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Still the Poor Cousin
how we choose (not) to talk about regulation

Abstract
Regulation is a core dimension of government activity, but this is often obscured by language that frames public agencies as service providers rather than deliverers and stewards of regulatory systems. This article argues that such framing does not reflect the nature and reality of regulation, and can compromise the management, financing, monitoring and reporting of government regulatory activities. Greater acknowledgement of the regulatory nature of many government activities would help to reduce these concerns and bring more focus to the need to treat regulatory systems as public assets that require active care and investment to deliver value for New Zealanders.

Keywords regulation, regulatory systems, regulatory stewardship, public sector performance, Crown entity monitoring, New Zealand public sector

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In the foreword to its 2014 report on regulatory institutions and practices, the New Zealand Productivity Commission observed:

> Despite its extensive reach and impact, in many ways regulation is the poor cousin of government. In comparison with taxation, spending or monetary policy, little attention is paid to regulation. There is no annual review of regulation, as there is with government spending (the Budget). We do not know how much of our income is taken up by complying with regulations, as we do with our tax bills. And unlike spending, tax or monetary policy, there is no one minister or agency in charge of regulation. (New Zealand Productivity Commission, 2014, p. iii)

New Zealand now has a Ministry for Regulation, but the points made then broadly still stand. Around the world, tax departments, finance ministries and central banks are ubiquitous, but ministries dedicated to regulatory oversight are rare indeed.

So, why is regulation the neglected relation? Is it just because regulation is harder to measure? This article suggests that the way we currently choose to talk about regulation (and about government activity more generally) fails to give proper attention to the nature and reality of regulation. Better acknowledgement of the regulatory nature of many government activities might help to address some current weaknesses in public sector performance frameworks, measurement, reporting and budget decision making, and bring more enduring attention to regulation, for the benefit of New Zealanders.

Taxation, spending ... and regulation too?

It is common to see taxing, spending and regulation discussed as three distinct levers or tools of government. 'The regulatory system is an important part of New Zealand's policy infrastructure and should be seen, for example, as no less significant than the systems behind taxation and government spending' (ibid., p. 412); 'The biggest levers government has available are tax settings, expenditure, and regulations (the power to set the rules). Each tool involves trade-offs' (Australian Productivity Commission, 2025, p. 5).

Taxation and government spending are primarily concerned with the resourcing of government. They are the two core components of a government's budget – the revenue and the expenses, in rough terms. By introducing regulation as a third lever, however, the implication is that regulation is something that sits separate from tax and spending decisions. It tends to suggest that regulation just means legislation or the law.

That framing narrows our understanding of regulation. It is a well-known public law maxim that legislation is not self-executing. As former New Zealand appellate court judge David Goddard KC has noted, law-making 'isn't a form of magic. A legislator cannot, simply by passing a law, make the world different – in great ways or small' (Goddard, 2022, p. 16). Rather, legislation requires some form of action to give it effect. And that requires people, organisations and administrative arrangements.

This aligns with an approach that views regulation as regulatory systems. A regulatory system is 'a set of rules, organisations and their practices, designed to work together to shape how people behave and interact, in pursuit of a broad policy goal or outcome' (Ministry for Regulation, 2026). The government is potentially responsible for between 170 and 200 regulatory systems, although some are yet to be explicitly recognised as such.

Since it involves some kind of organisational action, regulation requires resources. Resources are provided through government spending (funded out of general taxation) or paid directly by regulated parties through levies (another kind of taxation) or fees. Other types of government actions, such as investments, transfers and the provision of goods and services, also require resources. The main purpose and function of government taxation and spending, then, is to support different types of government actions. Regulation's relationship with taxation and spending makes more complete sense when included in this list.

You will not get that sense, however, from reading a government budget. Investments and transfers get separately identified, but regulatory activities do not. They are hidden within the more general term 'outputs', which are defined as goods or services.

Regulatory activities disguised as service provision

Indeed, presenting regulatory activities as services is ubiquitous across the public sector. The statutory purpose of the New Zealand public service refers to 'deliver[ing] high-quality and efficient public services' (Public Service Act 2020, s11). The home page of the New Zealand government website (www.govt.nz) describes itself as 'your guide to finding and using government services'. The auditor-general's most recent strategic intentions document begins with the statement: 'New Zealanders have high expectations that the public services they receive are effective and good value for money' (Audit Office, 2026, p. 3). None of these sources make general mention of regulation.

