardship in mind. While it can also be used by people and agencies with more regulatory stewardship experience, you do not need an in-depth understanding of regulatory stewardship practice to be able to use the resource.

Relationship to other tools and resources

This resource does not claim to address all aspects of regulatory stewardship. It is one of many resources and tools that government agencies might use to help them discharge their regulatory stewardship responsibilities. We have included links to some of these throughout this resource.

You can also reach out to experienced people in your own and other agencies to ask about what has or has not worked for them. While there is no one-size-fits-all model of regulatory stewardship practice, lessons learned are often transferable between different regulatory systems.

If you do not already have useful contacts, talk to the people assigned to promote and support regulatory stewardship in your agency, or join the Regulatory Stewardship Community of Practice convened by the Treasury and the Government Regulatory Practice Initiative (G-REG).

Please help us improve and extend this resource

This is the first published version of this resource. People from many government agencies provided feedback during its development. We want it to be a living resource that is periodically updated and further developed by the regulatory stewardship community, based on their practical experience in using the material it contains.

If you run a workshop or group discussion, or develop a plan or a tool, drawing on any of the topics covered in this resource, we would like to hear from you. Let us know how you used this resource, what you found useful and what less so. We would also welcome suggestions for improvement drawing on your experience or subject-matter expertise, such as new links to resources and tools, wording changes, points that you think should be added (or dropped) or ideas for new topics.

Providing feedback

We welcome your feedback and suggestions at regulation@treasury.govt.nz

Introducing regulatory stewardship

What is regulatory stewardship?

The Government of Aotearoa New Zealand uses regulation to protect the community from harm and to improve the living standards of its people. Regulation is likely to involve legislation in some form, but it is not just about the law. In order to make the intentions of the law come to life, government agencies and other organisations need to deliver services, educate and inform, make sure people follow the rules, and support resolution of disputes. The rules, organisations and their practices – the whole regulatory system – work together to shape people's behaviour and interactions, and thereby improve the lives, work and businesses of all New Zealanders.

Regulatory stewardship is the governance, monitoring and care of our regulatory systems. Regulatory systems are intended to be assets for our communities but, like most other kinds of assets, they need regular ongoing care and maintenance if they are to deliver best value to New Zealanders.

Regulatory stewardship aims to ensure that all the different parts of a regulatory system work well together to achieve its goals, and to keep the system fit for purpose over the long term. Effective stewardship requires government agencies to be proactive and collaborative, so that regulatory systems adapt to changing circumstances in a timely way.

Regulatory stewardship expectations and responsibilities

The stewardship responsibility for all chief executives of public service agencies was introduced to the State Sector Act 1988 in 2013. Subsequently, the Public Service Act 2020 enhanced the status of stewardship to one of the five principles of public service. The Legislation Act 2019 also indicates that the overarching objective of the Parliamentary Counsel Office is to exercise stewardship of Aotearoa New Zealand's legislation as a whole.

Government's expectations for regulatory stewardship by government agencies set out responsibilities for regulatory stewards in three broad areas:

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

In July 2020, the Secretary to the Treasury was appointed by the Public Service Commissioner to exercise a new Regulatory System Stewardship and Assurance leadership role. The Secretary has set up a Regulatory Stewardship Chief Executives Group to advise and collectively lead regulatory stewardship work across the public service. This group is committed to providing support to agencies with their stewardship work, and to providing the Government with confidence that the public service is actively delivering on its regulatory stewardship responsibilities.

Why invest in regulatory stewardship?

The quality of regulation matters a lot. There is good evidence that levels of economic and social development, and ultimately wellbeing, are significantly determined by the quality of a country's institutions. In Aotearoa New Zealand, many of those institutions take the form of regulatory systems that are primarily developed and maintained by government.

Regulatory systems require ongoing attention to deliver effectively and fairly over time. Governments do not always get the details right first time, requiring adjustments to be made to ensure the goals of the system are being met. There are often unintended consequences, with disproportionate impacts falling on certain groups, or unexpected responses to new or revised rules. In addition, the regulatory context, technologies and even social values that underpin the operation of a regulatory system will continue to evolve.

Consequently, failure to actively look after our regulatory systems to ensure they remain fit for purpose can have significant adverse effects on the wellbeing of New Zealanders. What should be our most important assets may not deliver the level of societal benefits that were intended or that could now be provided. Some regulatory systems may even become liabilities rather than assets, whether through a serious failure or chronic poor performance. Investing in regulatory stewardship is a way for agencies to identify (and prepare to address) problems and risks before they become full-blown failures, as well as latent opportunities to improve the performance of a regulatory system.
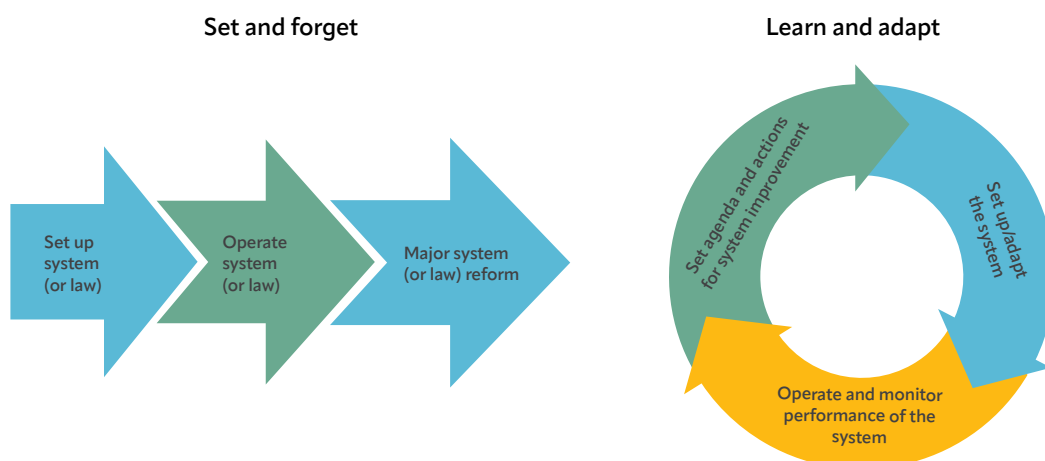
It can be a challenge to find the time and resources for regular regulatory stewardship thinking and practice. It also requires a change of mindset from a reactive to a proactive work culture, which may be the greatest challenge of all to achieve. Nonetheless, it can have a high payoff for stewarding agencies, as well as for New Zealanders.

Opportunities for reform can emerge with little warning. Ministers may expect these reforms to be conducted at pace. If agencies within a regulatory system do not already have established relationships, and if they lack shared understandings of their system, system performance, emerging challenges, and where fixes or improvements could be made, then they can miss these opportunities, or run the risk of compromised or poorly executed reforms.

If regulatory stewardship has been undertaken, then preparing policy advice, regulatory impact analyses and funding proposals at pace becomes much easier, and the case made will likely be far more convincing. That, in turn, will increase the likelihood of securing support from other agencies, stakeholders, and Ministers. Practical implementation issues are also more likely to be identified early in the reform process, and budgeted and planned for, increasing the chance of a reform's success.

From 'set and forget' to 'learn and adapt'

One way of thinking about regulatory stewardship is a shift from a set-and-forget approach to regulatory systems to one where we learn and adapt. A set-and-forget approach leads to out-of-date legislation which may result in costly regulatory failures. A learn-and-adapt approach requires ongoing investment, but is likely to be less costly in the long run (particularly if significant regulatory failures are avoided) and result in better overall performance.

Set and forget

Set up system (or law) → Operate system (or law) → Major system (or law) reform

Learn and adapt

Set agenda and actions for system improvement

Set up/adapt the system

Operate and monitor performance of the system

Experiences of government agencies

Agencies that have started to apply regulatory stewardship practices have reported the following benefits.

