



# GUIDE TO REGULATORY STEWARDSHIP

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# Stewardship

Stewardship involves managing resources that are owned by, held on behalf of, or exist for the benefit of someone. Proactively promoting stewardship of the public service is one of the principles in the Public Service Act 2020. This includes stewardship of the legislation administered by agencies. Chief Executives also have a responsibility to support their Ministers to act as good stewards in relation to legislation.<sup>1</sup>

Regulatory stewardship 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.<sup>2</sup>

This Guide focuses on stewardship of regulation. Regulations are the rules by which governing institutions impose obligations or constraints on the way something is done, or the way people behave. See our **Guide to Regulation**,

available in hard copy or on our website <https://www.allenandclarke.co.nz/resources/>.

Parliament or Ministers usually have the formal decision rights over regulation. Government regulatory agencies have a stewardship role for the regulations they administer.

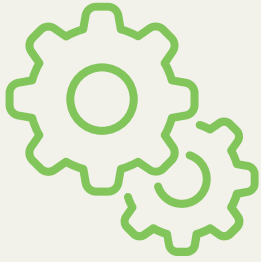
**Regulatory stewardship** involves agencies adopting a whole-of-system view of regulation, and taking a proactive, collaborative approach to the care of the regulatory system(s) within which they work.<sup>2,3</sup> This approach considers regulation as an asset that needs ongoing care and maintenance to deliver effectively over time.<sup>1,2,4</sup>

## Regulatory systems approach

Regulatory stewardship encompasses more than just responsibility for a specific statute, regulation, or instrument. It applies to the wider system within which such instruments exist.

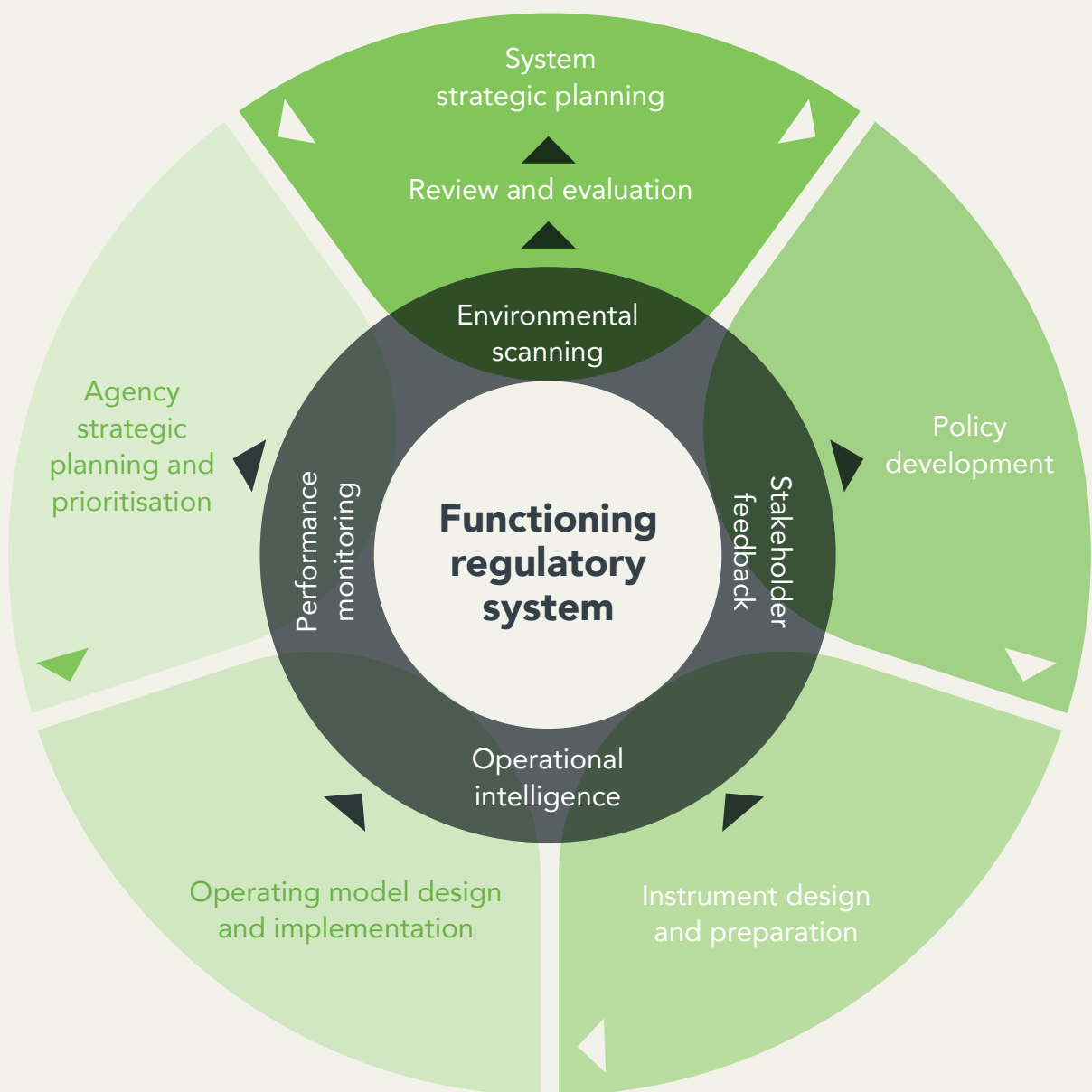
**A regulatory system** is a set of rules, norms and sanctions, supported by the actions and practices of designated agencies to shape people's behaviour in pursuit of broad policy goals or outcomes.<sup>3,4,5,6</sup>

