What regulatory system governance is and why it's important: principles and guidance

Acknowledgements

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Foreword

Kia ora mai tātou katoa, ngā mihi ki a tātou.

Tēnei te mihi nui ki ngā kaikōrero, mō nga whakaaro me ngā wawata.
Our huge thanks to the contributors, for their thoughts and aspirations.

Tēnei te mihi ki a koutou katoa, mo to koutou tautoko.
Thanks to all of you who have participated.

The recent 26th anniversary of Cave Creek is a reminder of the importance of ensuring that New Zealand's regulatory systems are fit for purpose to avoid the impacts of failure. As a leader in managing regulatory systems, MBIE is strongly focused on getting clear about what good regulatory system governance looks like and on lifting governance practice across our systems.

System governance is about the time we dedicate to working 'on' our systems, rather than 'in' them. Effective governance means that we are clear about what we expect from each system and that we manage its performance. It means ensuring that all the checks and balances are in place to support MBIE's systems running smoothly, meeting their objectives, and delivering the outcomes sought by New Zealanders both today and tomorrow.

System governance is our leadership challenge for achieving systems that protect New Zealanders. System governance is an important way to set the frame, the culture and the expectations around how things are done within regulatory systems and our leaders are key to this. New Zealanders need our regulatory system leaders to have the right focus, to work together, and to support greater collaboration and partnership to deliver system outcomes.

The principles of good regulatory system governance in this guide apply to any regulatory system, whether it is a complex, multi-agency system or a system for which MBIE is the sole agency. How the guidance will be used will differ from system to system. This guidance reflects MBIE's commitment to building effective system leadership and governance across our systems - enabling businesses to thrive, keeping people safe, delivering on system objectives and managing risk of failure.

Nāku noa, nā

Carolyn Tremain
Te Tumu Whakarae mō Hikina Whakatutuki
Secretary for Business, Innovation & Employment and Chief Executive

Whakataukī

WHAKATAUKĪ:

Mā te huruhuru ka rere te manu

Adorn the bird with feathers so it may soar.

1 Guidance in a nutshell

1.1 WHAT IS REGULATORY SYSTEM GOVERNANCE?

Regulatory system governance is the setting of objectives of that system and ensuring that actions are taken to deliver on those objectives, consistent with good public sector management practice. It should be done with a long term perspective. It comprises:

Component	Description	Key functions
Specify outcomes	Ensure system outcomes are comprehensive, aligned with government priorities and clear to stakeholders	Specify intended outcomes and other expectations of performance such as efficiency, resilience and trust and confidence
Strategy and delivery	Make sure the arrangements to deliver the system outcomes are clear and in place	Set high level system design and strategy Ensure sustainable funding Ensure capability
Performance and risk management	Manage system performance and risks, and ensure that underperformance is addressed	Monitor performance Manage risk and assurance, including setting risk appetite
Manage critical issues	Ensure critical issues are effectively responded to *This is not usually included within definitions of governance, but in practice those responsible for system governance often get involved in critical issues*	Critical issue management

1.2 FOUR KEY ENABLERS OF REGULATORY SYSTEM GOVERNANCE

Effective regulatory system governance requires the following enablers below. These are intended to supplement statutory and other institutional governance arrangements.

Enabler	Explanation	Why this is needed	Potential solutions
Structures within agencies	Having the structures within agencies so that appropriate attention is given to regulatory system governance.	For departments, the distinction between governance and management can get blurred. For departments and crown entities, a range of other (non-regulatory) functions can gain priority. Within departments, responsibility can be fragmented.	*For MBIE*: Creating oversight bodies with senior representatives from groups/branches involved. *For Crown Entities*: Creating a regulatory sub-committee of the board.
Mechanisms to coordinate across agencies	Establishing mechanisms to coordinate across organisations that have a role in a regulatory system.	To address issues raised by vertical accountabilities: avoid gaps, develop a shared view of strategic priorities, enable collaboration and alignment to support outcomes.	Overarching coordinating body (e.g. Council of Financial Regulators)
Governance agendas	Giving these structures the right agenda so that due attention is given to governance as opposed to management functions.	Systems are typically established by multiple pieces of legislation so the overall system purpose is not articulated. Crown entities have limited scope to set higher level outcomes. Monitoring regulatory system performance is hard. Other priorities crowd these out.	Governance agendas that give due regard to governance functions.
A systems perspective in decision making	Within agencies, making sure that governance decisions are aligned with those of other agencies in the system. Having regard to other factors (agencies/systems/approaches) that have an impact on system outcomes.	It is easy to focus on agency priorities. Regulatory systems don't work in isolation.	A range of tools can help improve alignment between agencies in a system, but awareness and information exchange are key. Due regard to contextual factors and a structured approach to engagement with relevant parties.

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1.3 FUNCTIONS OF REGULATORY SYSTEM GOVERNANCE

These functions should be covered by governance agendas:

Governance Functions	Specify system outcomes	Set system design and strategy	Ensure sustainable funding	Ensure capability	Monitor system performance	Manage system risk & assurance	Manage critical issues
Success	System outcomes are aligned with government priorities and are clear to stakeholders	Arrangements required to deliver the system outcomes are clear and in place			System performance and risks are managed		Critical issues are effectively responded to
Scope	Overall outcomes of the regulatory system Intermediate and institutional outcomes Service expectations and standards Resilience expectations Compliance with high level regulatory principles Trust and confidence expectations	Prescription of regulatory rights and responsibilities Institutional arrangements Checks and balances Allocation of agency roles & responsibilities	Funding mechanisms Key rates and parameters Budgets	Across range of regulatory functions Plus capability dimensions of partnerships, business processes, workforce, culture, physical assets, organisational structure, data & intelligence	All dimensions of performance Addressing under-performance	Risk appetite Risk management arrangements Strategic risks Assurance arrangements Follow up of issues raised	Understanding causes Transparency, accountability Follow up actions including remediation, prevention

Characteristics of Good Governance

- ✓ Provide for stewardship and take a long term view
- ✓ Identify and resolve trade-offs at the right level
- ✓ Meet Māori-Crown partnership obligations
- ✓ Engage with related regulatory systems
- ✓ Address changes to the context
- ✓ Understand range of stakeholder perspectives
- ✓ Take a system view
- ✓ Ensure accountability
- ✓ Undertake self-assessment

In many systems, governance functions are distributed over multiple agencies. The governance body of/within each agency should have regard to each of these functions, but what this means in practice varies according to the agency. The attention given to the different functions is likely to be uneven – both between functions and over time. The characteristics of good governance should be taken into account across the range of functions.

2 Introduction

2.1 PURPOSE

The Ministry of Business, Innovation and Employment (MBIE) has grouped the regulatory regimes for which it has a responsibility into 19 systems, based on the outcomes sought[1]. Regulatory system governance is critical to system performance, however there is little guidance on what good regulatory system governance actually means in practice. This guidance intends to supplement formal requirements for governance in the public service.

It has been prepared to help:

- those with senior responsibilities for regulatory systems make sure that the necessary governance arrangements are in place – in particular to give due consideration to regulatory systems alongside their other governance and management responsibilities

- those with responsibilities for regulatory system governance in an agency discharge that function, and do so in a way that supports overall regulatory system outcomes

- regulatory system designers ensure that provision is made for good governance

- those with governance responsibilities, those in assurance roles, and other reviewers assess the effectiveness of governance.

MBIE's regulatory systems typically involve multiple agencies or independent statutory officers. This guidance is aimed at those involved directly or indirectly in governance both within MBIE, and in the Crown entities and statutory bodies involved in the regulatory systems for which MBIE has some responsibility[2]. In practice, given the range of MBIE's systems, we hope the guidance will be useful to most of New Zealand's regulatory systems.

The guidance intends to provide for good governance at the system level – across all agencies involved. But effective governance of the system ultimately depends on the coherent and coordinated governance of individual institutions within that system. So the guidance also applies to individual agencies in the system. This means governors of individual agencies:

- consider all the functions and characteristics of good governance (see sections 4 and 5), noting that there will be differences of emphasis and different toolkits according to specific circumstances

- work with governors of other agencies in the system to ensure effective system governance

- have full regard to the overall performance of the system in their decision making.