A shared view of the entire system and interactions between parts, resulting in:

- understanding and agreement of roles and responsibilities (which may lead to the development of regulatory charters)
- individuals being able to clearly understand their own role and how that fits within the wider regulatory system to deliver intended outcomes
- improved collaboration and relationships between people and teams, including policy and operational teams.

More transparent and understandable regulation, including:

- publication of clear objectives, stewardship strategies and assessments
- renewed focus on delivering intended outcomes to minimise harm and provide public good
- better-informed decisions on prioritisation of resources and proposed changes.

Improved perception of and engagement with the regulatory system and regulator, including:

- being able to clearly articulate whether the intended outcomes are being met, and how the regulatory system is being stewarded to continue to deliver public good
- improved leverage, support and drive to make required changes within regulatory systems
- enhanced social licence to regulate.

Minimising the risk of regulatory failure through[1]:

- early identification of underperformance and risk
- more proactive management and planning
- more responsive regulation
- improved compliance when regimes are fit for purpose.

Getting started with regulatory stewardship

Regulatory stewardship is about developing a mindset rather than following a prescriptive process, so the first steps in implementing stewardship ideally involve thinking about regulatory systems as assets to be cared for and maintained.

To give stewardship practices the best chance at being successful, some groundwork is needed to establish good foundations:

- Dedicated resource for regulatory stewardship. This can be specific roles or as part of a wider work programme, but the resource should be defined and ring-fenced. This highlights the value the organisation places on regulatory stewardship and ensures that the work will not be displaced by reactive work.
- An understanding at the leadership level that your regulatory regime is part of a system.
- A regulatory systems mindset, or willingness to develop one. Regulation is often defined as anything that aims to influence behaviour, so almost everything governments do can be defined as regulatory or part of a regulatory system.
- Commitment from leadership teams to progress stewardship objectives.
- Openness at the leadership level to receiving criticism of aspects of the regulatory system.
- Participation and buy-in from people in all levels of the system to enable holistic assessment.
- An understanding that regulatory stewardship is a long game, and assessments of regulatory systems are not a 'one-and-done' process.

Once you have established these foundations, you will be better prepared to make a start on regulatory stewardship.

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1 For more on regulatory failure, see: van der Heijden, J. 2022. Regulatory failure: A review of the international academic literature. State of the Art in Regulatory Governance Research Paper – 2022.11. Wellington: Victoria University of Wellington/Government Regulatory Practice Initiative. Retrieved from www.wgtn.ac.nz/chair-in-regulatory-practice/pdfs/2022-State_of_the_Art_in_Regulatory_Governance_11-Regulatory_failure.pdf (15 November 2022).

If you are able to devote further time and effort to preparation before starting out with regulatory stewardship, useful first steps include the following:

1. **Information gathering:** A desktop review of work already carried out will help inform your regulatory system stewardship work, as well as potentially identifying where issues have been found or improvements made previously. What is the history of the legislation you administer? Why was it enacted/reformed? Look for Cabinet papers, performance improvement framework assessments, rules reviews, previous regulatory reforms, audits or similar. Also, you could look for compliance strategies or other documents that guide the operations or governance of the system.

2. **Developing a shared understanding within the relevant agencies (or at least the lead agency) of the importance of regulatory stewardship:** A key condition for effective regulatory stewardship is an organisational culture that values and appropriately resources stewardship activities. Examples of such activities are as follows.

   a *Prioritising relationships* with other agencies that perform roles within each regulatory system. They will help your organisation better understand and support the value proposition for investing in regulatory stewardship.

   b *Establishing governance arrangements* that help to maintain clear objectives and roles, resolve conflicts and gaps, sustain communication and information sharing, and ensure follow-up over time.

   c *Encourage the sharing of information and insights* relating to the performance of the regulatory system. Senior leaders must be open to receiving these insights from key stakeholders.

   d *Building capability* from design through to implementation, enforcement, compliance and monitoring. Effective regulatory stewardship necessitates a culture that supports and encourages ongoing professional learning and development.

   e *Organisational culture* that supports and encourages regulatory experimentation, as well as an appetite for criticism and exploring alternate options.

For more information in this resource on organisational culture, see Stewardship topic: Authorising environment for regulatory stewardship.

Te Ao Māori and regulatory stewardship

A unique feature of regulatory stewardship in Aotearoa New Zealand is the need for regulation to give effect to Te Tiriti o Waitangi/the Treaty of Waitangi (Te Tiriti/the Treaty). Understanding and enabling Te Tiriti/the Treaty as part of regulatory stewardship practice represents an opportunity to improve the performance of our regulatory systems.

Te Tiriti/the Treaty is a constitutional document that establishes and guides the relationship between the Crown in Aotearoa New Zealand (embodied by our Government) and hapū, iwi and Māori citizens. Some legislation explicitly refers to Te Tiriti/the Treaty, while some rights and obligations are set out in other legislation.

Effective regulatory stewardship in Aotearoa New Zealand should consider the principles of Te Tiriti/the Treaty, te ao Māori, and the role of Māori in the regulatory system. There are prompts throughout this resource to support you with this. You could also turn to Te Arawhiti guidance on providing for the Treaty of Waitangi in legislation and on building closer partnerships with Māori.

There is also an opportunity to draw on mātauranga Māori to develop our regulatory stewardship practice. You may find it useful to familiarise yourself with the He Ara Waiora framework, which provides a Māori perspective on wellbeing. Many aspects of the framework are highly relevant to regulatory stewardship, including:

- kotahitanga – working in an aligned, coordinated way
- tikanga – making decisions in accordance with the right values and processes, including in partnership with Māori
- whanaungatanga – fostering strong relationships through kinship and/or shared experience that provide a shared sense of wellbeing
- manaakitanga – enhancing the mana of others through a process of showing proper care and respect
- tiakitanga – guardianship, stewardship (eg, of the environment, particular taonga or other important processes and systems).

Applying the principles set out in He Ara Waiora means taking a holistic view of a regulatory system, rather than looking at constituent parts in a siloed fashion. It also means collaborating with a range of stakeholders on an ongoing basis

How to use this resource

This resource includes a set of questions under a series of nine topic headings. These questions aim to help you undertake some analysis or a structured conversation on that topic for the purpose of improving the stewardship, and ultimately the performance, of a regulatory system to which you contribute.

We suggest that you consider these topics in collaboration with other people, teams and agencies that play important regulatory roles within your selected regulatory system. If these are held as regular conversations, you can rotate through a range of topics (which might include topics not covered in this resource), returning to them again after a suitable period. The topics could be covered by holding workshops, facilitating conversations or interviews.

Each identified topic is intended to be broad enough in scope to raise interesting issues for most regulatory systems, but specific enough that a small group of knowledgeable people can reach some initial conclusions after one workshop discussion (if that is how the resource is used – see Annex 1: Holding and facilitating workshops on regulatory stewardship). Included with the topic prompts are some possible indicators of progress, as well as links to further information or examples where these are available.

The topics have been grouped into two categories – a set of stewardship topics and a set of system topics. Both sets of topics should be relevant for agencies that are relatively new to regulatory stewardship. More experienced agencies may also find them to be a useful starting point for identifying potential gaps or opportunities in their work.

The stewardship topics

The stewardship topics directly address some of the stewardship actions and practices that will help agencies to be effective regulatory stewards. These topics are particularly relevant to those agencies just starting out. Indeed, we suggest that two of these topics (system fundamentals and the authorising environment) are among the first topics you explore, as they provide key foundations upon which other stewardship practices will naturally build.

The four stewardship topics are:

System fundamentals – testing the scope and description of a regulatory system.

Authorising environment for regulatory stewardship – checking you have the internal and external commitment, relationships and governance arrangements that will sustain effective regulatory stewardship.

