

CREATING ROBUST REGULATION

Designing interventions
with lasting impact

The wellbeing of all New Zealanders depends on the quality of our country's regulatory design and practice.

The introduction of the new Ministry and Minister of Regulation means increased scrutiny on high-quality regulation.

New regulation needs to be strong, durable, and guaranteed to last.

This guide contains Allen + Clarke's top tips for creating robust regulation, from the principles of good regulation to common challenges and pitfalls and how to develop resilient regulation.

What is the value of regulation?

Regulation significantly shapes the everyday lives of New Zealanders. It recognises and protects their wide-ranging rights and interests and can assist them to interact with others and with the state on clear, fair, and efficient terms. However, regulations can also impose costs, may limit freedoms, stifle innovation, and give rise to other unintended consequences.

The wellbeing of all New Zealanders therefore depends on the quality of our country's regulatory design and practice.



Key features of good regulation

Good regulation will contain the following features.

- **Effectiveness:**
Good regulation achieves its intended purpose. Continuous review of the regulation is critical to maintaining its efficacy – it is not treated as a ‘set and forget.’
- **Efficient and growth compatible:**
It is important to identify the goal at hand and analyse whether regulation would be the most efficient or cost-effective way of achieving that goal. This also involves asking whether this regulation would provide the best net benefit to society.
- **Proportionate, fair, and equitable:**
Durable regulation needs to be proportionate to the actual risk or problem. Implications of regulation can be different for different stakeholders.
- **Transparent and accountable:**
The justification behind the regulation should be clear, as well as transparency around likely impacts and consequences. If regulators are responsible for implementing the regulation in some way, accountability mechanisms should be in place to ensure that regulators are doing what is required of them.
- **Certain and predictable:**
Robust regulation is applied and interpreted in a consistent way, and regulators understand what is expected from them and the consequences of their actions.
- **Flexible and durable:**
Where appropriate, regulation gives regulators flexibility in how requirements are met and how they can fulfil their obligations. This minimises compliance costs and facilitates efficiency.
- **Capability:**
Robust regulation needs to be supported by capable regulators who have the right people, resources, and systems behind them to ensure the regulation is achieving its intended purpose.

Strong regulation goes beyond the words on the paper, as the contexts in which the regulation exists will constantly shift, and regulators will continue to work with the regulation in changing operating contexts. Thus, when reviewing regulatory frameworks, examining the regulation’s objectives and how well these objectives are articulated is key, as this is the blueprint from which action will flow.

Implementation

Naturally, there are several challenges to implementing regulation.

These include:

- Unclear drafting of the legislation.
- Confused responsibilities, particularly during maturity assessments of regulatory systems.
- Regulator capability.
- Limited funding for implementation.
- Not enough or power or having the wrong powers.

Having a thorough understanding of implementation brings a critical perspective when it comes to the design of regulation. Considering how the regulation will be implemented future-proofs the regulation and maximises the potential to achieve the desired outcomes and minimise the risks. Collaboration with agencies who are responsible for upholding regulation ensures consistency and capability across different organisations.

Even the most meticulously-designed regulation can fail if implementation is overlooked. Insufficient planning is one of the biggest factors behind regulatory failures, but consideration of compliance, enforcement, education, awareness, and the factors needed to ensure successful implementation is critical to delivering on intended outcomes.

Part of creating an effective implementation process includes designing a jointly-developed handover/transition document between the policy and implementation team. This ensures that expectations are agreed upon by all parties, and facilitates the relationship 'transfers' from design to implementation staff.

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Proactive regulatory stewardship

Stewardship is a core principle of the Public Service Act 2020, including the stewardship of regulation. Regulatory stewardship is defined by the Treasury as the governance, monitoring, and care of regulatory systems, and acknowledges that regulatory systems are more than just the statute or regulation itself, but exists in a wider world of rules, organisations, policies, and processes surrounding it.

It is important that those working with a particular regulation consider how it fits into the wider regulatory strategy of the agency it is operating within, how it sits within the government's priorities, including if these priorities change, and how government regulatory stewardship expectations impact on what is trying to be achieved.

Regulatory resilience

There is commonality between proactive regulatory stewardship and resilience. Building regulatory resilience is an increasing priority for governments all over the world, especially in an environment of intensifying risks, including Covid-19, climate change, the development of artificial intelligence, and economic crises.

The concept of resilience refers to the ability for regulatory systems to absorb and adapt to disruptions caused by major and unexpected events, achieving stability and preparedness for dealing with future events.