This guidance is just that: guidance. Because of the variety of regulatory systems, it is not prescriptive. It makes suggestions as to what it takes to achieve effective system governance, but systems should feel free to adopt alternative approaches consistent with the underlying intent. Regulatory system governance is about more than implementing and ensuring compliance with legislation. It includes consideration as to the overarching outcomes that

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[1] Accident Compensation, Building, Communications Markets, Competition, Consumer and Commercial, Corporate Governance, Employment Relations and Standards, Energy Markets, Financial Markets Conduct, Health and Safety at Work, Housing and Tenancy, Immigration, Intellectual Property, Managed Isolation and Quarantine, Outer Space and High Altitude Activities, Petroleum and Minerals, Standards and Conformance, Tourism, and Trade

[2] these are noted in Appendix C

relevant legislation is intended to contribute to; whether that legislation is fit for purpose; and whether there are any gaps. Further regulatory systems can include a range of components that may not be provided in legislation (e.g. practices developed by regulators and industry responses such as voluntary codes).

This guidance is NOT intended to be:

- a prescription of good regulatory practice, quality regulation, or regulatory stewardship; there are multiple prescriptions of these already (with some selected sources set out in the Bibliography) and other initiatives aimed at improving regulatory practice

- a detailed how-to-do-governance manual; rather, it sets out a range of functions and arrangements that are required. What this means in practice will vary from system to system. Some pointers as to how to develop effective regulatory system governance arrangements are provided in section 6. The Regulatory Stewardship Branch intends to work with those in regulatory systems to support the development of good governance.

Whilst the governance functions set out in section 4 should be relevant to all systems, the arrangements suggested in section 2.3 may not be appropriate for systems with distinctive institutional arrangements, notably ACC (where Treasury is the monitoring department) and Building (where there are numerous regulators and territorial authorities).

Some users of this guidance may be familiar with governance in the private sector. It is important to note that regulatory system governance is very different in practice because of the multiple objectives and trade-offs to be considered in public sector activities. Further legislation often constrains the discretion available with regard to overall strategy and approach – this is particularly true for Crown entity board members[3]. That said, one of the roles of regulatory system governance is to identify if those constraints are no longer appropriate.

For more on what is a regulatory system see Appendix B.3. For more on the difference between regulatory system governance and related regulatory concepts see Appendix B.1. For an overview of regulatory systems governance vs corporate governance see section 4.8.

2.2 WHY GOOD REGULATORY SYSTEM GOVERNANCE IS IMPORTANT

High performing regulation is an important contributor to social, economic and environmental outcomes. Good governance is key to getting the most out of this contribution and making sure that it aligns with New Zealanders' priorities and values. In particular, good governance can help:

- respond to critical events such as Covid-19

- adapt to changes in context including new technologies and business processes

- deliver regulation in a way that minimises the compliance costs of regulated parties.

Without good governance, at best a high performing system will fail to respond to new opportunities and changing circumstances and drift into mediocrity. At worst, a poorly

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[3] see also the article Governing the Regulators at https://ojs.victoria.ac.nz/pq/article/view/4474/3964

performing system will fail to deliver on its objectives resulting in preventable harms, unjustified costs on the regulated community and lost opportunities.

Good regulatory system governance is critical to good stewardship, and to making the components and institutions in a system work well together so the whole is greater than the sum of the parts. This includes making sure that key risks and trade-offs in regulatory systems are identified and managed. Examples are: reviewing remits to ensure material harms are addressed; systems remain fit for purpose in dynamic markets; the challenges of building regulatory expertise are addressed; and trade-offs regarding funding levels and system impact.

In its review of regulatory failure, set out in its report on regulatory institutions and practices[4], the Productivity Commission found that a number of factors were implicated. Some of these are primarily in the domain of the regulators but others are in the domain of regulatory policy and systems design bodies, or bridge the two – hence the importance of a systems perspective. They include: weak governance and management of both regulator and regulated parties; the lack of clarity of the regulator's role; the complexity of regulatory regimes; weak regulator accountability, monitoring and oversight; the capability and resourcing of the regulator; failures of compliance and enforcement; failure to understand and assess risk; poor engagement and communication about regulatory requirements; the culture and leadership of both regulators and regulated parties; and out-of-date regulation or lack of review of regulation.

In addition to weak governance itself being cited, the job of system governance includes either directly addressing the other issues, or making sure that they are addressed. Put more simply, good governance is required to ensure that a regulatory system's objectives evolve in response to changing circumstance and that its performance is built over time.

Governance is a pre-requisite for compliance with the stewardship principles set out in the Public Service Act 2020 and with Treasury's Expectations of Good Regulatory practice. Further context on regulatory systems governance in the public sector is set out in Appendix B.

2.3 HOW THIS DOCUMENT SUPPORTS REGULATORY SYSTEM GOVERNANCE

This guidance supports effective regulatory system governance as follows:

Section 3: Organising for regulatory system governance explains what additional structures may need to be put in place.

Section 4: Detailed guidance on regulatory system governance functions sets out governance functions, what they mean for different types of agency, and how they can be delivered in a way that supports alignment across agencies.

Section 5: Good regulatory system governance characteristics sets out aspects of good practice in discharging the functions of section 4.

Section 6: Establishing good governance in practice provides some starting points in setting up and getting going bodies that contribute to system governance.

This guidance represents emerging practice and as such will iterate over time. Appendix B.4 explains how the guidance was developed. We welcome your feedback and suggestions at Regulatory.Systems@mbie.govt.nz.

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[4] https://www.productivity.govt.nz/assets/Documents/d1d7d3ce31/Final-report-Regulatory-institutions-and-practices-v2.pdf

3   Organising for regulatory system governance

This section suggests structures that may need to be put in place to deliver effective regulatory system governance. They are intended to supplement existing arrangements and line accountabilities to ensure that sufficient focus is given to the governance of each regulatory system. It also provides an overview of how the relationship between MBIE and a Crown entity can be managed to achieve alignment. Section 6 sets out more about how to get these groups in place and running. In all cases it is important that adequate provision is made for servicing arrangements.

3.1   ORGANISING FOR REGULATORY SYSTEM GOVERNANCE WITHIN AGENCIES

3.1.1   Within MBIE

Within MBIE the aim should be to create the space to focus on system governance issues and to align and bring together the various sections of MBIE. What is appropriate varies from case to case, and the following suggests how this can be achieved in broad terms:

3.1.1 WITHIN MBIE	Description
Governance group	A governance group is ideally constituted of those positions that have, or can, strongly influence decision making regarding the system - in some systems this may be DCEs and GMs in others GMs and managers. In most cases it will need to be cross-branch or cross-group. Where there is an existing group that has primarily management functions that is used for this purpose, it may be appropriate for it to have periodic 'governance' meetings.
Terms of reference	Terms of reference should establish the role of the governance group, decision rights of the group, and the demarcation between it and MBIE's line accountability arrangements. The demarcation can take some time to specify.
Servicing arrangements	Allocate resource to service the governance group that the group has the ability to call on.

Where MBIE has both a regulatory policy/system design function and a regulator function, this process inevitably means bringing together more than one branch or group in to the governance body. Even when only one function is present, it is not sufficient to simply leave governance to the relevant policy team. This is unlikely to be effective to ensure that due attention is given to governance functions as opposed to a range of other priorities. Given the range of regulatory governance functions set out in section 4, inputs from multiple sources are required.

3.1.2   Within Crown entities

Within a Crown entity the aim should be to ensure that enough governance attention is given to the Crown entity's contribution to the regulatory system. This may not be an issue in many cases, but is potentially an issue where the Crown entity has a range of regulatory and non-regulatory responsibilities.

3.1.2 WITHIN CROWN ENTITY	Description
Consider appointing a regulatory sub-committee of the board	If the overall agenda of the board does not allow sufficient time to be given to regulatory system governance functions (see section 4) consider appointing a regulatory sub-committee with terms of reference and appropriate delegations.
Consider co-opting regulatory systems expertise to the governance function	If there is little in-depth regulatory experience among board members, consider how this might be co-opted to regulatory system governance discussions.
Consider regulatory systems in the accountability arrangements	For Crown entities with a diverse range of functions, consider whether the senior leadership should include someone with overall responsibility/accountability for regulatory matters.

The idea of a sub-committee will only be appropriate where the agency has significant non-regulatory functions. Section 6.2 sets out some considerations to be taken into account in establishing such a committee. In particular, regard will have to be had to the legal framework in considering the extent and scope of any delegation.

3.2 COORDINATING GOVERNANCE BETWEEN MBIE AND A CROWN ENTITY

As noted above, both regulatory policy and system design, and the delivery of regulation are critical to high performing regulation. MBIE and the Crown entities it has responsibility for should act as partners in regulatory system governance. This can be achieved by:

- agreeing regulatory system outcomes and the role of each agency in achieving them; this can be provided through a regulatory charter or similar instruments

- having due regard to system perspectives in discharging the functions listed in section 4, both by considering the impact on system outcomes and considering the perspective of other system actors

- exchanging information on regulatory system performance, matters affecting regulatory system performance, matters that inform regulatory policy and system design, and critical issues

- aligning strategically by identifying and agreeing system gaps, and agreeing priorities for system development.