Building capability – maintaining the knowledge and skills to support effective regulatory stewardship.

Considering regulatory reform – Setting up processes to ensure that regulatory stewardship work feeds into and supports a regulatory reform.

The system topics

The system topics relate more to the performance of a regulatory system itself. These are concerned with different elements or characteristics of a regulatory system, and whether the nature or performance of those system elements point to any important risks that should be managed, or opportunities that could be realised.

Not all these topics will be relevant to every regulatory system. However, even if you initially think a topic might not be very important to your system, it is worth formally testing that. The impacts of international regulatory developments and of the actions of people outside of Aotearoa New Zealand, for example, are often greater than people expect.

The five regulatory system topics are:

System-specific risks – looking at whether a regulatory system has characteristics that increase the risk of regulatory failures or underperformance.

Opportunities to ease compliance and support innovation – looking at possible opportunities to improve system resilience or performance.

Delegated and devolved regulatory responsibilities – ensuring the performance and integrity of those entities charged with exercising devolved regulatory powers.

Maintaining infrastructure – looking at the state of the digital and physical infrastructure on which a regulatory system relies.

International context – looking at whether and how international regulatory developments, and activities and actors that occur or operate outside of Aotearoa New Zealand, might impact current and future system performance.

Next steps after using this resource

Your next steps will depend on how you have used this resource. If you've used it to start conversations on the way your regulatory system is working, you may wish to begin a deeper investigation into the whole system, perhaps including regulated parties in your assessments. Alternatively, you might choose to focus on parts of the system where opportunities for improvement have been identified.

Using this resource may have resulted in recommendations for actions that you can start to work on. For example:

- When system improvements require additional resourcing, the next step might involve looking into internal reprioritisation or other funding options.

- If changes to legislation are required, it may be that improvements can be combined with legislative reform that is already underway. If no system-specific legislative reform is imminent, it may still be possible to make timely changes through an omnibus legislative option, such as Regulatory Systems Amendment Bills/Statutes Amendment Bills/Revision Bills/Statutes Repeal Bills (see Glossary for more information).

- If you have identified a need to undertake further review of a particular aspect of your system (such as governance), you might need to interview a broader range of people who interact with the system. Throughout this resource, we have signposted exemplars and further guidance which may also be useful for this.

The outcomes and recommendations should be reported to the relevant oversight or governance group, or senior agency leaders, with suggested next steps. You could also consider whether a summary of outcomes and recommendations could be published and/or shared with the Treasury.

You may also like to reach out to other regulatory stewards for ongoing learning and development with peers through the Regulatory Stewardship Community of Practice convened by the Treasury and G-REG, or make use of G-REG's Peer Advisory Service or Regulatory Stewardship workshops.

Further resources

The Ministry for Primary Industries has developed a framework for regulatory review.

The Legislation Design and Advisory Committee published the 2021 Legislation Guidelines, which are a guide to making good legislation.

MBIE has carried out assessments of a number of its systems, including the Consumer and Commercial Regulatory System, the Corporate Regulatory System, the Building Regulatory System and the Competition Regulatory System.

For more information on how MBIE carries out regulatory system assessments, see its assessment of regulatory systems.

For more information and examples of Regulatory Systems Amendments Bills, see MBIE's guidance on Regulatory Systems Amendment Bills, and see examples Regulatory Systems (Housing) Amendment Bill (No 2), or Regulatory Systems (Workplace Relations) Amendment Bill.

Goddard, D. 2022. *Making Laws that Work: How Laws Fail and How We Can Do Better.* Oxford: Hart Publishing
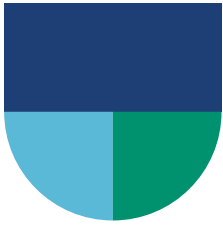
Stewardship topic 1:
System fundamentals

Establishing system fundamentals is a key part of setting your regulatory stewardship journey up for success. Discussing system fundamentals involves testing whether you have a comprehensive and well-articulated system description, as well as an agreed understanding of the key components of the regulatory system and the connections between those components, including governance, policy, operational and other functions.

Determining the scope and boundaries of your regulatory system is largely a matter of perception and judgement. As a rule of thumb, if things exist primarily to support the same broad policy goal, that is a good sign that they are part of the same regulatory system. There is also the important matter of ensuring that agencies know which laws and regulations they are responsible for and making sure none is missed. Regulatory systems may overlap in places, because some regulatory system components contribute to multiple policy goals and can be part of two or more regulatory systems. However, these overlaps need to be well understood.

There are also pragmatic considerations. A very broadly scoped system could include so many elements that people struggle to maintain a whole-of-system view. If this gets too hard, then people will not actively engage in regulatory stewardship practice. System definitions may need to trade off comprehensiveness and manageability.

One option, which some agencies have chosen, is to adopt two-tier system definitions. This involves the identification of an overarching regulatory system that includes within it two or more regulatory systems or sub-systems. This can be useful in situations where, for many purposes, a more narrowly scoped regulatory system will cover the key interlinkages but, for more fundamental or general issues, a wider scope is necessary or desirable. For example, a transport regulatory system might include the identification of sub-systems for land, sea and air transport regulation.

Consequently, expect to revise or refine the scope of your regulatory system after the initial attempt, as you learn more about your system and hear the views of other stakeholders. That is the experience of most of the major regulatory agencies that have already published regulatory system descriptions.

All parties to a regulatory system must clearly understand their roles and responsibilities, to alleviate risk of gaps or overlaps, so these should be written down or recorded in some way. The form this takes may vary depending on what is appropriate in the context of the regulatory system. Working together on the system description can help build this understanding, as can the development of formal agreements such as a regulatory charter or Memorandum of Understanding or Cooperation.

? **Prompts for discussion**

1. **Has the regulatory system been identified and described?**
   - The system description should aim for a whole-of-system view and clearly state the:
     - purpose, objectives and scope of the regulatory system
     - roles and responsibilities for all organisations that actively contribute to the regulatory system (eg, policy agencies, regulators, statutory officers, service providers or third-party delegates, tribunals, governance bodies)
     - formal and informal rules of the system (eg, primary and secondary legislation, international agreements, and any significant administrative requirements, international standards, domestic guidance, or established norms)
     - governance, operational and resourcing arrangements
     - important connections between different parts of the system and other systems.
   - In developing the system description, you should also consider the existing Māori Crown-relationship and the Treaty-related obligations for the Crown.

2.	Has this description been developed and agreed collectively by all agencies with key regulatory roles in the system?
3.	Are there misalignments or gaps in the current system description components, or unintended overlaps with the descriptions of other regulatory systems? • These could indicate a problem with the system description (eg, overlooked legislation, organisational roles, or other system components, or a lack of dialogue with the stewards of related regulatory systems). • Alternatively, they could be a sign of a poorly balanced system (eg, duplicate or conflicting roles, or a system that has been extended in a piecemeal fashion beyond its original mandate).
4.	Are there any major factors related to the system description that could increase the likelihood of regulatory failure or underperformance? These could include: • poor role clarity due to the regulatory system definition not fitting the industry or activity being controlled (eg, regulation built around technologies or industry definitions that are becoming obsolete as technology has evolved) • insufficient or differing understanding of the desired outcomes and objectives of the regulatory system • limited understanding of the legislation and other laws underpinning the regulatory system • regulatory functions that create potential or perceived conflicts of interest • where the system description has been developed in isolation and may not recognise roles of other regulators or adjacent systems.

Early indicators of progress

• The system description is agreed between stewarding agencies, available online and referenced in agency resources.

• System stewards are identified at all levels and in all agencies involved in the system.

• Agencies work together constructively on system stewardship.

Taking it further

• There is formalised system governance within/across agencies.