Individual public servants also seem reluctant to use the 'r' word. Colleagues have heard people insisting that they or their work units provide services, not regulatory activities. People might say their work isn't regulatory because 'we only provide advice and guidance', or 'we just investigate things', or 'we only monitor compliance with regulations'. And this is understandable. Describing government activities, even regulatory ones, as the provision of public services has rhetorical and psychological advantages. For both politicians and public sector organisations, it conveniently sidesteps the negative connotations often associated with the term regulation, such as control, bureaucracy or red tape. For individuals, it better aligns with their motivations for working in the public sector – that they want to be 'of service' to the community.

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At the managerial level, talk of public services also simplifies analogies with private sector practice. These analogies have long been deployed at the centre of government to encourage senior public servants to be more active leaders and managers (results-oriented, adaptive, managing organisational risks and capability). This has sometimes been characterised as the shift from 'public administration' to 'public management' (Osbourne, 2006; Christensen et al., 2007, Chapter 2).

Active, results-oriented public sector leadership is to be welcomed. So too are public servants motivated by 'a spirit of service to the community', as the Public Service Act puts it. The problems come when a service mindset leads to distorted or narrow thinking about public agency objectives and performance.

The problematic nature of a service mindset for regulation

We are all familiar with the huge range of services that private markets successfully deliver every day. Our core ideas about service delivery are therefore naturally influenced by the features of these voluntary transactions, where ideas of success tend to involve meeting the needs or expectations of customers and measuring success by levels of customer demand and satisfaction.

The concept of 'customer' is problematic, however, when applied to regulation. Regulation is often about reducing harms, which may involve imposing and enforcing obligations or restrictions on people that are expected to reduce those harms. In many such cases, as noted by Harvard professor Malcolm Sparrow, 'the person or party the regulator encounters directly is not paying for the service, often does not want it, and will not be pleased by it' (Sparrow, 2000, p. 62).

Wauchop and Manch provide a nice balanced discussion of this issue in their article 'Are regulated parties customers?' (Wauchop & Manch, 2017, pp. 10–12). The concern is more than academic. For example, a member of the public died because of a seat belt failure that should have been picked up in a vehicle warrant of fitness assessment performed by an authorised vehicle inspector. The resulting inquiry found that the New Zealand Transport Agency, as the regulator, knew that this inspector was not undertaking proper vehicle inspections, but the agency had not sufficiently acted upon the resulting risks to public safety because they applied a customer focus to their interactions with inspecting organisations (McDonald, 2019).

Even apparently voluntary exchanges between the government and people should be viewed with great care. For example, at first blush New Zealand citizens can be viewed as customers for government-issued passports, since they both request and pay for them. But this is not a wholly voluntary transaction. People are required to have a passport to leave and enter the country. Further, the government does not offer to issue a passport with the name and personal details of the applicant's choice. Rather, the government is providing credible assurance to others, often another government, about the identity of the person with whom they are dealing. It helps those others to appropriately and confidently discharge their own regulatory responsibilities in relation to the person to whom the passport belongs. It is not as easy to measure, but the credibility and veracity of the passport information is therefore the performance metric of primary importance, while, say, the time taken to issue it is a secondary consideration.

Regulatory systems need broader Crown entity/department relationships

Many key regulatory agencies are Crown entities, legally separate from the Crown. Crown entities are generally overseen by a governance board, which is accountable to a minister for the entity's performance. A designated monitoring department acts as the minister's agent and provides the minister with independent advice.

The Crown entity/monitoring department relationship involves some 'inherent tensions' (Audit Office, 2022, p. 3). The potential problems are starkly illustrated by the review commissioned by the Ministry of Transport of its monitoring of the New Zealand Transport Agency (a Crown entity) after the regulatory failure mentioned earlier. It found that, in the preceding years, monitoring practice was initially so light touch that it was unlikely to have identified issues with the agency's regulatory approach, but, when the monitoring was later strengthened, it created a fraught relationship that led to a strong defensive reaction from the agency, which then sought to block the ministry's monitoring work (MartinJenkins, 2019).

To help monitoring departments avoid the Ministry of Transport experience, Public Service Commission guidance emphasises the importance of effective engagement, trusted relationships, and shared understandings of roles and responsibilities (Public Service Commission, 2022). Nonetheless, monitoring departments appear to struggle with some elements of their role. On performance monitoring, a 2022 review found (among other things) that monitoring arrangements tended to be one-size-fits-all and were not developed in consultation with the Crown entities. Many Crown entities considered their current monitoring requirements 'to be an administrative burden without equivalent benefit' and thought departments 'do not focus on the right things and do not fully understand the Crown entities they are monitoring' (Audit Office, 2022, p. 19).

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entities also thought monitoring teams were 'siloed' within their departments and that the Crown entities 'struggled to engage with other teams of the monitoring department (such as the policy team)' (ibid., pp. 27–28).