There is commonality between proactive regulatory stewardship and resilience

Features of regulatory resilience include:

- **Pre-planning.** This includes pre-preparing legislative instruments that can be rolled out during an unexpected event, such as preparing a legislative instrument that can grant emergency powers to allow quick decision-making.
- **Collaboration** between government agencies and actors to facilitate an all-of-government approach to responding to a major shock. This means that regulation supports collaborative operating approaches, such as sharing workloads and redeploying staff across agencies.
- **Utilising effective digital technologies.** This forms part of creating a collaborative operating approach across government agencies and actors. Digital technology and information systems allow decision-making to be based on real-time data and changed or updated as necessary.
- **Adaptability.** Regulatory resilience allows room for supporting adaptation and innovation to enable the devolution of service delivery. While there may be existing national standards, regulation needs to support flexible operating approaches at the front line.

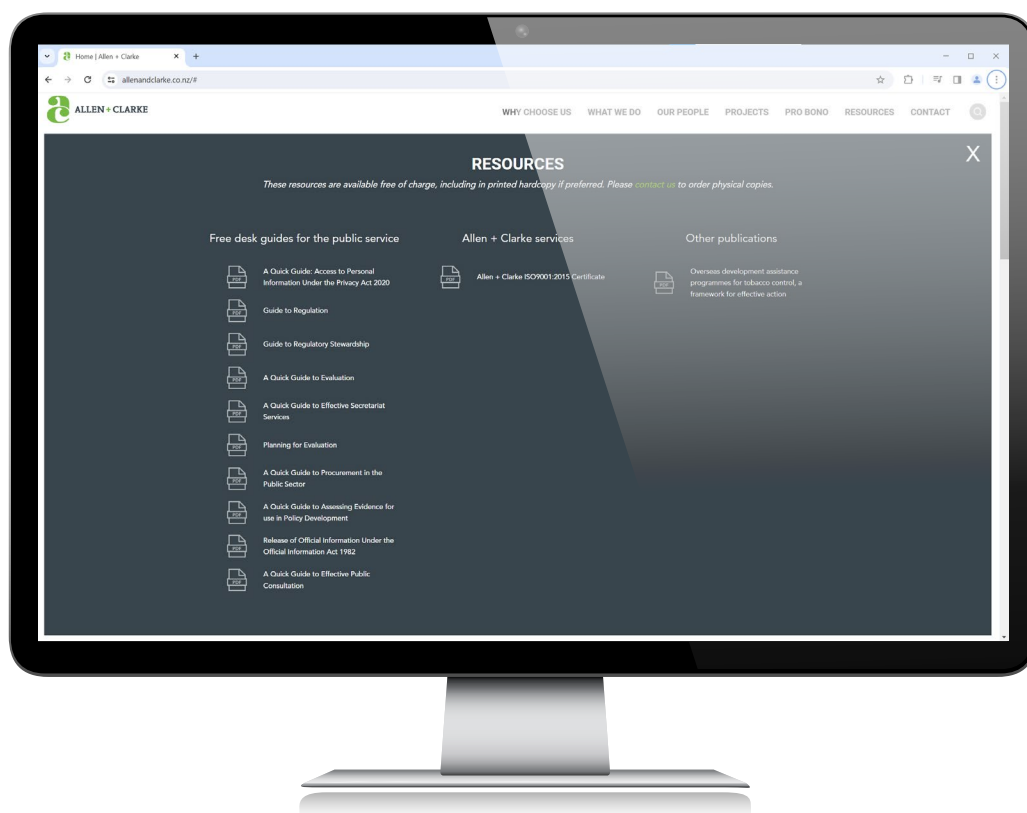
Key takeaways

1. The **problem definition**, including the **need for intervention**, needs to be front and centre when designing regulation. You need to quantify the benefits and costs to justify any regulatory burden to ensure this regulation will achieve its desired outcome.
2. **Planning and resourcing for implementation** is key to successful regulation.
3. **Include planning for adverse events** as part of your regulation design to ensure that effective solutions can be implemented quickly during a major event.
4. **Create future-facing regulation** to ensure that regulation can keep up with future innovation. Flexibility in your regulation gives room for regulation to adapt to changing circumstances, contexts, and innovations.

Allen + Clarke has various free resources on regulation, which are available on our website under the 'Resources' tab



Click here to find A+C resources



Additional resources

The Treasury has produced several guides for understanding regulatory stewardship and government expectations:

- Starting out with Regulatory Stewardship
<https://www.treasury.govt.nz/publications/resource/starting-out-regulatory-stewardship-resource>
- Government Expectations for Good Regulatory Practice
<https://www.treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf>
- Building Effective Regulatory Institutions and Practices: The government's regulatory management strategy
<https://www.treasury.govt.nz/publications/building-effective-regulatory-institutions-and-practices-governments-regulatory-management-strategy>

The following web pages may also be useful:

- Public Service Commission
<https://www.publicservice.govt.nz/role-and-purpose/principles-and-values/stewardship>
- Department of the Prime Minister and Cabinet
<https://www.dPMC.govt.nz/our-programmes/policy-project/policy-advice-themes/stewardship>
- Ministry of Business, Innovation, and Employment
<https://www.mbie.govt.nz/cross-government-functions/regulatory-stewardship/regulatory-systems/>