Some systems may include multiple pieces of legislation and multiple agencies with their own roles that contribute to overall system performance. Sound regulatory stewardship includes parties involved in the system working together to ensure the system remains fit for purpose.<sup>7</sup>



# Key stages in a simple regulatory cycle

This diagram shows how a regulatory system can change and evolve.<sup>5</sup>



# Regulatory management system

Regulatory stewardship is a key component of New Zealand's regulatory management system. This system includes the policies, institutions, processes, and tools used by central government to administer, develop, implement, monitor, and review regulation, as outlined below.<sup>1</sup>

## Key components of the regulatory management system



### The Government's regulatory management strategy

Describes New Zealand's regulatory management system and identifies some initiatives to develop it further.<sup>5</sup>



### Government expectations for good regulatory practice

Provides government agencies with high-level guidance on the design of good regulatory systems and outlines the government's expectations for regulatory stewardship by government agencies.<sup>3</sup>



### Departmental regulatory stewardship reporting

Major regulatory departments publish descriptions and assessments on regulatory systems for which they have a major regulatory stewardship role. The Treasury asks departments to use key performance dimensions: effectiveness; efficiency; durability and resilience; and fairness and accountability.<sup>8</sup>



### Regulatory impact analysis requirements

A process and analytical framework that encourages a systematic and evidence-informed approach to policy development. If regulatory change is a potential solution to a policy problem, departments must identify viable policy options and assess their impacts. Departmental Regulatory Impact Statements summarise such impact analysis for decision-makers.<sup>9</sup> See our **Guide to Regulation** available in hard copy or on our website <https://www.allenandclarke.co.nz/resources/>.



### Departmental disclosure statements

Published for Government Bills and substantive Supplementary Order Papers. They explain the policy underpinning the proposed legislation, its objectives, key features/content, the quality assurance work undertaken to develop it, and any significant powers or unusual features that may be of interest to Parliamentary or public audiences.



### Exposure drafts of proposed legislation

The release of an exposure draft of proposed legislation for consultation can help inform its development. This process can identify and resolve potential issues before proposed legislation is put to decision-makers.<sup>11</sup>



### Expert support for legislative design

Includes support from the Parliamentary Counsel Office and advice on legislative design issues from the Legislative Design Advisory Committee.



### Omnibus reform Bills

Statutes Repeal Bills, Regulatory Systems Bills, Revision Bills, and Rewrite Bills can help maintain and improve New Zealand's regulatory system.



### Other supporting legal + constitutional arrangements

Examples include:

- > parliamentary scrutiny and disallowance processes
- > legislative drafting through the Parliamentary Counsel Office
- > vetting of draft legislation for consistency with the New Zealand Bill of Rights Act 1990.