• There are forms of agreement, such as regulatory charters or memoranda, which support systemic collaboration and formalised governance across all stewarding agencies.

For more information

For more information on the design of regulatory systems and the responsibilities of regulatory stewards, see the Government Expectations for Good Regulatory Practice and Conditions for Good Regulatory Stewardship.

For examples of regulatory system descriptions, see:

• Local Government

• Unsolicited Commercial Electronic Messaging

• Consumer and commercial

• Outer space and high-altitude activities

• Biosecurity

• Forestry

• Toitū Te Whenua Land Information New Zealand

For examples of regulatory charters, see:

• Energy markets charter

• Financial markets charter

• Competition system charter

For an example of regulatory Memoranda, see the New Zealand Space Agency Memorandum of Cooperation in place with the United States Federal Aviation Administration and with the New Zealand Civil Aviation Authority (CAA).

Stewardship topic 2:
Authorising environment for regulatory stewardship

Regulatory stewards need to feel authorised and encouraged to carry out stewardship functions. This can involve formal authority provided by legislative roles, position descriptions and work programmes, as well as the informal authority provided by social licence, stakeholder support, and internal receptiveness to constructive criticism.

For effective regulatory stewardship, the agencies involved in stewarding a regulatory system need to be willing to identify, share and respond to risks and opportunities for improvements in that system.

In practice, this necessitates a culture that sees value in regulatory stewardship. This is a culture that:

- encourages the sharing of information and insights related to a system's performance
- provides a safe environment for staff to raise potential system issues or offer constructive criticism

- acknowledges and rewards good regulatory stewardship work
- recognises that regulatory stewardship needs to happen at all levels in a system and organisation
- allocates time and resource to pursue stewardship work and to follow up and act on the findings
- supports and encourages regulatory experimentation and exploring alternative options.

Good attitudes and intentions are not enough, however, to sustain collaborative stewardship practice in the face of the pressures from competing government priorities, unexpected operational demands, tight resources, and the comfort of organisational silos. Appropriate governance and accountability arrangements are also required, to ensure that stewarding agencies keep talking to each other on a regular basis, that regulatory stewardship practices are embedded in business as usual, and that there is appropriate and timely follow-up on issues and opportunities that have been identified.

Prompts for discussion

1.	Does your agency have a culture that values and supports regulatory stewardship? • What actions could you or your agency's senior leaders take to improve that culture?
2.	Have internal and cross-agency governance arrangements been established to support regulatory stewardship practice? • Are those arrangements sufficient to sustain regulatory stewardship practice for your regulatory system over time?
3.	Have regulatory stewards been able to maintain productive relationships with each other, and with key stakeholders, to share insights on system opportunities and risks? • Are there processes in place to gather insights on regulatory risks from others involved in the system? All stakeholders with relevant insights should be involved and feel able to share these insights, including Māori. • Has the leadership of stewarding agencies been open to those insights, especially those that might be perceived as being bad news? • Has follow-up action been taken in response to previously identified opportunities and risks?
4.	Has sufficient resource been allocated to stewardship of the regulatory system, including for the identification and follow-up of regulatory risks?

Early indicators of progress

- Senior leaders communicate the importance of regulatory stewardship and allocate sufficient resource for stewardship activities.
- There are (formal or informal) processes in place to gather insights from regulatory stewards and stakeholders, including Māori.
- Major opportunities and risks are escalated to the appropriate level.
- Senior system leaders are open to receiving and acting on criticism or negative findings.
- Stewards proactively address sources of regulatory risk.

Taking it further

- There is a track record of follow-up actions and responses to identified issues with regulatory systems.
- There are formalised processes for gathering insights, including from stewards or interconnected systems.
- Senior leaders endorse publication of system assessment findings, recommendations and intended actions.

For more information

The Ministry of Business, Innovation and Employment (MBIE) has developed resources on regulatory system governance. See What regulatory system governance is and why it's important: principles and guidance and What regulatory system governance is and why it's important: guidance in a nutshell.

G-REG has published a set of practical good-practice steps to assist policy and operational functions to deliver on their regulatory stewardship obligations.

Stewardship topic 3:
Building capability

Agencies need to have the right capabilities to carry out effective regulatory stewardship. This includes capabilities in regulatory design (including comprehensive regulatory impact analysis), through to implementation, enforcement, compliance, and monitoring.

Capability includes knowledge of best practice in these disciplines and how to apply it in the regulatory system. Strong communication skills are also required, since effective stewardship requires a collaborative approach. Regulatory stewards also need an understanding of Te Tiriti/ the Treaty and te ao Māori, and how these apply to the regulatory system.

To develop these capabilities, effective regulatory stewardship requires a culture that supports and encourages ongoing professional learning and development. Policy and operational stewards should explore ways of collaborating and sharing knowledge and expertise. This helps to build capability, understanding and linkages within the regulatory system.

Conversely, capability gaps increase the risk that issues with regulatory systems will not be identified and responded to in a timely and coherent manner. Having knowledge and experience concentrated among a small number of specialists risks capability loss when these people move on from their roles. Poor communication skills across the system could lead to complacency, leaving issues unidentified.

Prompts for discussion

1. Have the key capabilities necessary for stewarding the system been identified? These could include:
   - regulatory design skills
   - policy and strategy leadership
   - communication and stakeholder engagement skills
   - an understanding of Te Tiriti/the Treaty and te ao Māori as they apply to the regulatory system, and how the system impacts on Māori
   - compliance, monitoring and enforcement skills
   - intelligence, research or evaluation functions
   - sufficient understanding of existing statutory constraints, and limits of existing levers by all members of the system
   - capability to identify and respond to rare incidents, as well as to recognise risk or underperformance even in the absence of incidents.

2.	Are people in stewarding agencies encouraged and enabled to access ongoing professional learning and development? This could include:
	• development plans and goals, including capability building for teams and individuals
	• completing courses and/or regulatory qualifications
	• attending conferences, sector events and networking opportunities
	• joining a community of practice
	• shadowing other regulatory stewards.
3.	Are there processes in place to ensure that collaboration and knowledge transfer is maintained between regulatory stewardship specialists and other teams with stewardship responsibilities?
	• Is knowledge and experience concentrated among a small number of specialists?

Early indicators of progress

- The stewarding agencies prioritise training and development.
- There are succession-planning processes in place to ensure knowledge is retained through staff changes.
- Induction training includes regulatory stewardship.
- Senior leaders actively prioritise resources for stewardship.

Taking it further

- The stewarding agencies contribute towards knowledge sharing and stewardship capability-building programmes, such as communities of practice.
- Agencies work with G-REG to inform the development of common capability-building resources.

For more information

G-REG delivers a range of regulatory qualifications and professional development opportunities.

The Treasury and G-REG convene a Regulatory Stewardship Community of Practice.

Te Arawhiti has produced a Māori Crown Relations Capability Framework and guidance on providing for the Treaty of Waitangi in legislation and supporting policy design.

The Department of the Prime Minister and Cabinet (DPMC) has published a Policy Capability Framework.

The Treasury has guidance on Best Practice Impact Analysis.

Stewardship topic 4:
Considering regulatory reform

A regulatory system that is undergoing reform provides a particular opportunity to address issues identified through regulatory stewardship work, and to improve the performance of the system. However, there are also risks associated with undertaking regulatory reform that ongoing regulatory stewardship work can help to mitigate.

Whatever the triggers for a regulatory reform, the issues and objectives identified by a Minister for embarking on reform are unlikely to be the only issues or opportunities for improvement within the affected regulatory system. The reform exercise can provide an excellent and sometimes rare opportunity to address these additional matters, particularly smaller issues that still require a legislative change. That will be easier to do if the additional matters are identified at the outset of a reform and can inform the reform work programme and timetable endorsed by the Minister. This is where proactive review work already undertaken, and the keeping of issues registers to collate issues for future attention, can really pay off.