For some systems it may be appropriate to enable the above by establishing the kind of mechanism set out for systems with multiple agencies under 3.3 below.

3.2.1 Using Letters of Expectations

In some instances where the Crown entity involved is a Crown agent, it may be appropriate to support alignment by seeking agreement from the Minister to include in a Letter of Expectations: any key strategic priorities; and, if a clear framework for system performance is established, including an expectation that the Crown entity aligns its performance measures with system strategy.

In practice, any specific items relating to regulatory system performance for inclusion in a letter of expectations will need to be raised by MBIE's relevant policy branch.

3.2.2   Governance in the context of the wider MBIE/Crown entity relationship

Substantive engagement on system governance functions is potentially a significant expansion to the MBIE/Crown entity relationship. The extent and nature of that relationship varies from case to case for good reason, but typically includes Crown entity monitoring functions and engagement on policy development.

It may be appropriate to consider governance as an additional 'channel' to ensure that appropriate focus and arrangements are established.

3.3   COORDINATING GOVERNANCE ACROSS MULTIPLE AGENCIES

Where a system has multiple entities involved, it is appropriate for a coordinating body to be established. For most such systems this would be either new or an evolution of current arrangements. There are limited precedents (one being the Council of Financial Regulators[5]) and, as such, this is emerging practice.

The body *coordinates* because statutory responsibilities remain with each agency. As such, a coordinating body at the system level can best be thought of as a part of the governance servicing arrangement – one that provides common advice to the governors of each entity. Each system is different and so what is appropriate is for each system to develop. The following should be taken as a starting point:

3.3 MULTIPLE AGENCIES	Description
Coordinating body functions	Depending on the specific system, potentially one or more of the following: • alignment of each component governance function • agree any high level instruments/arrangements that set out overall system outcomes and support alignment • identify system gaps • develop a shared view of strategic priorities and issues • enable collaboration and alignment to support system outcomes • monitor overall regulatory system performance • identify system level changes required in response to emerging issues or changing environment • identify and ensure management of key strategic risks • agree high level stakeholder engagement processes (such as the establishment of a stakeholder representative group).
Coordinating body membership	Could include leaders who are responsible for policy and delivery functions, statutory officers (where relevant) and representatives from other involved regulatory bodies (as appropriate). When considering membership, consider the required level of seniority - this may be the Chief Executive (CE), or tier 2 or 3 managers.

Arrangements to coordinate governance across (parts of) agencies should be treated as distinct from structured arrangements to engage with stakeholders.

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[5] https://www.rbnz.govt.nz/news/2019/08/new-vision-for-council-of-financial-regulators

4 Detailed guidance on regulatory system governance functions

Good regulatory system governance comprises a set of fundamental ***governance functions*** that define the purpose of the system, establish its high level features, and provide assurance that the necessary capabilities are in place to deliver the intended outcomes. System governance should give due regards to these functions:

a) specify system outcomes

b) set system design and strategy

c) ensure sustainable funding

d) ensure capability

e) monitor system performance

f) manage system risk and assurance

g) manage critical issues.

The following figure provides an overview of the governance functions, their success factors and scope. Functions are described in detail in sections 4.1 to 4.8, covering requirements, typical tools and what this looks like for different types of agencies.

The functions should be covered by governance agendas. In practice, the attention given to the different functions is likely to be uneven, both between functions and over time. For example, work on system design and strategy may be intensive in times of change but then reduce to a brief periodic check that no further change is required. Similarly the extent to which governors engage in the detail of the tools suggested will vary. Monitoring system performance and managing system risk is likely to be a regular feature of governance agendas.

In most systems, governance functions are distributed over multiple agencies. The governance body of/within each agency should have regard to each of these functions, but what this means in practice varies according to the type of agency in ways set out in the sections below.

For the purpose of the remainder of this guidance, agencies have been grouped according to regulatory practices they are responsible for: those responsible for regulatory policy and system design *and* those responsible regulatory service design and delivery ('the regulator'). This is inevitably a simplification.

REGULATORY SYSTEM GOVERNANCE FUNCTIONS

These functions should be covered by governance agendas:

Governance Functions	Specify system outcomes	Set system design and strategy	Ensure sustainable funding	Ensure capability	Monitor system performance	Manage system risk & assurance	Manage critical issues
Success	System outcomes are aligned with government priorities and are clear to stakeholders	Arrangements required to deliver the system outcomes are clear and in place			System performance and risks are managed		Critical issues are effectively responded to
Scope	Overall outcomes of the regulatory system Intermediate and institutional outcomes Service expectations and standards Resilience expectations Compliance with high level regulatory principles Trust and confidence expectations	Prescription of regulatory rights and responsibilities Institutional arrangements Checks and balances Allocation of agency roles & responsibilities	Funding mechanisms Key rates and parameters Budgets	Across range of regulatory functions Plus capability dimensions of partnerships, business processes, workforce, culture, physical assets, organisational structure, data & intelligence	All dimensions of performance Addressing under-performance	Risk appetite Risk management arrangements Strategic risks Assurance arrangements Follow up of issues raised	Understanding causes Transparency, accountability Follow up actions including remediation, prevention

Characteristics of Good Governance

- ✓ Provide for stewardship and take a long term view
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- ✓ Address changes to the context

- ✓ Understand range of stakeholder perspectives
- ✓ Take a system view
- ✓ Ensure accountability
- ✓ Undertake self-assessment

4.1 FUNCTION: SPECIFY SYSTEM OUTCOMES

4.1 SPECIFY SYSTEM OUTCOMES Requirements	Description	Typical tools	Roles of different type of agency
Specify the overall outcomes of the regulatory system	Be clear about the purpose of the regulatory system and the public interest outcomes it is intended to contribute to. This should establish the criteria against which the effectiveness of a system will be assessed. Note: Outcomes are primarily set at the time the relevant legislation is developed. However, most systems depend on multiple pieces of legislation and it may be helpful to specify outcomes at a higher level to test whether there are gaps. Legislation itself may not articulate outcomes, or set out a mix of outcomes and outputs. Regard should be had to relevant government objectives and directives.	Regulatory charters Regulatory impact assessments Policy documents	Regulatory policy and system design: has primary responsibility for overall outcomes, including alignment with other instruments or investments designed to achieve them. The regulator: ensure specification of outcomes is adequate for own objective setting and that outputs contribute to overall outcomes.
Specify intermediate and institutional outcomes	Provide a basis for line of sight for the contribution of system components to the overall outcomes. Provide a basis for measuring impact of the regulatory system (where this cannot be done at the outcome level).	Regulatory charters Outcomes frameworks that provide line of sight from regulatory activities to outcomes. Agency statements of intent or other planning documents. Policy documents For some agencies, outcomes may be specified in legislation, but this may not provide the required line of sight.	Regulatory policy and system design: ensure that the purpose of the different components and actors within the system is clear and aligned with the overall outcomes. The regulator: need to ensure that outcomes and outputs (and related measures) established to monitor performance are aligned with the outcomes framework of the regulatory system.