# The Government's regulatory stewardship expectations

This page reproduces the Government Expectations for Good Regulatory Practice.<sup>2</sup>

The Government expects regulatory agencies to work to do the following things:

## Monitor, review, and report on regulatory systems

This includes working collaboratively to:

- > monitor the performance and condition of the regulatory system and environment
- > periodically review the system to determine whether it is still fit for purpose
- > test operating assumptions, and consider the perspective of regulated parties and others affected by the system
- > periodically look at other regulatory systems for possible trends, threats, linkages, economies of scale, and examples of innovation and good practice
- > use the information gathered to proactively identify and assess, and report/address problems, vulnerabilities, and opportunities for improvement
- > pay attention to requirements that appear unnecessary, ineffective, or excessively costly.

## Analyse and implement support for changes to regulatory systems

This includes providing advice or assurance on the robustness of the proposed regulatory change to:

- > assess the importance of the issue in relation to the overall performance of the regulatory system(s), and how it might fit with plans or opportunities for system improvement
- > clearly identify the nature and underlying cause of the problem it needs to address, drawing on operational intelligence and information gathered from monitoring or review activities
- > undertake systematic impact and risk analysis, including assessing alternative policy options, and how it might interact with existing domestic and international requirements
- > make genuine effort to identify, understand, and estimate the costs and benefits associated with the options
- > identify and address design, resourcing and timing issues required for effective implementation and operation, in conjunction with the regulator(s) who will deliver the changes

- > provide affected and interested parties with appropriate opportunities to comment and participate in the regulatory design process
- > use 'open book' exercises to allow potential fee or levy-paying parties to scrutinise the proposed statutory charges.

Before a substantive regulatory change is formally made:

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

## Undertake good regulator practice

This includes, where appropriate to their role, working to:

- > maintain a transparent compliance and enforcement strategy that is evidence-informed, risk-based, responsive, and proportionate
- > provide information and support to help regulated parties understand and meet regulatory obligations
- > provide straightforward ways to engage with regulated parties, and listen and respond to their views
- > maintain and publish up-to-date information about their regulatory decision-making processes
- > develop relationships with other regulatory agencies to share intelligence and coordinate activities to help manage regulatory gaps/overlaps, minimise regulatory burden on regulated parties, and maximise the effective use of resources
- > provide frontline regulators with the necessary knowledge, skills, tools and support to discharge their responsibilities, review and improve their practice, and report back on issues
- > contribute to wider regulator capability building initiatives where there are common interests and benefits from collective action and leadership
- > alert ministers and monitoring agencies to organisational capability or resourcing issues, or problems with legislation, that may compromise the ability to discharge responsibilities
- > provide advice on the nature of the system-performance risks and mitigating strategies.



# Potential risks from poor regulatory stewardship

## Leadership, collaboration + administration



- > Unnecessary costs or impacts on stakeholders, including the regulator
- > Poor administrative decisions undermining even the best-designed frameworks
- > Inadequate capacity and resourcing of the regulator
- > Cultural disconnect, group-think, intellectual prejudice, operational disconnect
- > Lack of clarity in regulators' roles and responsibilities, for example, in the interface between central government and the local government regulatory system
- > Weak governance and management of regulators and regulated parties

## Design + development



- > Poor design of regulation
- > Overly-complex regulation
- > Obsolete regulation, failing to keep up with technology or public expectations

## Implementation



- > Poor implementation
- > Poor engagement and communication about regulatory requirements
- > Failures of compliance and enforcement

## Monitoring + review



- > Regulators unable to respond to emerging problems
- > 'Set and forget' mindset to regulation, with reviews only triggered by adverse events
- > Weak regulator accountability, monitoring and oversight



# Tips for effective regulatory stewardship

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## Leadership, collaboration + administration