Reform, however, can also create new issues. Reforms may only be concerned with one part of a regulatory system, or with addressing a specific risk or incident. Looked at too narrowly, this may not give sufficient consideration to potential interactions with other parts of the system or adjacent regulatory systems. Bringing a system perspective to a reform exercise can help to reduce the potential for negative impacts or unintended consequences within the system as a whole. Use of a good policy framework will also help.

Even in the best circumstances, however, reforms do not always work out as intended. People have different attitudes and capacities to comply and can respond in unexpected ways to new regulatory arrangements. That can make it hard to get reform details right first time ie, encouraging the desired behavioural response in an efficient way and without unintended consequences. Subsequent adjustments may be required, and good regulatory stewardship work can help agencies to identify and respond to implementation issues early, before they become bigger problems. Good stewards will anticipate this and build into the reform work programme an ability to identify and respond to issues that become apparent once the reform is in place.

Prompts for discussion

1.	If a reform opportunity arose in your regulatory system tomorrow, could you quickly locate and access information on other system changes previously suggested or identified that could possibly be progressed as part of that reform?
2.	For a proposed regulatory reform, how well placed are you to meet the Government's expectations for regulatory stewardship related to robust analysis and implementation support? • Refer to the Government's expectations for regulatory stewardship by government agencies.
3.	Have the implications of the proposed or current reform been considered from a system perspective (ie, the potential impact of change for all aspects of the system and adjacent regulatory systems)?
4.	Will the intended objectives of the reformed system align with the operational reality of the (reformed) system?

5.	Is sufficient time built in for collaboration, engagement and information provision, at the policy and implementation stages? This should take into account:
	• how extensive/complex the reform may be
	• collaboration with Māori and consultation processes for different stakeholder groups
	• potential divergence of stakeholder opinions on the reform, and whether the regulated parties are resistant, reluctant, or unprepared for change.
6.	Have implementation-related risks and challenges been considered, and appropriate mitigation or adjustment plans developed?

Early indicators of progress

- System stewards maintain an awareness of issues with the regulatory system and opportunities to address these in potential reforms (issues registers or similar tools).
- There is connection and alignment between people in all parts of the system during policy design, the legislative process, and implementation.
- Regulatory stewards work with key agencies and teams in the system to appropriately scope and plan any reform.
- Stakeholders are involved early if there are signs of implementation issues, especially with contested reforms.
- Regulatory stewards assess whether further legislative reform or intervention is necessary or desirable.

Taking it further

- Stewards have the capacity and knowledge to facilitate major reform quickly when the opportunity arises
- Stewards can identify and adapt common solutions to common legislative problems when planning and implementing regulatory reform.
- Stewards are empowered to give robust, free and frank, and persuasive advice on the costs, benefits, and risks of reform; on realistic timing; and on realistic transition costs.
- Techniques such as regulatory pre-mortems are used to identify potential issues.

For more information

APEC/OECD has an integrated checklist on regulatory reform.

MBIE has undertaken a Building System Legislative Reform Programme public consultation.

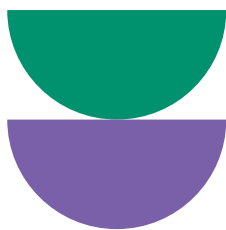For guidance on engaging with Māori, see Te Arawhiti's Engagement Framework and Engagement Summary, and the guidance on building closer partnerships with Māori. See also Te Puni Kōkiri's Directory of iwi and Māori organisations (for consultation/engagement).

MBIE has developed a System Maturity Assessment (SMA) Framework for considering the health of the regulatory systems that it is part of. For readers working at MBIE, the SMA framework is likely to be the preferred tool to use when considering the performance of a specific system.

System topic 1:
System-specific risks

A "set-and-forget" approach to regulation creates substantial risk to the performance and responsiveness of any regulatory system. But each regulatory system has unique characteristics and will be more vulnerable to certain kinds of risks than others. For example, some regulatory systems may be particularly vulnerable to climate change, rare events, or to changes in international trends and geopolitics. The challenge for regulatory stewards is to identify and manage the sources of risk that are likely to be most important for their particular regulatory system.

In some regulatory systems, key risks may come from significant ongoing change in the regulatory environment, which might arise from rapid changes in the size, form or scientific understandings of the problem the system is seeking to address, in associated technologies or in underpinning social values. In other cases, key risks may come from significant uncertainty about the likely effects of a regulatory intervention, including possible unintended consequences, perhaps due to the novelty of the regulatory approach or significant heterogeneity in the regulated population. Some regulatory systems may also be vulnerable to pressure, whether from sudden external events (such as the COVID-19 pandemic), or a failure in critical internal resources or tools used by the regulator.

Other potential areas of risk might arise from the way a regulatory system is managed over time. Short-term fixes, extensions and "work arounds" may have accumulated to the point where the system has become overly complex and incoherent, leading to frustration and loss of confidence in the system from frontline staff or regulated parties. Imbalances in the relative influence exerted by regulated parties and those whose interests are intended to be protected could threaten the integrity of a regulatory system. Resourcing problems or the internal authorising environment may not allow frontline regulatory staff to do an adequate job or take appropriate enforcement actions where there have been compliance failings.

Regulatory stewardship should seek ways to manage and mitigate those performance risks likely to be most important for that regulatory system. This may require systematic monitoring and review work, and the development of internal systems for identifying and circulating risk information. That information then needs to be used in operational decision-making, including decisions on acceptable levels of risk in different areas of operation.

Prompts for discussion

1.	**Is there a system for identifying and managing different sources of risk in the regulatory system?** • Does risk information inform operational decision making and processes? • Do system leaders regularly review risks and agree on risk tolerance within the system?
2.	**Is the regulatory system characterised by:** • an increased likelihood of rare events occurring, with potentially serious harm to the system • imbalances of influence or power between regulated parties and beneficiaries • a high prevalence of risks that are not reported or are underreported?
3.	**Is the system funded effectively on a basis that is consistent with the outcomes sought?** • Enforcement and compliance activities are often financed through financial penalties, which can lead to unintended consequences. • The system's ongoing funding can be subject to budget cycles that occur out of sync with the development of legislation.

4.	Has a lack of best practice led to a loss of coherence, integrity or trust in the system? • This could include a regulatory system with a high prevalence of temporary fixes or reinterpretations of the legislation, or a system where unintended consequences accumulate to the point that key elements of the system are vulnerable to legal challenge.
5.	Does the legislation underpinning the regulatory system enable current expectations of the Māori Crown partnership? Is this agreed by Māori and the Crown?
6.	Is there effective compliance monitoring and enforcement? • Is compliance and enforcement activity targeted to risk of harm? • Is compliance monitoring and enforcement done differently for different regulated parties? • How do you ensure that potential harm from chronic, low-level non-compliance is identified and addressed?

Early indicators of progress

- There is a risk identification and management system in place for the regulatory system.
- Issues registers are maintained, allowing for early identification of new issues and evolving contexts.
- Risk information and thinking informs decisions at leadership and operational levels.
- Major risks are either addressed by the stewarding agencies or escalated for response at the appropriate level.

For more information

See the section on good regulator practice in the Government Expectations for Good Regulatory Practice and Conditions for Good Regulatory Stewardship.

The Office of the Auditor General has some further information on risk management.

Taking it further

- The stewarding agencies undertake simulation exercises to test preparedness for rare catastrophic events.
- Regulatory stewards have a programme for maintaining their system and, where appropriate, use levers for adapting the underlying legislation, such as taking advantage of Regulatory System Amendment Bills and other legislative vehicles.