4.1 SPECIFY SYSTEM OUTCOMES Requirements	Description	Typical tools	Roles of different type of agency
Set service expectations and standards	Set minimum standards that ensure that non-fee costs of compliance are kept low. Standards may include matters such as timeliness, accessibility, equity, fairness and coverage. It is important that service standards do not compromise the primacy of overall outcomes. The setting of service standards appropriately has regard to the desirability of seamless service delivery across systems to common regulated parties.	Policy documents Agency performance/accountability documents Approval of agency strategies Legislation may specify some standards, but these should be regarded as a base level of performance.	Regulatory policy and system design: ensure that standards are at a sufficient level to support cost benefit assumptions in justifying the establishment of regulatory compliance requirements. The regulator: set standards for service delivery to ensure costs of compliance are reasonable and standards for compliance with regulatory principles such as clarity, equity and fairness.
Set expectations for resilience in the face of adverse events	Set the service and regulatory activity levels that might reasonably be expected after potential adverse events. Consider an appropriate response when an adverse event makes normal activity and service levels inappropriate or impractical. Note: In practice, setting expectations for resilience is often done implicitly, for example in deciding on investments in business continuity planning. But explicit statements are better.	Approval of business continuity strategies/plans Letters of expectations or other directive mechanisms to regulators	Regulatory policy and system design: the costs of providing resilience should be taken into account in developing cost benefit analysis. General expectations can be set for delivery agencies using a range of instruments. These should be consistent across systems and align with general emergency preparedness planning. The regulator: this is a key issue in developing capability. Decisions should be made in accordance with any high level guidance/direction.
Set expectations for compliance with high level regulatory principles	Adopt and promulgate a coherent set of high level regulatory principles. In certain circumstances this may include design principles.	Approval of strategies *Some mechanisms, e.g. regarding consultation, may be built into legislation.*	Regulatory policy and system design: review principles to determine where there are any that are appropriately reflected in system design and strategy The regulator: review principles to determine whether there are any that

4.1 SPECIFY SYSTEM OUTCOMES Requirements	Description	Typical tools	Roles of different type of agency
	Note: There are a number of prescriptions of high level regulatory principles. OECD's high level regulatory principles[6] provides an example. What is appropriate here, will depend on how the other dimensions of performance are framed – this is something of a catch all for anything else. Important where expectations need to be set at this level.		need to be reflected in performance expectations.
Set expectations for trust and confidence	Set standards for trust and confidence to guide fair and impartial decision making and transparency. Ensure requirements are in place to have and make available compliance and prosecution strategies.	Meaningful stakeholder engagement Agency performance/accountability reporting Communication strategies *In some systems, there are legislative requirements to consult with appropriate parties before making regulations and other legislative instruments.*	Regulatory policy and system design: ensure transparent processes are used in system design The regulator: set expectations for robust decision making and recording the rationale for decisions. Set expectations for the reporting on activities and determinations.

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[6] https://read.oecd-ilibrary.org/governance/recommendation-of-the-council-on-regulatory-policy-and-governance_9789264209022-en#page1

4.2   FUNCTION: SET SYSTEM DESIGN AND STRATEGY

For clarity, 'system strategy' in this context is at a higher level than compliance and enforcement strategy. System strategy covers how regulatory system components fit together to contribute to system outcomes. Compliance and enforcement strategy is how to achieve compliance with particular regulatory requirements. An example of system design and strategy is the machinery of government choice around institutional design within the system. Compliance and enforcement strategy is critical, and the presence of a robust one is covered below under 'Ensure capability'.

Key features of system strategy are usually set when the system is designed and/or legislation is developed. However, it is appropriate to review them from time to time as information becomes available from performance monitoring and other sources, and in response to the changing context. The key governance decisions are: when to trigger reviews; their scope; and directing appropriate follow up of findings.

4.2 SET SYSTEM DESIGN AND STRATEGY Requirements	Description	Typical tools	Roles of different type of agency
Confirm system strategy	Consider whether the high level regulatory system components (such as gate keeping functions, ex ante approvals, ex post inspections, licencing regimes, use of occupational regulation etc.) are sufficient and necessary to achieve regulatory outcomes. Propose changes as necessary. In considering sufficiency, regard should be had that in some instances other government interventions may support system outcomes. Although some of this might be set out in an outcomes framework, it typically does not provide insight into relative priority of system components or complex system dynamics. *A regulatory system strategy is not the same as a typical national strategy which may set out high level outcomes to be delivered by a range actors through regulatory and other means.*	Periodic review of key provisions of primary and subordinate legislation. Consider e.g.: • whether the assumptions in any regulatory impact assessments are still valid • whether the tools provided in enabling legislation are necessary and sufficient • whether the framing is still appropriate (e.g. performance based) • whether there is further opportunity to make use of non-legislative tools.	Regulatory policy and system design: has primary responsibility. The regulator: will provide intelligence to inform assessments. Delivery agencies' own strategies need to be aligned with the overall regulatory system strategy.

4.2 SET SYSTEM DESIGN AND STRATEGY Requirements	Description	Typical tools	Roles of different type of agency
Confirm the prescription of regulatory rights and responsibilities is appropriate	Consider whether regulatory rights and responsibilities are clear and appropriate. Both may need to change if the system is not delivering on required outcomes, or has excessive economic cost. A need for change may result from new technology or business models.	Commission review of relevant subsidiary legislation and other instruments.	Regulatory policy and system design: has primary responsibility. The regulator: will be the primary source of information as to whether regulatory instruments meet these requirements and should establish mechanisms to provide alerts (e.g. whether there are an excessive number of disputes, driven by lack of clarity as to rights or responsibilities). Regulatory policy and system design and the regulator need to have arrangements in place to manage overlap and grey areas.
Ensure the right intervention tools and remedies are available	Consider whether the tools available to the regulator are adequate to achieve compliance with regulatory requirements – and whether some tools are inappropriate and not required. *An example of an issue that might arise is that tools are not appropriate for a graduated and proportionate response to non-compliance.* *Note that some legislation incorporates a principle of continuous improvement which means aiming higher than meeting minimum regulatory requirements.*	Analysis of whether tools are appropriate to deliver a compliance strategy that is consistent with regulatory principles.	Regulatory policy and system design: will consider the case for and priority of any potential changes. The regulator: will be the primary source of information as to whether the existing array of tools is adequate.

4.2 SET SYSTEM DESIGN AND STRATEGY Requirements	Description	Typical tools	Roles of different type of agency
Confirm institutional arrangements are appropriate	Ensure that institutional forms/machinery of government are and continue to be appropriate. This extends to ensure that enabling legislation sets out powers and responsibilities appropriately and clearly. Funding mechanisms are developed as part of regulatory system design and the way a delivery agency is funded impacts on many elements of its output and outcome success (see 4.3 for details). Institutional forms are driven by machinery of government considerations. In addition to general machinery of government principles, the key issues with regulation are whether decision makers on compliance matters have the appropriate degree of independence from government and whether they are appropriate for the overall regulatory objective.	Periodic review of institutional forms	Regulatory policy and system design: has the primary responsibility. The regulator: may provide information as to whether its form is compromising its ability to make regulatory decisions.
Ensure there are adequate checks and balances	Ensure that prescribed high level arrangements that deliver check and balances are appropriate (e.g. dispute resolution arrangements). Take into account existing system elements that relate to this (courts, ombudsman etc.). Ensure that effective mechanisms are in place to ensure compliance decisions are consistent with regulatory principles. Check and balances include: • mechanisms to ensure consistency and fairness in the interpretation of compliance requirements and in enforcement activities	Periodic review Assurance activities	Regulatory policy and system design: has the primary responsibility for the high level arrangements, including dispute resolution. The regulator: has primary responsibility for ensuring consistency and fairness in the interpretation of compliance requirements and in enforcement activities. It will be the primary source of information as to whether there are stresses on current checks and balances (e.g. whether there are reports of inconsistency in regulatory decisions and practice).

4.2 SET SYSTEM DESIGN AND STRATEGY Requirements	Description	Typical tools	Roles of different type of agency
	• dispute resolution mechanisms and rights of appeal.		
Consider the allocation of agency roles and responsibilities	The scope of this needs to cover: • all the elements of the system (including non-government actors such as professional bodies, or contacted regulatory service providers as appropriate) • all regulatory functions. Ensure any overlaps are managed and there are no gaps in practice (where each agency assumes it is the other's responsibility).	Regulatory charters Memorandum of Understanding (MoU) between agencies Legislation Output agreements and agency accountability documents Letters of expectations	This is a key area of interaction between regulatory policy and system design and the regulator and requires high quality collaboration.

4.3   FUNCTION: ENSURE SUSTAINABLE FUNDING

Regulatory system funding matters potentially overlap with corporate finance. The focus with regulatory system funding is to ensure that revenue structures (e.g. the use of levies and fees) support system outcomes; and where there are budget constraints to take a system focus to resolving the necessary trade-offs.

There are often tensions and important trade-offs regarding the funding of regulators, their ability to meet statutory obligations and their ability to expand their remit to meet new regulatory risks. It is important that these are considered from time to time when circumstances change or new insights are available. These can be matters for the Minister – it is important that they are considered at the right level.