The Public Service Commission has published guidance with some useful things to say about Crown entity monitoring (Public Service Commission, 2026). It covers key dimensions of the government's ownership interest in the Crown entity, such as effective governance, capability, financial performance and the management of risks, and also recognises the government's interest in value for money from outputs, and entity service performance. Regulatory roles or responsibilities also get brief mention. But, fundamentally, the framework set out for the Crown entity/monitoring department relationship is still designed primarily to support the government's ownership interest in the Crown entity. It does not address the full implications of the common situation where the Crown entity is a regulator, and the department administers the supporting legislation and leads the provision of policy advice on that legislation.

The presence of such complementary regulatory roles could also be said to involve a government 'ownership' interest, but it concerns a different type of asset (a regulatory system) and we call it a stewardship responsibility. Regulatory systems can be appropriately viewed as assets, or at least intended to be assets, because they are expected to deliver, over time, a flow of benefits to society that exceeds the flow of costs incurred (Ayto, 2014, pp. 23–24). This shifts the primary frame of reference for monitoring. The focus of attention is no longer just on the Crown entity, but on the regulatory system as a whole. The government ownership interest in the Crown entity doesn't disappear as a concern, but it becomes a subsidiary element. We start to recognise that, unless it also has non-regulatory functions, the Crown entity only exists to support the regulatory system to deliver public value.

The Crown entity and department now share a stewardship responsibility for monitoring and managing the performance of the regulatory system they both support. They need to collaborate closely to properly discharge that responsibility. This includes setting agreed priorities for monitoring and reviewing aspects of system performance, sharing information on system issues identified and developments in the regulatory environment, and prioritising and coordinating initiatives to improve the legislation and regulatory system performance.

This requires a broader, deeper and more collegial relationship dynamic than the standard monitoring role has been designed to support. For regulatory agencies, the need to also build this system stewardship partnership should help shape the design of the Crown entity/department monitoring relationship at the outset. Doing so would not only ensure that regulatory responsibilities are appropriately acknowledged but should also help the parties to address some of the common performance monitoring problems identified by the Audit Office review.

We could better align financial and regulatory decision making

Effective government budget control requires strict rules for budget decision making. Limits on available resources gives rise to a strong need to prioritise, which requires information about the expected impacts of new or additional spending proposals.

Regulatory initiatives may require or seek both legislative changes and additional resources. Ideally, these decisions would be taken together or in a clear sequence, based on an integrated set of impact and financial analysis. In practice, this sort of alignment has proved elusive to date. Past expectations for analysis of regulatory proposals and for budget initiatives have had features in common, but they have not been the same. In general, each has had their own distinct information demands and decision paths, with agencies needing to meet both.

Without an integrated approach to regulatory decision making and with insufficient attention to the costs of monitoring, review and maintenance work, it is too easy to get approval for regulatory changes that do not have adequate sustainable funding. Policy advisors often underestimate the costs of regulatory implementation and operation, including conveniently assuming they can be absorbed within baselines, if the people who will have to give effect to the change are not consulted early enough in the process. This builds up future problems, either through unexpected demands for more budget resources after a regulatory change has been made, or through under-resourced regulators that cannot deliver the intended level of benefits, cannot fund the supporting monitoring, review and maintenance work required, and are consequently storing up risk of regulatory failure.

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Even regulatory initiatives intended to be cost-recovered from external parties can give rise to financial problems. The processes for approving revised fees and levies can be cumbersome, expensive and given low priority. More importantly, legislative provisions that authorise cost recovery sometimes only allow recovery of the costs of providing particular 'services' to regulated parties, and do not cover the necessary associated monitoring, review, maintenance and reform work, or permit shifts of resources to respond to evolving regulatory developments. This is another case where treating regulation as just a service can cause problems for agencies.

By contrast, investment in physical assets is better integrated into government financial decision-making and reporting arrangements. These arrangements recognise that good investment decisions involve working through the structured stages of a business case. They also require consideration of whole-of-life costs, including expenditure to maintain, upgrade and refurbish the asset. Estimates of asset depreciation are included in the financial statements. Agencies are expected to maintain asset management plans and consider asset resilience to key risks.

Since regulatory systems can also be viewed as depreciating assets, decision making for major regulatory initiatives could adopt a similar staged approach (with suitable tailoring, because whole-of-life costs and benefits can be harder to estimate). Initial policy decisions could be taken in principle only, informed by (but of course not limited to) mandatory preliminary estimates of the potential financial impacts. These in-principle decisions would then be subject to more detailed legislative and operational design work and final approval for the financial costs of implementation and operation, with an allowance for future monitoring, review and maintenance needs (whether government-funded or cost-recovered).