- > Apply a leadership model that promotes a whole-of-system view recognising relationships between those involved in the regulatory system<sup>7</sup> – for example, outline the regulatory system’s objectives and describe how agencies within the system will work together to monitor performance.
  - > Establish a genuine collaborative participation model between policy agencies, regulators, and other stakeholders at the core of the regulatory system to inform development and implementation of regulatory systems.<sup>7</sup>
  - > Consider Te Tiriti and how you will partner with Māori, and opportunities for co-design.
  - > Participate in regulatory capability building across government and be part of a community of regulatory professionals – for example, the Government Regulatory Practice Initiative, G-Reg.
  - > Undertake an organisational stocktake to assess the effectiveness of regulatory stewardship obligations, and identify any gaps or problems. Develop a strategy and work programme for the organisation’s regulatory stewardship priorities and track its progress.
  - > Set clear expectations for staff regarding regulatory stewardship responsibilities – for example, include stewardship in team work programmes and position descriptions, and link activity to the organisation’s strategy.
- > Include regulatory stewardship in key strategic documents – for example statement of intent, annual and quarterly reports.
  - > Consider options to champion regulatory stewardship within the organisation. For example:
    - appointing a senior official as the organisation’s regulatory steward. Choose someone who has access to decision makers, and is given the mandate and support to champion regulatory stewardship
    - convene a group or committee to help the organisation meet its regulatory stewardship obligations. This is to provide a forum to share new developments and lessons, to promote stewardship issues with decision-makers, and to assist with quality assurance.
  - > Raise staff understanding and awareness of what regulatory stewardship comprises and its importance – for example, via communications or guidance.
  - > Share lessons from regulatory success and failure across the organisation to promote learning.
  - > Proactively consider options for capability building in the organisation – for example, training on different aspects of regulatory stewardship and supporting staff to attain regulatory qualifications.
  - > Ensure the agency is proactive in contributing to omnibus bills (for example, Statutes Repeal Bills or Statutes Amendment Bills) to help with keeping the regulatory system fit for purpose.



## Tips continued...

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### Design + development

- > Keep in mind the Government Expectations for Good Regulatory Practice. These include the design of regulatory systems in Part A and the expectations for robust analysis and implementation support for changes to regulatory systems in Part B.<sup>2</sup>
- > Ensure regulatory impact analysis is always undertaken during policy development when there are potential regulatory implications. Engage early with The Treasury's regulatory quality team when considering or developing regulatory solutions to policy problems.<sup>9</sup>
- > Follow the quality assurance requirements for regulatory impact analysis and policy papers.<sup>9</sup> Check whether the agency is responsible for quality assurance, or whether The Treasury will provide this role.
- > Engage early with other agencies on technical issues – for example, Ministry of Justice for offences and penalties or checking Bill of Rights implications, and the Office of the Privacy Commissioner for privacy implications.
- > Ensure staff are aware of Te Tiriti implications of the proposed regulation. Refer to the Department of the Prime Minister and Cabinet's Te Tiriti o Waitangi analysis.<sup>17</sup> See our **Guide to Regulation** for further information.
- > Consider the relationship with other regulatory systems to avoid potential conflicts or inconsistencies.
- > Obtain expert regulatory design advice – for example, engage early (before policy approvals are obtained) with the Legislation Design and Advisory Committee and Parliamentary Counsel Office, and refer to their guidance.<sup>13,14</sup> This can prevent unwanted surprises, ensure smooth progress, and help guarantee quality regulatory design.

- > Always get legal advice early to check whether proposed secondary regulation is within the powers of its parent legislation (if in doubt, Crown Law Office advice may be needed).
- > Proactively consider implementation issues during policy and regulatory design phases.
- > Consider extra consultation with stakeholders (beyond the policy development phase) – for example, to test exposure drafts of legislation with stakeholders.
- > Check that draft legislation accurately reflects policy decisions, including the roles, responsibilities, and powers of different government agencies.
- > When checking draft legislation, focus on its scope and proposed regulation-making powers to ensure sufficient flexibility for future needs.

### Implementation

- > Ensure sound implementation planning is undertaken for all regulatory systems.
- > Use risk-based decision-making to guide implementation across your regulatory portfolio and within each regulatory system.
- > Ensure appropriate transition timing is factored in when new regulatory systems are introduced, or changes made to existing requirements. Develop a communications strategy with key stakeholders.
- > If regulation provides for discretionary decision-making powers for office-holders, consider what administrative tools or support is needed to help ensure consistent and sound decisions. Be open and transparent with such material.