4.3 ENSURE SUSTAINABLE FUNDING Requirements	Description	Typical tools	Roles of different type of agency
Funding mechanisms	Ensure that funding mechanisms for regulatory activities are appropriate and adequate. Funding mechanisms are usually developed as part of regulatory system design and are typically a mix of levies, fees and Crown funding. Funding mechanisms are important because, for example, a dependence on fees may drive the focus of regulatory activities. While the broad structure of funding may be difficult to change, its continued appropriateness should be considered from time to time.	Budget setting processes Financial reports to monitor the sources of income against relevant cost categories. Analysis of the impact on incentives	Regulatory policy and system design: is responsible for high level decisions on the sources of funding. The regulator: is typically responsible for the majority of costs in a regulatory system and will receive fees. They will provide information on whether funding mechanisms support system outcomes.
Key rates and parameters	Set fees/levies etc. at appropriate levels. Set parameters for seeking Crown funding. The levels of fees/levies etc. may need to be reviewed from time to time in accordance with Treasury guidance for setting fees and charges in the public sector. Sometimes reviews are mandated in legislation. A strategic, long term approach is desirable.	Commission fees and levy reviews.	Regulatory policy and system design: is responsible for supporting government decision making on fee/levy levels. The regulator: will provide the information that supports decisions on fee/levy levels. This includes being clear about the trade-offs between funding levels and risks to regulatory effectiveness.

4.3 ENSURE SUSTAINABLE FUNDING Requirements	Description	Typical tools	Roles of different type of agency
Budgets	Approve operating budgets. Ideally operating budgets should be set at a level that supports system outcomes. Where budget constraints dictate lower budgets, governors should confirm how resources are matched to funding. Ensure there is adequate funding for stewardship, system monitoring and governance activities.	Commission budget bids. Agency budget setting processes	Regulatory policy and system design: is responsible for supporting Budget bids in the Budget process. The regulator: will provide the information that identifies the needs for and supports Budget bids. Both groups are responsible for their agency budget setting.

4.4 FUNCTION: ENSURE CAPABILITY

4.4 ENSURE CAPABILITY Requirements	Description	Typical tools	Roles of different type of agency
Ensure capability across the full range of regulatory functions	The dimensions of capability include regulatory partnerships, business processes, workforce, culture, physical assets, organisational structure, and data, information and intelligence. A long term view ensures that capabilities support system changes over time. *Other breakdowns of regulatory functions exist and may be an appropriate basis for considering capability.* It is not the role of system governors to deliver the necessary capability themselves, but to ensure that it is developed and seek assurance that it is fit for purpose. In practice, governors would expect to be consulted on the key features. The Government Regulatory Practice Initiative (G-REG) supports the professional development of regulators and therefore stewardship of the regulatory environment. G-REG offers qualifications, conferences and events, and a range of resources for regulators (see: https://g-reg.govt.nz/)	Consultation with governors on the key features of relevant planning documents (e.g. the operating model) as they are developed or key elements are revised. From time to time, it may be appropriate to commission a review of one or more regulatory function. *It is important that within agencies there is a deep and broad understanding of all components that can be brought to capability development (such as the G-REG products and network), strategy and regulatory system design.*	Regulatory policy and system design: in terms of regulatory functional capability, policy agencies usually have primary responsibility for items shown under 'regulatory design', including policy information and research. Regulatory policy and system design has primary responsibility to ensure there are no gaps and that elements are aligned but all parties have a role in this. The regulator: usually has primary responsibility for the remaining items – in some instances there is separate responsibility for standards setting. Further details of the capabilities required of regulators is set out in DIA's Achieving compliance guide[7].

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[7] https://g-reg.govt.nz/wp-content/uploads/2019/04/AchievingComplianceGuide_17July2011.pdf

4.5 FUNCTION: MONITOR SYSTEM PERFORMANCE

4.5 MONITOR SYSTEM PERFORMANCE Requirements	Description	Typical tools	Roles of different type of agency
Monitor the overall outcomes of the regulatory system	Receive and consider information on whether the system is achieving the purpose it was established for and on the overall economic impact. Monitoring should include the four dimensions of performance: • effectiveness • efficiency • durability and resilience • fairness and accountability. The economic impact typically has productivity, inclusion and sustainability dimensions.	Establish measures and arrangements to monitor the overall outcomes and the contribution of the system to those outcomes. Receive and consider monitoring reports.	Regulatory policy and system design: has primary responsibility, though a delivery agency may contribute relevant information. The regulator: may have a role in collecting and analysing relevant information and should provide any insights to support interpretation of findings.
Monitor other dimensions of system performance	Consider information on other dimensions of regulatory system. This includes being able to understand the contribution of system components and agencies. In some cases, legislation may require specific monitoring activities.	A range of tools will be appropriate but will include: • routine monitoring reports covering all levels of the intervention logic and service standards • periodic studies/reports on such factors as resilience and compliance with regulatory principles. Crown entity monitoring activities	Regulatory policy and system design: needs to be able to understand the contribution of system components and agencies. The regulator: needs to be able to understand the contribution of sub-system components and its overall contribution. Regulators are likely to have primary responsibility for compliance with high level regulatory principles.
Addressing underperformance	Where underperformance is identified, commission a plan to remediate and monitor critical milestones. *In considering underperformance, regard should be had to the risk of underperformance and of regulatory failure – see 4.6.*	Monitoring of action points and milestones.	Approach is similar for both, but consideration should be given as to the root cause of the issue and whether remediation is a policy or delivery issue.

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4.6 FUNCTION: MANAGE SYSTEM RISK AND ASSURANCE

Corporate risk management arrangements may or may not adequately cover regulatory system risks. Where they do not, additional arrangements may be appropriate. Regulatory system risks are risks to achievement of regulatory outcomes or other dimensions of performance, e.g. the risks that the financial and economic costs of regulation are too high.

4.6 MANAGE SYSTEM RISK & ASSURANCE Requirements	Description	Typical tools	Roles of different type of agency
Risk appetite	Determine appetite for different types of strategic risk.	Risk appetite statements	Approach is similar for both - regulatory policy and system design, and the regulator.
Risk management arrangements	Ensure that arrangements are in place to identify and manage regulatory system risks. This includes risk management frameworks and reporting of key risks and their management.	Risk management framework Establish the extent to which established corporate/enterprise risk management frameworks capture regulatory system risks.	Approach is similar for both - regulatory policy and system design, and the regulator.
Strategic risks	Consider the appropriate management of strategic risks.	Review of strategic risks	Approach is similar for both - regulatory policy and system design, and the regulator, but the nature of 'strategic' will vary according to context.
Assurance arrangements	Ensure there are appropriate arrangements in place to provide assurance of compliance with regulatory operating policies including in respect of services delivered by third parties. The breadth of appropriate assurance arrangements will vary from system to system. For example in some systems it may cover the operation of third party audit schemes. Direct the commissioning of assurance reviews and receive assurance reports. It may be	A clear framework for compliance and assurance arrangements, for example the three lines of defence model[8].	This is a matter for the regulator as the regulator is responsible for the development and implementation of operating policies.

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[8] for the three lines of defence model see: https://oag.parliament.nz/good-practice/audit-committees/what-works/three-lines-of-defence

4.6 MANAGE SYSTEM RISK & ASSURANCE Requirements	Description	Typical tools	Roles of different type of agency
	appropriate to draw on third party advice from time to time. *This is in addition to corporate/enterprise assurance arrangements to ensure compliance with enterprise polices around such matters as privacy, health and safety and so on.*		
Follow up of issues raised	Establish accountability arrangements for follow up of critical issues raised by the assurance system.	Monitoring of register of critical issues and their follow up.	Approach is similar for both - regulatory policy and system design, and the regulator.

4.7 FUNCTION: MANAGE CRITICAL ISSUES

An aim of good governance (and particularly risk and assurance work) is to avoid critical issues. But critical issues of public interest can arise from time to time. As noted above, managing critical issues is not conventionally included in most definitions of governance, but is included because those in governance often get involved. An initial question is: W*hat is the appropriate body to manage the issue?* For very major critical issues, dedicated bespoke bodies can be formed, in which case the response is beyond the scope of this guidance.

4.7 MANAGE CRITICAL ISSUES Requirements	Description	Typical tools	Roles of different type of agency
Understanding causes	From time to time critical issues of public interest arise. The worst cases can amount to regulatory system failure. Other examples may be privacy breaches, or where regulatory decisions attract significant attention. Lead the development of arrangements to understand the causes of the issue.	Communications Reviews and investigations	Depending on the nature of the issue, primary responsibility may lie either with regulatory policy and system design or with the regulator. If primary responsibility is with the regulator, policy and system design will need assurance that the response is adequate and appropriate. If it is with policy, the regulator will need assurance that it is real and implementable.
Transparency and accountability	Ensure appropriate standards of transparency and accountability are adhered to.	Establishment of crisis management functions.	As per above
Follow up actions including remediation, prevention	Ensure appropriate follow up actions are taken. This includes remediation and prevention of recurrence.	Monitoring of register of critical issues and their follow up.	As per above

4.8 LEVERAGING CORPORATE GOVERNANCE FUNCTIONS

Corporate governance and regulatory systems governance overlap. Both include specifying outcomes, setting strategy and delivery arrangements, and performance and risk management. The former focuses on an agency, the latter on a regulatory system. A regulatory system can be both larger than an agency (because multiple agencies are involved) and smaller (in the case of MBIE, which is responsible for multiple systems). This does mean that a factor in developing regulatory system governance arrangements – particularly within MBIE – is clarifying decision rights.