System topic 2:
Opportunities to ease compliance and support innovation

Regulatory requirements often impose costs of compliance on the public. How a regulator performs its functions can affect the size of that burden and who is most impacted. Even the process to obtain information can have a big impact on the experience and effort required of the person providing it. In consideration of this, it is helpful to look at the issue from the perspective of a regulated party and consider whether specific regulatory requirements are essential to regulatory success, or whether the intended outcomes could be satisfied in a less burdensome way.

It is useful for regulatory stewards to periodically ask how they can reduce regulatory burdens, make it easier for people to comply with requirements, or simplify interactions between the public and the government. This may be particularly relevant for individuals, groups or enterprises whose situations, communication needs or ability to access information may differ from the majority.

Regulatory environments evolve, and regulated parties may want to take advantage of new opportunities. It is therefore important to support system changes that allow or encourage innovation, or that support other desirable dynamics such as learning or fair competition (eg, removing overly prescriptive requirements based on current technologies that can lock out new technologies and innovation).

Compliance costs can often be reduced without legislative change. This might include changes to requirements for reporting information or applying for approvals.

Flexible, adaptable regulation can help to identify and realise these opportunities. So can regular proactive reviews of a regulatory system, and ongoing engagement with interested and affected parties. There also needs to be an organisational culture that supports and encourages regulatory experimentation, and an acceptable appetite for making adjustments to get it right.

Prompts for discussion

1.	Are there opportunities to reduce unnecessary regulatory burdens, including making compliance easier, particularly for more disadvantaged people, groups or small enterprises?
	• Have behavioural insights been applied to the design of regulatory procedures? In particular, has the experience of the regulated party been considered?
	• How well do engagements with interested and affected parties help to identify practical opportunities for system improvements?
2.	Are there opportunities to increase competition in markets and industries shaped by the regulatory system?
3.	Are there new technologies or business models being introduced or considered that could affect currently regulated activities?
	• How well can the current regulatory system accommodate these new technologies or business models?
	• How might the system need to change to allow or support useful innovations?

4.	Could the regulatory system be made more adaptable to make it easier to accommodate future innovations not yet seen, or take advantage of opportunities for performance improvement not yet identified?
5.	Are there opportunities to partner with Māori to generate ideas for innovation, especially where Māori are already involved with the system?

Early indicators of progress

- New opportunities are identified, based on regular stakeholder engagement and research by stewarding agencies.
- Significant opportunities are either addressed by the stewarding agencies or escalated for response at the appropriate level.
- Senior leaders are open to trying new types of regulatory practices.

For more information

For more information and examples of Regulatory Systems Amendments Bills, see MBIE's guidance on Regulatory Systems Amendment Bills, and see examples Regulatory Systems (Housing) Amendment Bill (No 2), or Regulatory Systems (Workplace Relations) Amendment Bill.

Taking it further

- Agencies are confident about how to support innovations safely within the regulatory system.
- Omnibus Bills, such as Regulatory Systems Amendment Bills, are used to progress opportunities for improvement requiring minor legislative changes in a timely way.
- Regulatory innovation helps to create high-value industry niches (eg, the creation of the outer space and high-altitude activities regulatory system), or to make compliance easier.
- There is active regulatory support for broader policy initiatives such as industry transformation plans and innovation policies.

System topic 3:
Delegated and devolved responsibilities

Not all regulatory tasks are performed by central government agencies. Some regulatory roles have been devolved or assigned to local government authorities or to external parties outside of government control, such as representative bodies for particular industries or occupations (eg, the New Zealand Law Society). In other cases, private bodies (sometimes called regulatory intermediaries or agents) may be authorised by statute, or permitted or contracted by a regulator, to provide services that have a regulatory function, such as inspection, certification, authorisation, or standard setting (eg, auditors, credit-rating agencies, vehicle warrant-of-fitness agents).

Using parties outside of government (whether statutory or private, domestic or international) in a regulatory role can help reduce costs or take advantage of technical expertise or on-the-ground knowledge that might not be readily accessible otherwise. However, the private incentives of such parties have the potential to differ, in at least some way, from the policy intent or public interest. Their interpretation or understanding of the purpose of the regulatory system, and their role within it, may also differ from the policy intent.

Regulatory stewards therefore need to consider ways to manage or mitigate the risk such divergences could pose to the integrity or performance of a regulatory system. Good system design can alleviate some of these issues at the outset, and guidance can also be helpful in some situations. However, it usually requires resources to undertake some form of ongoing monitoring and audit of these bodies.

Some of these issues could also arise in-house for decisions delegated to frontline regulatory staff. The interpretation and understanding of their roles may diverge from that intended by the regulatory system design. The true nature and pressures of frontline roles may lead staff to act in ways that were not intended or contemplated by those involved in the policy or operational design, especially if staff support systems and training are inadequate. Regulators need to periodically check whether the operational assumptions underlying the design of their systems, processes, training, and tools reflect the reality on the ground, including the range of situations that frontline staff may face.

Prompts for discussion

1.	Does your regulatory system use parties outside of central government to perform a regulatory function? Do they have any potential incentives to act contrary to the public interest and the expectations of the regulatory system in the performance of their function? How would you know if this was occurring?
2.	Have sufficient resources been allocated to monitor the conduct of regulatory intermediaries and bodies exercising devolved regulatory powers, on an ongoing basis?
3.	Does the delegating agency have the capacity and/or capability to quality-assure the work of the operational regulator/regulatory intermediary?
4.	Are the behaviours and practices of frontline staff consistent with the objectives of the system? • Is there a risk that system changes are not translated to frontline regulatory practices, resulting in divergence over time? • Is there regular interaction between government agencies and regulatory intermediaries, including training, professional development and discussion, to ensure consistency? • Are all frontline staff, including those working for regulatory intermediaries, empowered to raise issues and constructive criticism? • Is a conflict-of-interest check regularly undertaken?

Early indicators of progress

- Delegation and contracting processes consider potential or perceived conflicts of interest.
- The need for, nature and scope of any monitoring and audit arrangements have been informed by an assessment of the interests, understandings and pressures on frontline staff or external parties performing regulatory roles.
- Regulatory system changes are accompanied by a suitable education programme to clearly explain the nature and purpose of those changes to frontline staff, including any regulatory intermediaries.

Taking it further

- Frontline staff provide input into system design and review.
- Monitoring and audit arrangements are reviewed and adjusted when a regulatory system comes under pressure.
- Monitoring and audit arrangements make use of data from multiple sources to identify early signs of potential problems with the work of particular regulatory intermediaries or agents.

System topic 4:
Maintaining infrastructure

Regulatory systems rely on both digital and physical infrastructure to engage with stakeholders and deliver the desired regulatory outcomes. This may, for example, include infrastructure for storing and sharing information and for undertaking monitoring and compliance activities. It also includes physical infrastructure such as buildings and equipment.

Infrastructure that is outdated, poorly maintained and/or underfunded can inhibit the ability of a system to operate effectively, leading to poor or inadequate outcomes, low staff productivity, or even regulatory failure. For example, a regulatory system that relies on outdated information technology risks being ineffective if that technology is not compatible with the technology used by counterparts or regulated parties. If information systems are unreliable, then compliance and enforcement activities may be compromised, or there may be a risk of privacy or other data breaches.

Prompts for discussion

1.	Has the digital and physical infrastructure critical to delivery of the regulatory system been identified, including where the critical dependencies are?
2.	Has the infrastructure that supports the operation of the regulatory system been maintained and/or replaced to keep it fit for purpose? • Are physical and digital assets (including information systems needed for compliance and enforcement) outdated, with high or disproportionate operating costs? • Is the key infrastructure compatible with the infrastructure used by the system's key stakeholders?
3.	If the infrastructure includes impacts on assets or taonga that are significant to Māori, has that cultural significance been acknowledged and addressed with affected Māori in the use of the infrastructure?
4.	Is the key infrastructure sufficiently flexible to cope with pressure, diversity in the regulated population, and emerging regulatory challenges? • Would the infrastructure be able to meet a sudden increase in demand for services, or to cope with the failure of an infrastructure component? • When updating system infrastructure, have regulatory stewards considered the impact on various stakeholder groups (eg, with increased use of online delivery, are there sufficient alternative delivery mechanisms for those without online access)?