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- > Develop a core enforcement and compliance strategy for the regulatory systems the agency administers, while considering specific needs for each regulatory system. This includes balancing proactive (for example, audits) and reactive (for example, responding to complaints) approaches.
  - > Support and enable voluntary compliance. Produce guidance on the regulation, its effect, and people's obligations under it. Consider training, workshops and other means to support compliance – for example, videos or social media.
  - > Consider innovative mechanisms to inform and support compliance planning and decisions – for example, a compliance panel with external members to test your assumptions.
  - > Continually develop capability of key players in the regulatory system. This includes ensuring competence of regulators – both in terms of undertaking their core regulatory functions, but also their understanding of policy objectives the regulatory system is intended to achieve, and the capability to evaluate the behaviours and actions of others in pursuit of the public interest outcomes being sought.<sup>7</sup>
  - > Develop the necessary administrative tools and resources to ensure efficient and effective implementation and retention of institutional knowledge – for example, plain English process guides, application forms, templates, and guidance. Translate documents into relevant languages to reach other populations.
  - > Build and use tools to capture data on the regulatory systems' performance (to inform monitoring and review).

- > Consider how to provide the public with ongoing access to regulation, particularly secondary legislation that may not be on [legislation.govt.nz](http://legislation.govt.nz).
- > Seek opportunities to share good implementation practice and lessons across your organisation and with fellow regulators.

### Monitoring and review

- > Develop agency monitoring and review plans together with other stewardship agencies.
- > Keep in mind the Government Expectations for Good Regulatory Practice including expectations for monitoring, review and reporting in Part B.<sup>2</sup>
- > Monitor progress on how regulation is being implemented. Develop robust intelligence models based on quantitative and qualitative data to inform insight and continual improvement.
- > Undertake a process evaluation to understand how well regulation is being implemented and what potential improvements could be made.
- > Undertake an outcome evaluation to assess if regulation has been effective and achieved expected results. See our **Quick Guide to Evaluation** available in hard copy or on our website <https://www.allenandclarke.co.nz/resources/>.
- > Continue to engage with those being regulated to identify issues – for example, surveys, feedback loops, complaints management, trend monitoring.
- > Undertake regulatory scans to identify where there are performance issues in the regulatory systems systems, or new approaches that could be applied.
- > Incorporate lessons from monitoring and review back into the policy cycle – is there a need to amend the regulation to adapt to changing circumstances?<sup>15</sup>

These tips are drawn from our experience and various sources, including references 2, 7,9,13,14 and 15.



# Benefits

Sound regulatory stewardship helps in four key ways —

## Leadership, collaboration + administration



- > Informing an understanding of how the regulatory system is working in practice to help to identify issues, vulnerabilities and opportunities. This ensures these can be addressed or reported on, increasing the chances that regulatory systems remain fit-for purpose
- > Fostering collaboration and sharing of information across the regulatory system, taking a whole-of-system view
- > Proactively seeking views of stakeholders and those impacted by the regulatory system and using feedback to make improvements
- > Supporting practice development, including building workforce capability and regulatory and organisational culture, to support effective design, management and assessment of regulation
- > Prioritising quality and increasing accountability
- > Informing decision-making on the need for remedial action to address deficiencies, inequities, or perverse outcomes

## Implementation



- > Minimising the chances of regulatory failure while ensuring that the intended outcomes of regulation are achieved, including social, cultural, economic, environmental or other outcomes

## Design + development



- > Ensuring an efficient and effective regulatory environment, and maximising the benefits while minimising the costs of regulation
- > Providing an end-to-end view of each regulatory system and good understanding of the context in which they are operating
- > Clearly articulating processes for the effective design and management of regulatory systems with a clear view of the intended outcomes
- > Understanding the interconnectedness and overlapping functions of different regulatory systems, and providing support to manage competing interests, priorities and objectives

## Monitoring + review



- > Regularly testing regulatory systems and assessing their performance against intended outcomes
- > Establishing feedback loops to support continuous improvement, and remediation processes that are informed by systematic monitoring and assessment

# References

The regulation section of The Treasury's website is a useful starting point for New Zealand regulation guidance: <https://treasury.govt.nz/information-and-services/regulation>. Also see:

1. The key sections in the Public Service Act 2020 regarding stewardship are sections 12(1)(e) and 52(1) (e). The Act is available at <http://www.legislation.govt.nz/act/public/2020/0040/latest/LMS179758.html>
2. The Treasury. 2017. Government Expectations for Good Regulatory Practice. <https://treasury.govt.nz/publications/guide/government-expectations-good-regulatory-practice>
3. Ayto, J. 2014. Why Departments Need to be Regulatory Stewards. Policy Quarterly. Volume 10, Issue 4. <https://ojs.victoria.ac.nz/pq/article/view/4506/3995>
4. Ministry of Justice. What is regulatory stewardship? <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/what-is-regulatory-stewardship/>
5. The Treasury. 2017. Building Effective Regulatory Institutions and Practices. <https://treasury.govt.nz/sites/default/files/2015-09/reg-inst-practices.pdf>
6. Manch, K. 2017. What Does Good Regulatory Decision Making Look Like? Policy Quarterly. Volume 13, Issue 2. <https://ojs.victoria.ac.nz/pq/article/view/4705/4189>
7. Winson, S. 2017. Regulatory Stewardship – Voice of the Regulator. Policy Quarterly. Volume 13, Issue 4. <https://ojs.victoria.ac.nz/pq/article/view/4569>
8. The Treasury. Regulatory System Reporting. <https://www.treasury.govt.nz/information-and-services/regulation/regulatory-stewardship/keeping-regulation-fit-purpose/regulatory-system-reporting>
9. The Treasury. 2020. Guide to Cabinet's Impact Analysis Requirements. <https://www.treasury.govt.nz/sites/default/files/2020-06/guide-cabinet-ia-requirements-june2020.pdf>
10. OECD. 2020. Regulatory Impact Assessment, OECD Best Practice Principles for Regulatory Policy. <https://www.oecd.org/gov/regulatory-policy/regulatory-impact-assessment-7a9638cb-en.htm>
11. Legislation Design and Advisory Committee. Exposure draft Bills. <http://www.ldac.org.nz/guidelines/supplementary-materials/exposure-draft-bills/>
12. The Treasury. 2015. Best Practice Regulation: Principles and Assessments. <https://treasury.govt.nz/sites/default/files/2012-08/bpregpa-feb15.pdf>
13. The Legislation Design and Advisory Committee's Legislation Guidelines: 2018 edition. This includes a checklist for officials to use when developing legislation. <http://ldac.org.nz/guidelines/legislation-guidelines-2018-edition/>
14. A Guide to Working with the Parliamentary Counsel Office. 2016. <http://www.pco.parliament.govt.nz/working-with-the-pco/>
15. The Treasury. 2019. Guidance Note: Best Practice Monitoring, Evaluation and Review. <https://treasury.govt.nz/sites/default/files/2019-12/guidance-note-monitoring-evaluation-review.pdf>
16. New Zealand Productivity Commission. 2014. Regulatory institutions and practices (including the Government Response, 2015). <https://www.productivity.govt.nz/inquiries/regulatory-institutions-and-practices/>
17. Department of the Prime Minister and Cabinet. 2020. Te Tiriti o Waitangi / Treaty of Waitangi analysis. <https://dpmc.govt.nz/our-programmes/policy-project/policy-methods-toolbox/treaty-waitangi-analysis>

# Endnotes

- i. The information in this table is based on material accessed from the regulation section of the Treasury's website and references 3,4,5,8 and 9 above.
- ii. These risks were drawn from various sources, including references 1,10 and 15 above.

The Treasury's regulatory quality team promotes regulatory stewardship and supports agencies to develop their regulatory stewardship practices.



## Services provided by Allen + Clarke

Allen + Clarke has been a trusted advisor to the public sector, business, and NGOs for more than 20 years. With offices in Wellington and Melbourne, we partner with clients across Aotearoa New Zealand, Australia, the Pacific, and Asia to tackle the challenges facing society today and into the future.

For more information, visit our website: [allenandclarke.co.nz](http://allenandclarke.co.nz)

### We have proven expertise in:

- > helping agencies plan for, and implement regulatory stewardship responsibilities
- > developing regulatory and non-regulatory solutions for policy problems
- > developing legislation and regulations in various countries
- > undertaking regulatory impact analysis and drafting Regulatory Impact Statements
- > legal analysis and the design of regulatory instruments
- > project and programme management
- > producing Cabinet papers and drafting instructions
- > consultation and engagement with a wide range of sectors
- > evaluations and reviews of legislation, programmes, processes and agencies
- > enforcement of legislation and regulations
- > regulatory implementation planning
- > developing best practice guidance, training and capability building



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