The regulatory system governance functions set out on in sections 4.1 to 4.7 are those that the structures proposed in section 2.3 will need to focus on.

There are some governance functions that are beyond the scope of the arrangements set out in section 2.3 and are not included here, but potentially affect regulatory system performance. They are set out in the table below for completeness. There may be opportunities for those in regulatory system governance roles to leverage off them, and they should be discharged with regard to the impact on regulatory systems.

4.8 LEVERAGE FUNCTIONS	Description	Opportunity for alignment
Crown entity board appointments	Development of advice to the Minister on the appointment of board members.	Due regard is given to include expertise on regulatory systems in the mix of board members.
Appointment of senior staff	Typically covers the appointment and performance management of the chief executive of a Crown entity or a senior manager in MBIE.	Due regard is given to regulatory systems responsibilities in appointments and performance agreements.
Internal assurance	3rd line of defence in the three lines of defence model.	Include coverage of the delivery of operational policy in the internal assurance programme.
Compliance	Ensures compliance with a range of corporate policies, e.g. privacy and security.	Cover these aspects of regulatory practices.

5 Characteristics of good regulatory system governance

A set of characteristics needs to be taken into account in discharging regulatory system governance functions. These characteristics describe the quality features that make up all of regulatory system governance:

a) provide for regulatory stewardship and take a long term view

b) identify and resolve trade-offs at the right level

c) meet Māori-Crown partnership obligations

d) engage with related regulatory systems

e) address changes to the context

f) understand range of stakeholder perspectives

g) take a system view in institutional decision making

h) ensure accountability mechanisms

i) undertake self-assessment.

The characteristics are described in detail in the following table, covering requirements, a brief description and what this may look like for different types of agencies.

5. CHARACTERISTICS Requirements	Description	Implications for different types of agency
a) Provide for regulatory stewardship and take a long term view	Take a long term view so that the regulatory system stays fit for purpose in the future. Refer to MBIE's Regulatory Stewardship Maturity Assessment Tool[9] to embed stewardship in the governance agenda. Ensure that regulatory stewardship requirements are taken into account in governance decisions. Ensure that agencies in a system have the capability for stewardship. Attending to the functions set out in this guidance with appropriate frequency will be a large step in driving stewardship.	This applies equally to regulatory policy and system design and delivery agencies.
b) Identify and resolve trade-offs at the right level	There should be a shared understanding of where trade-offs are properly made, what issues should be escalated and addressed at the governance level and what is delegated to managers. Governors often make trade-offs in: • setting performance standards • formulating strategies and policies • specific investment decisions • budgeting.	Regulators should escalate where issues are arising that are not well addressed within their existing powers, or require using their powers in ways that were not anticipated (e.g. trade-offs between safety and cost or

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[9] Contact us on Regulatory.Systems@mbie.govt.nz to learn how the Maturity Assessment Tool can help keep stewardship on the governance agenda.

5. CHARACTERISTICS Requirements	Description	Implications for different types of agency
	An important factor in determining what is resolved at the governance level (which includes identifying what matters should be escalated to Ministers) is the capacity of the governance arrangements to consider issues. This is not the only factor however. Decisions should be delegated to those best able to make them. One implication of this is the importance of governors to prioritise their time over the different governance functions. This includes considering the extent of involvement in the tools suggested in section 4. This will vary from substantive engagement to seeking assurance that they are in place.	regulation need to be made at the policy level).
c) Meet Māori-Crown partnership obligations	Decisions should support the Māori-Crown partnership and give effect to the Crown's obligations under the Treaty of Waitangi and Treaty settlements. It is appropriate to develop a framework that sets out the implications of these obligations for the regulatory system. Te Arawhiti provides resources and frameworks that can help in this regard https://www.tearawhiti.govt.nz/.	This applies to all agencies
d) Address changes to the context	Understand the context in which the regulatory system operates, including: • changes to government objectives and relevant policy directives • the social and political context • other systems that affect the regulated parties • other government interventions supporting the same or related outcomes. Periodically consider whether any changes to the operating context require changes to the regulatory system to ensure it remains fit for purpose and efficient. Employ foresighting. Examples of the changes that may have an impact: • changes to technology or business models or practices • changes in government priorities • changes in international requirements • significant changes in the characteristics of the sector being regulated • changes in one part of the system that may have implications elsewhere.	This applies equally to all agencies
e) Engage with related regulatory systems	Systems can be related for a variety of reasons including: • they affect the same regulated parties – in which case ideally arrangements should be established to provide seamless service delivery • they contribute to the same outcomes – even if that is not their primary objective	This applies equally to all agencies

5. CHARACTERISTICS Requirements	Description	Implications for different types of agency
	• they otherwise affect or are affected by the first system. There will always be a question about whether agencies in related systems should be considered part of the first system. In some cases, a pragmatic approach will be to treat them as stakeholders and seek to gain strategic alignment as far as possible.	
f) Understand range of stakeholder perspectives	Governors should monitor and understand stakeholder perspectives and ensure that high level stakeholder engagement processes are in place (such as the establishment of a stakeholder representative group). Stakeholder perspectives should provide input on whether different but related regulatory systems are sufficiently connected and provide seamless service delivery.	This applies equally to regulatory policy and system design and regulators but policy and design agencies have an additional responsibility for thinking about stakeholder perspectives at the system level.
g) Provide a system view in institutional decision making	For each entity, its governors should consider: • the impact of any decision on other parts of the system • whether other parts of the system should be making specific decisions that enable their entity to fulfil its role. As a minimum this requires all governors to have an understanding of the overall regulatory system. A shared understanding of the roles of different agencies and actors in the system is important to taking a system view and reducing tensions between them.	This applies equally to all agencies
h) Ensure accountability mechanisms	Ensure compliance with Public Service Act, Crown Entities Act and Public Finance Act accountability mechanisms. Additional arrangements may be appropriate so that each entity in a system accounts for its contribution to the overall system performance. These might include reporting against the regulatory system charter (if any).	This applies equally to regulatory policy and system design and regulators. In practice, at least some accountabilities will be driven by corporate rather than regulatory system governance arrangements.
i) Undertake self-assessment	From time to time, it is appropriate to consider the governance arrangements including: • whether the structures are in place to ensure due attention is given to regulatory system governance • whether governance agendas give due attention to the functions set out in section 4 • whether enough is being done to ensure alignment of agency level governance with overall regulatory system outcomes.	This applies equally to regulatory policy and system design and regulators.

6 Establishing good governance in practice

This final section sets out some pointers as to how to go about establishing effective system governance arrangements. What is appropriate will vary according to the nature of the system and the starting point. The Regulatory Stewardship Branch is available to support the development of good practice, including facilitating sharing of lessons learned by teams.

In each case, a prior question is the scope of the regulatory system and the appropriate scope to bring within the governance arrangements. As noted, it may be appropriate to split a system because there is a distinctive sub-system that is best treated on a stand-alone basis. It may also be appropriate to engage with non-MBIE related agencies. For more on the scope of a regulatory system see Appendix B.3.

6.1 ESTABLISHING ARRANGEMENTS WITHIN MBIE

Regardless of the breadth of MBIE's role in the regulatory system, it is appropriate to establish dedicated governance arrangements for each system. This is simpler where MBIE's role is primarily the policy and system design functions. It is more complicated where MBIE has both that and a regulator function. In either case it can take time for participants to develop a shared understanding of the governance function.

6.1 MBIE ARRANGEMENTS	Description	Key choices and issues
Self-assessment of current arrangements	Consider the effectiveness of the current arrangements against the functions and characteristics set out in sections 4 and 5.	
Initiation	Identify who is appropriately involved (i.e. DCEs, GMs, managers), resource experienced staff to drive the process and seek endorsement from the relevant DCEs. Work through the process of finalising composition of the governance group and drafting terms of reference.	
Composition	Agree composition of governance group and institute series of meetings.	Whether or not to include the relevant DCEs. It is important to establish meetings that focus on governance and not management matters – this can be an issue where the group also has a management role.
Scope and terms of reference	Agree system scope. Set out purpose, operating principles, member responsibilities, quorum and expectations regarding meeting frequency and arrangements. The terms of reference should be endorsed	Critical issue is to distinguish between system, branch and team governance and focus on system governance.