Early indicators of progress

- Regulatory stewards across participating agencies identify opportunities and risks with the system's digital (eg, information management systems, databases) or physical (eg, buildings, labs, machinery) infrastructure.

- If the system needs to operate with a fragile infrastructure for a prolonged period, a corresponding risk-management strategy is devised, and inherent risks are escalated for response at the appropriate level.

Taking it further

- Investments into regulatory infrastructure are core considerations for funding of regulatory systems.
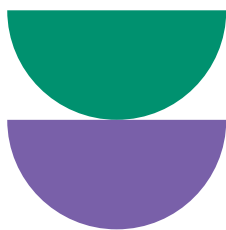
System topic 5: International context

International regulatory developments, and activities and stakeholders based outside Aotearoa New Zealand, have important implications for the design and operation of many domestic regulatory systems. In particular, the effectiveness of a domestic regulatory system can be compromised by:

- failure to learn from overseas experience
- failure to consider how the system interacts with regulatory arrangements and norms in other countries
- the inherent difficulties in regulating activities or stakeholders based outside Aotearoa New Zealand.

Paying close attention to these international and cross-border issues can significantly enhance the performance and resilience of regulatory systems. In some cases, the cross-border dimension will be front and centre, such as in the areas of air and sea transport, biosecurity, and customs. Here, active international cooperation, common standards, and aligned or interoperable systems can be vital. In other areas the cross-border dimension might be less obvious, but it still needs to be considered – such as in regulation for the protection of whistle-blowers.

In many regulatory systems, there will be international obligations, expectations or commonly accepted international standards that apply. For example, Aotearoa New Zealand has signed up to a number of treaties to protect the rights of indigenous people, including an international obligation to comply with some of the Te Tiriti/ the Treaty rights (eg, International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Declaration on the Rights of Indigenous Peoples.

If nothing else, it is very unlikely that Aotearoa New Zealand will have regulated something that is not also regulated for a similar purpose in another jurisdiction. Consequently, there are likely to be opportunities to learn from the experience and practices of other countries, even if their domestic context differs.

Prompts for discussion

1.	What international obligations or expectations accepted by Aotearoa New Zealand are relevant to this system, and how well is the regulatory system meeting these international obligations and expectations?
2.	What trends and regulatory developments outside Aotearoa New Zealand may be relevant to the future performance, design and operation of the domestic regulatory system?
3.	Are legitimate cross-border activities (eg, related to the flow of people, goods, services, capital, or innovative ideas) potentially being hampered or made more costly than necessary by a lack of information or support for affected parties, or by regulatory gaps or misaligned, conflicting, or duplicative requirements between Aotearoa New Zealand and other countries? • Are there existing international standards, models, or frameworks that Aotearoa New Zealand could adopt or recognise to improve interoperability and reduce compliance costs?
4.	Where the range or effectiveness of enforcement options might be constrained because relevant stakeholders, property, or information sit outside Aotearoa New Zealand, are there opportunities to improve regulatory effectiveness through changes to regulatory design, or through better cooperation between regulatory authorities?

5.	To help mitigate resourcing or capability constraints in Aotearoa New Zealand, are there opportunities to engage with the equivalent overseas regulators to share or access useful analysis, intelligence, tools, methodologies, expertise, guidance, training, or other resources?
6.	What opportunities does Aotearoa New Zealand have to influence international regulatory settings and norms in ways that better support or accommodate domestic interests and circumstances? • Are Māori rights and interests appropriately considered in the development of international agreements in which Aotearoa New Zealand participates?

Early indicators of progress

- Regulatory stewards keep up to date with regulatory developments worldwide, through scanning international literature and the websites of relevant international bodies and country regulators counterparts.
- Regulatory stewards understand the range of options they have for international regulatory cooperation.
- Insights from stewardship are reported to agencies leading international negotiations and regulatory collaboration.

Taking it further

- Regulatory stewards maintain regular contacts with key international regulatory counterparts and attend relevant international forums.
- Regulatory stewards actively participate in the development of international rules and standards.
- There is regular engagement with those impacted by international regulation, to produce stewardship insights.

For more information

The Ministry of Foreign Affairs and Trade's website contains information on international agreements and arrangements to which Aotearoa New Zealand is a party.

The 2021 Legislation Guidelines, published by the Legislation Design and Advisory Committee, contain useful discussions of giving effect to treaties and international obligations and also dealing with conduct, people and things outside Aotearoa New Zealand.

The OECD website provides the Recommendation of the Council on International Regulatory Co-operation to Tackle Global Challenges and Best Practice Principles on International Regulatory Co-operation.

There is a short discussion of cross-border issues in *Making Laws that Work: How Laws Fail and How We Can Do Better.*[2]

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2   Goddard, D. 2022. *Making Laws that Work: How Laws Fail and How We Can Do Better.* Oxford: Hart Publishing, chapter 13.

Supporting material

ANNEX 1:

Holding and facilitating discussions on regulatory stewardship

The prompting questions in this resource aim to help you improve the stewardship and performance of the regulatory system to which you contribute.

These questions can be used as part of a deep-dive into your system, they could form the basis of conversations with stakeholders, or they could be used during regular and ongoing cross-agency discussions with teams involved with the regulatory system.

One suggested format for holding these types of discussions is through regular regulatory stewardship workshops. This approach has been tested by the Department of Internal Affairs and found to be useful. Suggestions for what this could involve are outlined below.

Why hold regulatory stewardship workshops

Regulatory stewardship is a collaborative exercise relying on the participation of multiple parties who may have diverse interests. Regulatory stewardship workshops are therefore a useful tool for the ongoing monitoring and care of the system, as they bring together participants to discuss the stewardship and performance of the regulatory system to which they contribute.

When to hold regulatory stewardship workshops

We recommend that you hold regulatory stewardship workshops for a specific system at regular intervals. The frequency of workshops should reflect the complexity of the system and the resourcing capacity of the regulatory system.

Who to invite to regulatory stewardship workshops

Effective regulatory stewardship workshops rely on the knowledge and experience of participants. The depth of any findings will depend on the information and evidence that participants bring to and share in the workshop.

As an early step towards preparing for these conversations, identify those within your system who are able to provide information on the stewardship and performance of the regulatory system. This should encompass people from all parts of the system.

The Department of Internal Affairs found it very useful to have outside regulatory and stewardship experts at their workshops, as those people could ask probing questions that might not occur to those working within a system. Talk with as many people as you can about who could be involved. If you start by taking a broad approach, you can easily narrow your list down if it becomes too large to practically manage.

The workshop relies on collaboration between:

- *A lead agency or agencies* – the lead agency will organise the workshop, invite attendees, appoint a facilitator, and summarise the discussion. The lead agency will also take responsibility for capturing the outputs from the discussion and next steps.
- *Policy and operational teams at participating agencies* – these teams provide a whole-of-system view based on the combined insights of subject-matter experts and their managers.
- *Individuals in the role of facilitators* – these individuals serve an advisory role by facilitating the workshop.
- *Outside regulatory and stewardship experts* – while not essential, these individuals are able to provide an outside perspective on the system.

Step 1: Preparing for the workshop

To enable informed and insightful discussions at the workshop, some pre-work is required of participants.

One option might be to ask all those invited to the workshop to read this resource and suggest one to two topics to discuss that seem most relevant for the regulatory system. You can aggregate this feedback and use it to outline an agenda for the workshop, focusing on the favoured topics.