If, at the initial policy stage, the preliminary estimates of these financial impacts do not fit within the government's fiscal allowances and priorities, ministers would have the option to defer proceeding to detailed design, or amend the policy proposal and/or set clear fiscal parameters for the detailed design work to fit within. With luck, those who would be responsible for implementation get early input, trade-offs between fiscal and regulatory objectives are made in a transparent way, budget control is strengthened, and those involved in detailed design will clearly understand the fiscal parameters the design is expected to meet.

A regulatory perspective may support better performance metrics

The New Zealand auditor-general has been a regular critic of the quality and value of public sector performance reporting. For example:

> Although there is good practice in how some public organisations report on aspects of their performance, we continue to see reporting that points out how busy public organisations have been rather than what they have achieved and what impact they have had on the outcomes the public is interested in. Reporting often gives little useful information for either the public or Parliament to effectively scrutinise the performance of these public organisations. There are few other areas of our lives where we would accept paying for services with no comprehensive understanding of what we received for the money we spent. (Audit Office, 2023, p. 4)

Identifying and producing meaningful and cost-effective public sector performance measures is challenging. However, greater recognition of the regulatory context or nature of what many public organisations do might help those organisations think about potential performance measures beyond the counting of organisational activities.

As already noted, seeking changes in people's behaviour is the key characteristic of regulation. Looking at options to report on the specific behaviours of interest (e.g., vehicle speed, driver impairment, seat belt wearing, various sources of driver inattention) may therefore be a useful place to start and will often sit nicely between basic measures of regulator activity (e.g., speed camera deployment, checkpoints, education) and measures of the ultimate desired outcomes (e.g., reduced road deaths and serious injuries).

Good regulation will also minimise the unwelcome consequences of regulatory interventions. Hence, measures of compliance costs and other 'side effects' of regulation can also be useful supplementary performance measures (Coglianese, 2023, p. 58). Further, regulatory processes should be able to cope with stresses and shocks and to respect rights and deliver good process, so measures of operational readiness, resilience, fairness and transparency could also be considered. These may not be unique to regulation but are more likely to be surfaced when thinking of regulation.

Unfortunately, some of these types of performance measures will not easily fit traditional expectations for government reporting that is primarily agency-based, public and annual. For regulatory systems involving several different agencies, agency-based reporting may provide only partial views of system performance. Some regulatory performance measures are also better used for learning purposes, or occasionally even kept confidential (e.g., because they relate to an enforcement targeting strategy), rather than as public accountability targets. And sometimes it will not be helpful or cost effective to assess and report measures annually.

Usefully, the auditor-general's recent final advice to Parliament's Finance and Expenditure Committee inquiry into performance reporting and public accountability seems to acknowledge some of those reporting challenges, which are not specific to regulation (Controller and Auditor-General, 2026, pp. 16–17, 19). It would be great if those acknowledgements

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informed future government work on performance reporting that responds to the Finance and Expenditure Committee's report.

The Audit Office could take more interest in government regulatory processes

The Audit Office does sometimes do performance audits of specific regulatory activities (e.g., Audit Office, 2024, 2025). It is unclear, however, whether this modest level of attention matches the scope of the regulatory role of government. More noteworthy, perhaps, this author is not aware of any Audit Office reviews of key general regulatory management processes of government, at any time.

Audit offices in other jurisdictions seem less coy. The National Audit Office in the UK has completed a range of reviews that have examined government-wide regulatory reform initiatives or various aspects of the UK's regulatory management arrangements, such as the quality of government regulatory impact analysis, the operation of regulatory burden reduction programmes, and business perceptions of regulation (e.g., National Audit Office, 2008, 2009, 2016, 2026). If the New Zealand Audit Office was able to give more attention to key regulatory management expectations and processes, it could prompt actual practice to improve.

Conclusion

Regulation sits right at the core of what government does, so regulatory thinking needs to inform core public management processes. At the moment, in some key areas it does not, and this likely undermines the effectiveness of government action.

The common framing of regulatory activities as just the provision of services is a major contributor to this. This can lead public servants to focus on the wrong objectives, fail to build the broader and deeper working relationships between agencies that are necessary for effective stewardship of regulatory systems, underfund regulatory work, miss opportunities to identify better performance metrics, and give limited attention to good regulatory practices. Better acknowledgement at the centre of government of the regulatory nature of many government activities would help to reduce these problems.

It would also help if more public servants and agencies were willing to acknowledge that the work they do is regulatory, or, at least, supports the effective operation of a regulatory system. Each of our regulatory systems is intended to be an asset for New Zealand. Our ongoing care and attention to the operation and performance of those regulatory systems should be viewed as a positive thing intended to deliver public value. We should stop running away from the 'r' word.

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