6.1 MBIE ARRANGEMENTS	Description	Key choices and issues
	by senior management to give the group the appropriate authority.	Be clear about how decision rights of group interact with decision rights of members in their individual roles.
Assessment and prioritisation	At initial meetings consider the performance of the regulatory system and challenges to regulatory governance functions. It may also be helpful to use a stewardship self-assessment tool.	Limited information may be available, but it will be appropriate to use the judgement of governance group members in the first instance and then look to build information where it is most important.
Develop work programme	Identify critical issues to work on in the coming year. It may be appropriate to delegate consideration of some issues to allow the governance body to focus in its priorities.	Work programme is potentially broad based, but it can be appropriate to focus on a relatively small number of issues and aim to address them fully. It may be appropriate to start with an internal focus before considering connecting systems and other agencies within the same system.
Servicing	Ensure that servicing arrangements are adequately resourced.	Effective operation of the governance group does have significant servicing implications – potentially a full-time equivalent, possibly more.
Execution	Deliver the initial work programme.	
Self-assessment	After an initial period suggested between 6 & 12 months, consider effectiveness of arrangements and identify improvements.	

6.2 ESTABLISHING ARRANGEMENTS WITHIN A CROWN ENTITY

In a Crown entity, the established board arrangements themselves may well be adequate to cover governance of regulator functions. However, in Crown entities with a broad range of responsibilities it may be appropriate to establish a regulation sub-committee.

A good place to start is with a self-assessment of current arrangements to determine what enhancements, if any, are appropriate.

6.2 CROWN ENTITY ARRANGEMENTS	Description	Key choices and issues
Self-assessment of current arrangements	Consider the effectiveness of the current arrangements against the functions and characteristics set out in sections 4 and 5.	Whether to establish a regulatory sub-committee. The following steps are only relevant if that is agreed to be appropriate.

6.2 CROWN ENTITY ARRANGEMENTS	Description	Key choices and issues
Composition	Agree composition of sub-committee.	Which board members to include. Whether to include external regulatory systems expertise – if that is allowed under the statutory arrangements.
Scope and terms of reference	Specify the range of issues to be considered by the sub-committee. Specify any decisions which are delegated and which should be referred to the full board for confirmation.	The default is that any substantive decisions should be referred to the full board for confirmation. There may be legal constraints on the scope and extent of any delegation. It is critical that the relationship between the sub-committee and the board is clear and clearly understood by both parties.
Assessment and prioritisation	At initial meetings consider the performance of the regulatory system and challenges to regulatory governance functions – to the extent that this has not been identified by the main board.	Limited information may be available, but it will be appropriate to use the judgement of sub-committee members in the first instance and then look to build information where it is most important.
Develop work programme	Identify critical issues to work on in the coming year – if this has not been specified by the main board.	Work programme is potentially broad based, but it can be appropriate to focus on a relatively small number of issues and aim to address them fully.
Servicing	Ensure there are adequate servicing arrangements. Ensure funding for any resulting additional inputs from board members.	Effective operation of the sub-committee is likely to increase overall board servicing requirements.
Execution	Deliver the initial work programme.	
Self-assessment	After an initial period suggested between 6 & 12 months, consider effectiveness of arrangements and identify improvements.	

6.3 ESTABLISHING CROSS-SECTOR ARRANGEMENTS

Cross-sector arrangements are appropriate where more than two bodies are involved. They may well be helpful when only two bodies are involved.

6.3 CROSS-SECTOR ARRANGEMENTS	Description	Key choices and issues
Self-assessment of current arrangements	Consider the effectiveness of the current arrangements against the functions and characteristics set out in sections 4 and 5.	Identify what opportunities for improvement can best be supported by a cross-sector group.
Composition	Agree composition of the group.	The breadth of the group The expected level of representation given the likely frequency of meetings.
Scope and terms of reference	Specify the purpose and objectives of the group. Set out expectations regarding frequency and participation in meetings.	
Assessment and prioritisation	At initial meetings consider the extent to which the overall outcomes of the system are clear, performance of the regulatory system and opportunities to drive performance through common approaches.	Limited information may be available, but it will be appropriate to use the judgement of members in the first instance and then look to build information where it is most important.
Develop work programme	Identify critical issues to work on in the first year.	Work programme is potentially broad based, but it can be appropriate to focus on a relatively small number of issues and aim to address them fully.
Servicing	Ensure that there are adequate servicing arrangements.	Effective operation of a coordination group is likely to have significant servicing implications. How servicing is to be funded and resourced by the participating agencies.
Execution	Deliver the initial work programme.	
Self-assessment	After an initial period suggested between 6 & 12 months, consider effectiveness of arrangements and identify improvements.	

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Appendix B: Context on regulatory systems governance in the public sector

B.1   REGULATORY SYSTEM GOVERNANCE AND RELATED CONCEPTS

Governance is one of several concepts that require attention if regulatory systems are to be valuable assets that contribute to economic and social wellbeing. These concepts are highlighted here. It should be noted there are no widely agreed definitions of these concepts, and there is a large degree of overlap in the literature between the concepts of stewardship, practice, and principles:

- **Regulatory system** is a set of formal and informal rules, norms and sanctions, given effect through the actions and practices of designated actors that work together to shape people's behaviour or interactions in pursuit of a broad goal or outcome[10]. MBIE has grouped these according to the outcomes sought and the kinds of harms being managed. For more on the scope of a regulatory system see section B.3.

- **Regulatory system governance** is setting the objectives of that system and ensuring that actions are taken to deliver those objectives, consistent with good public sector management practice.

- **Institutional governance** is the setting of the objectives of an entity or organisation and holding itself to account for delivering on those objectives.

- **Regulatory stewardship** is the monitoring and care of regulatory systems for which an organisation has policy or operational responsibilities. Its goal is to ensure that regulatory systems remain fit for purpose over the long term. For government agencies, regulatory stewardship means adopting a whole-of-system, proactive, collaborative, and long-term approach, that can anticipate, and respond to, change over time. Regulatory system governance includes responsibility for making sure that stewardship happens.

- **Regulatory practice** is the set of practices that are needed to deliver effective regulation. This might include gatekeeping functions, education and compliance and enforcement activities.

- **Regulatory policy** is the work that identifies problems and opportunities that might require a regulatory response and designs the frameworks and tools to drive that response. Policy is sometimes included in the spectrum of regulatory practices.

- **Regulatory principles** have been identified by some authors to be taken into account when adopting and implementing regulatory practices. Examples are: a system should be proportionate, fair and equitable in the way it treats regulated parties. Some prescriptions of good practice can be taken as encompassing regulatory principles.

- **Regulatory decision making** covers the formal decision by those authorised to make it, for example, on the issue of a consent, licence or warrant.

Governance is different to regulatory decision making. The ultimate authority for regulatory decision making varies across systems from Minister, to Crown entity board, to Crown entity CE to statutory officer. Where a Crown entity board has responsibility for regulatory decision

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[10] https://www.treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf

making, this is different to its governance functions and the board should organise its processes and agendas accordingly.

Nonetheless, governance does have an interest in the body of decision making and its overall quality. In establishing effective governance arrangements, it is important that regulatory decision making arrangements are considered because:

- regulatory decision making carries its own set of accountabilities

- one of the functions of governance is to make sure there is the capability in the system to support robust, fair and transparent decision making.

B.2   GOVERNANCE IN THE PUBLIC SECTOR

Regulatory system governance has many parallels to governance of public sector functions and entities. Much of this guidance takes governance in general and interprets what it means in practice in a regulatory context.

B.2.1   Governance roles

Public sector management arrangements and the arrangements prescribed by regulatory statutes mean that governance of any system is typically diffused across multiple 'governors' with different and overlapping roles. These include those shown in the table below. It should be noted that in addition, some or all of these parties will have roles in regulatory decision making.

Whilst the relevant Minister has overall responsibility for regulatory system governance, in practice or by law, governance functions are delegated to MBIE and other agencies (mostly Crown entities).

B.2.1 GOVERNANCE ROLES	Role	Comment
Minister	Overall responsibility for system outcomes, design and delivery.	Depending on the system, Ministers also have decision making responsibilities with varying degrees of discretion.
Agency CE	Varies according to system, potentially includes: • system outcomes • system policy and design • system delivery.	In practice, these responsibilities are delegated on a day to day basis to DCEs/GMs. There are likely to be separate delegations for policy and delivery elements.
Statutory Officer	Depending on agency arrangements, may have responsibility for the capabilities that support decision making. In principle these are in addition to the Statutory Officer responsibilities.	The statutory officer role is one of regulatory decision making, not governance. However, in practice, most Statutory Officers in MBIE are General Managers and are likely to have governance responsibilities by virtue of that position. In Crown entities, the regulatory decision maker is typically either the CE or the board itself.