Alternatively, you may choose to run a series of shorter workshops focusing on one topic at a time.

In choosing topics for an initial focus, we suggest that the system fundamentals, authorising environment, and the system-specific risks topics would be options worth giving some priority to.

Step 2: At the workshop

For the stewardship topics, you could discuss actions and practices that you can take to be effective regulatory stewards, as well as opportunities for improvement.

For the system topics, you could discuss the different elements of the regulatory system, and whether the nature or performance of those elements point to any important risks that should be managed or opportunities that could be realised.

You should also discuss, prioritise and agree next steps towards implementing selected improvements in short- and longer-term timeframes. If a risk of imminent failure is identified, urgent escalation steps should be taken.

Step 3: After the workshop

Providing a written summary

The coordinating agency or team should assume responsibility for capturing the discussion and agreed actions to be taken. For a summary template, see Annex 2: Summary of outputs template.

The outcomes of the workshop should be reported to the relevant oversight group. You could also consider whether a summary of outcomes and recommendations could be published, and/or shared with interested stakeholders (these may be other government agencies with interests in the regulatory system, central agencies like the Treasury, or agencies stewarding a related regulatory system).

Next steps on regulatory stewardship

Next steps will depend on the nature of the discussion and corresponding actions that have been identified. For more information on actions to take, see Next steps after this resource.

Summary of outputs template

Date of discussion:	
Names of those present:	

Summary of discussion on stewardship topics

Note here whether the workshop has either identified a risk of imminent regulatory failure related to stewardship of the regulatory system, or confirmed that no such risk was identified.

Summarise discussion on stewardship actions and practices to be effective regulatory stewards, as well as opportunities for improvement.

Summary of discussion on system topics

Note here any improvements that the stewardship teams intend to act upon in short- and longer-term timeframes.

The outcomes should be reported to the relevant oversight group. If there is no relevant oversight or governance committee, the outcomes could also be reported to the relevant senior leaders in the organisation, but those may need to be identified as well, as part of establishing the mandate for stewardship work. You could also consider whether a summary of outcomes and recommendations should be published, and/or shared with interested stakeholders (these may be other government agencies with interests in the regulatory system, central agencies like the Treasury, or agencies stewarding a related regulatory system).

Next steps

Note here any improvements that the stewardship teams intend to act upon in short- and longer-term timeframes.

The outcomes should be reported to the relevant oversight group. You could also consider whether a summary of outcomes and recommendations should be published, and/or shared with the Treasury.

Glossary

Government Regulatory Practice Initiative (G-REG)	A club-funded network of central and local government regulatory agencies established to lead and contribute to regulatory practice initiatives. It works on actions that improve leadership, culture, regulatory practice and workforce capability in regulatory organisations and systems.
'Learn-and-adapt' approach to regulation	Designing regulation with a collaborative approach by operational and policy agencies, with ongoing monitoring and triaging of issues and risks. This contrasts with the 'set-and-forget' approach to regulation, where system stewardship is disregarded following regulatory reforms, resulting in limited oversight of issues, and increasing risk of regulatory failure.
Regulated party	A person, group, enterprise or organisation that is subject to behavioural expectations, obligations and/or sanctions within a regulatory system.
Regulatory agency	Any agency (other than courts, tribunals and other independent appeal bodies) that carries out functions for the whole or part of a regulatory system, such as: 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.
Regulatory charter	A management tool designed to support a living regulatory system and reinforce its shared ownership for those with regulatory functions.[3]
Regulatory failure	This occurs where regulations fail to improve outcomes, or where they even lead to outcomes that are worse than no regulation. The two main ways regulation can fail are by failures of design or failures of operation.[4]
Regulatory pre-mortem	Testing potential issues with regulatory reform, by imagining a proposed regulation has failed and attempting to work out all the different ways that could have happened.
Regulatory Stewardship Chief Executives Group (RegCEs)	This group supports the Secretary to the Treasury's Regulatory System Stewardship and Assurance functional leadership role. The group is committed to providing support to agencies in their stewardship work and providing the Government with confidence that the public service is actively delivering on its regulatory stewardship responsibilities.
Regulatory Stewardship Community of Practice (RSC)	A space for people with an interest or responsibility for regulatory stewardship to connect, share and learn with colleagues from across central and local government. Convened by G-REG and the Treasury.

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3   Ministry of Business, Innovation & Employment. 2019. *Regulatory charters.* Retrieved from www.mbie.govt.nz/cross-government-functions/regulatory-stewardship/regulatory-charters/ (15 November 2022).

4   For more on regulatory failure, see: van der Heijden, J. 2022. *Regulatory failure: A review of the international academic literature.* *State of the Art in Regulatory Governance Research Paper – 2022.11.* Wellington: Victoria University of Wellington/Government Regulatory Practice Initiative. Retrieved from www.wgtn.ac.nz/chair-in-regulatory-practice/pdfs/2022-State_of_the_Art_in_Regulatory_Governance_11-Regulatory_failure.pdf (15 November 2022).

Regulatory stewardship	Regulatory stewardship refers to the governance, monitoring, and care of our regulatory systems. It aims to ensure that all the different parts of a regulatory system work together to achieve its goals, and to keep the system fit for purpose over the long term. Effective stewardship requires a proactive and collaborative approach, so that regulatory systems adapt to changing circumstances in a timely and cohesive way.
Regulatory System Stewardship and Assurance (RSSA)	The RSSA role is led by the Chief Executive and Secretary to the Treasury, to support agencies with their regulatory stewardship work and provide confidence to the Government that the public service is actively delivering on its regulatory stewardship responsibilities.
Regulatory systems	A set of rules, norms, and sanctions, given effect through the actions of designated actors, that work together to shape people's behaviour or interactions in pursuit of a broad goal or outcome. A regulatory system is defined by the shared understanding of the lead policy agency, regulators and other entities involved, which tends to be derived from the objectives of the legislation underpinning the regulatory system.
Regulatory Systems Amendment Bill	Regulatory Systems Amendment Bills are legislative vehicles that help to maintain the effectiveness and efficiency of regulatory systems, and to reduce the chances of regulatory failures. The amendments that are included in the Bills involve the continuous improvement of, or repairs and maintenance to, regulatory systems.
Responsive regulation (also agile and adaptable regulation)	Regulation that is developed to be responsive and collaborative, with a focus on the future and the outcomes to be achieved.
Revision Bill	Revision Bills, governed by subpart 3 of Part 3 of the Legislation Act 2019, are for systematically revising the presentation of some Aotearoa New Zealand Acts to make them more accessible. After being revised, they are introduced into Parliament as revision Bills for re-enactment. For each new Parliament, a revision programme is prepared that sets out the Acts to be revised over each parliamentary term.
Statutes Amendment Bill	Statutes Amendment Bills are designed as vehicles for short, technical, and non-controversial amendments to a range of Acts[5].
System stewards	A general term that, depending on the context, can refer to regulatory agencies, as that term is defined above, or to individual staff within those regulatory agencies that would be expected to take responsibility for regulatory stewardship, as appropriate.
Statutes Repeal Bill	Statutes Repeal Bills repeal or partially repeal Acts that are no longer needed because they no longer have any actual effect, have very limited effect, or are designed to achieve regulatory outcomes that are no longer relevant. By repealing unnecessary and spent legislation, Statutes Repeal Bills make the statute book easier for users to navigate and easier for departments to administer.

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5   For information on the process for developing Statutes Amendment Bills, see: Cabinet Office. 2020. *CO 20(11): Statutes Amendment Bill for 2021.* Retrieved from www.dpmc.govt.nz/publications/co-20-11-statutes-amendment-bill-2021 (15 November 2022).