B.2.1 GOVERNANCE ROLES	Role	Comment
Crown entity board members	Responsible for delivering the functions of the Crown entity as defined in relevant statutes. Crown entity regulatory functions typically focus on delivery (as opposed to policy/system design).	Some Crown entity functions may not be regulatory functions: this may impact on the appropriate structures (e.g. committees of the board) for regulatory governance.

This means that regulatory system governance in practice is diffuse and delivered by a mix of:

- ministerial decision making

- MBIE's own formal governance arrangements

- ad hoc arrangements within MBIE for each system

- aspects of MBIE's management arrangements

- boards of Crown entities

- inter-agency coordination arrangements (such as the Council of Financial Regulators)

- governance arrangements in other departments (where they have a system role)

- governance arrangements in other entities (e.g. Territorial Authorities).

It is important that the governors across these bodies act in a coordinated and coherent way. Where MBIE is responsible for regulatory policy and system design (i.e. in all cases other than housing and tenancy) it is effectively the system owner on behalf of the Minister. This includes ensuring coordination and coherence as required.

B.2.2   Regulatory system governance challenges

Governance in the public sector in general and for regulatory systems in particular faces a range of challenges that this guidance is intended to address:

- the diffuse nature of governance in the public sector

- regulatory systems are based on legislation which can lead to set and forget, yet there is a need to consider the appropriateness of that legislation from time to time

- systems are typically underpinned by multiple pieces of legislation, which may or may not set out the outcomes sought

- in MBIE, as in other departments, there tends to be a blurring of governance and management functions and focus on governance can require a deliberate approach

- governance ultimately rests with the responsible Ministers but many governance decisions are delegated in practice (if not in law)

- the context in which regulatory systems operate is constantly evolving – this sometimes requires decisions on major changes to the system

- the scope of a regulatory system is not necessarily well defined

- regulatory systems have multiple stakeholders with varying interests

- legislation may limit the flexibility of governance arrangements and may limit flexibility and scope of the decision making of governance bodies

- the legislative framework for each system differs, making it difficult to establish a common approach for each system

- lack of clarity of roles within regulatory systems can lead to tension between actors.

In practice, where there are several bodies involved, good governance is achieved by a mix of:

- individual governors discharging their responsibilities with due regard to impacts on the regulatory system - section 4 provides pointers on how to support this in practice

- a coordination mechanism that brings the various governance bodies together; for many systems this is a step up from current arrangements - see section 3 for guidance.

B.2.3   Governors and governance

Throughout this guidance the term 'governor' has been used for a person responsible for governance activities. For a Crown entity, the governors are its board members – in the system context they are governors of a component of the system and contributors to governance of the system as a whole. For MBIE, while governance formally rests with the Chief Executive supported by the Senior Leadership Team, in practice structures need to be formed to focus on individual regulatory systems, as set out in section 2.3.

B.3   MORE ON REGULATORY SYSTEMS

B.3.1   Defining a regulatory system

MBIE has grouped the regulatory regimes for which it has responsibility into 19 systems, based on the outcomes sought (see details section 2.1 on purpose). In general they comprise one or more sets of regulations and associated institutional arrangements intended to reduce a class of economic, social or environmental harms.

However, in some cases it may be appropriate to take a narrower or broader lens as to the classes of harms that fall within a system. What is appropriate will vary case by case. Too broad a view can potentially complicate arrangements or lead to a lack of focus on system components. Too narrow, increases the risk that certain types of harm fall in the gaps between systems and therefore remain unmanaged. A number of suggestions for a different breakdown to the 19 have been made, but it is beyond the scope of this guidance to resolve them.

This system view of governance should not obscure the fact that many regulated parties deal with multiple systems (including those outside MBIE's purview). Good governance should ensure that a stakeholder perspective is brought into decision making.

The situation is further complicated by the fact that multiple agencies can have an impact on system outcomes even if they are not one of the agencies included in Appendix B. For example, the Police may investigate road traffic accidents involving a truck driver at work. For the purpose of this guidance we suggest to regard such agencies as stakeholders who are engaged with rather than bodies that are brought into the system governance arrangements.

B.3.2   Regulatory system functions

MBIE's regulatory systems have been broken down into the following regulatory functions:

- policy advice (which in practice encompasses regulatory system design)

- operational policy/service design

- service delivery

- education and information

- compliance and enforcement

- monitoring and evaluation

- standard setting

- dispute resolution.

These practices are variously carried out by MBIE itself, other ministries, Crown entities, or other bodies. Typically the policy and design function is within one part of MBIE (the exception is the Ministry of Housing and Urban Development) and the remaining practices in another part of MBIE or with Crown agencies or territorial authorities.

Accordingly, in the guidance, regulatory practices have been grouped into the following types of agency: regulatory policy and system design *and* regulatory service design and delivery ('the regulator').

This is something of a simplification and the boundary between them is not black and white. For example, the regulator needs to understand policy to deliver on its intent, good practice in policy development involves those responsible for its delivery, and the boundary between policy and operational policy is not always clear.

Leaving aside the dispute resolution function, in only three cases does MBIE have responsibility for all functions. These are intellectual property, petroleum and minerals, and outer space and high altitude activities. In most cases, therefore, multiple agencies are involved in the design and delivery of the regulatory systems.

Both of these groups of practices are critical to high performing regulation[11]. They need to inform and be informed by each other and act as partners in system governance. This guidance aims to unify and align governance decision making between these elements as far as possible within the formal accountability arrangements.

Recognising the quasi-judicial nature of the dispute resolution functions, their own governance falls outside the scope of this guidance. Nevertheless most of the functions set out in section 4 will apply. A point of difference in practice will be that a dispute resolution function will have its own performance metrics. Information sharing across the regulatory system remains important as dispute resolution metrics can provide important insight into performance of other parts of the system.

B.4   HOW THIS GUIDANCE WAS DEVELOPED

This guidance was prepared by MBIE's Regulatory Stewardship Branch for those regulatory systems in which MBIE has a role. Our review has found little or no literature on regulatory *system* governance and only limited prescription on the governance of regulatory bodies.

In the circumstances, the guidance has been prepared:

- drawing on generic guidance on governance for a range of different types of bodies

- adapting it to the specific requirements of a regulatory system

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[11] see for example: *Regulatory Stewardship, Voice of the Regulator* at
https://ojs.victoria.ac.nz/pq/issue/download/546/pq13-4

- testing it with people with experience in the governance of public sector bodies in general and regulatory systems and agencies in particular.

This guidance is intended to supplement other prescriptions and guidance, notably:

- statutory requirements such as set out in the Public Service Act 2020, the Crown Entities Act 2004, and the Public Finance Act 1989. In so far as these affect Crown entities, these requirements are summarised in the Monitoring arrangements for MBIE-monitored Crown entities[12]. In most cases there is also system specific legislation. In relation to these requirements, the guidance in this document can be thought of as setting out the principles of good practice to be taken into account in discharging statutory requirements

- non-statutory official guidance and expectations such as the Government Expectations for Good Regulatory Practice

- generic guidance on governance such as that of the Institute of Directors (noting that there are significant differences in the institutional and legal context between the private and public sector)

- governance lessons learned from reviews of issues with regulation, such as the review of NZTA's regulatory capability and performance[13].

- resources for regulators provided by G-REG under the Government Regulatory Practice Initiative[14].

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[12] https://www.mbie.govt.nz/assets/monitoring-arrangements-for-mbie-monitored-crown-entities.pdf
[13] https://www.transport.govt.nz/about/crown-entities-and-statutory-bodies/review-of-nzta-regulatory-performance/
[14] available at https://g-reg.govt.nz/resources-for-regulators/

Appendix C: Regulatory Crown entities and statutory bodies associated with MBIE

Accident Compensation Corporation

Accreditation Council

Boards regulating building professions

Civil Aviation Authority (in respect of its functions regarding health and safety at work)

Commerce Commission

Commission for Financial Capability

Electricity Authority

Energy Efficiency and Conservation Authority

External Reporting Board

Financial Markets Authority

Immigration Advisers Authority

Maritime NZ (in respect of its functions regarding health and safety at work)

Measurement Standards Laboratory

Takeovers Panel

WorkSafe New Zealand