Te Kura Kāwanatanga – School of Government, Te Herenga Waka – Victoria University of Wellington

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SPECIAL ISSUE

Regulating regulation

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Regulating regulation: an introduction

This special issue of *Policy Quarterly* focuses on regulatory management experience in New Zealand over the last few decades. It is not about regulating specific domains, such as resource management or maritime operations. Instead, our contributors focus on various approaches to and lessons from the meta system that governs regulation – the regulation of regulation.

The economic reforms of the late 1980s and early 1990s included extensive regulatory changes. However, these reforms largely bypassed the system for developing and managing regulations, which had significant gaps. For example, there was no clear responsibility for managing the stock of regulation. The Cabinet Manual was silent on the matter, and expectations for departments that administered legislation were not specified. Meanwhile, the legislation, measured by the public act word count, more than doubled, from 11 million words in 1984 to 23 million in 2024 (Gill, Shipman & Simpson, 2025).

Finding a sweet spot in a race without a finish line

Steel and Mumford, in this issue, document the effort to fill these gaps, initially by introducing regulatory impact assessment to improve the flow of regulation. With the introduction of regulatory stewardship into legislation in 2013, the attention expanded to managing the stock of regulation. Regulatory systems were framed as social assets to be invested in and maintained (van der Heijden, 2021), and stewardship gradually started to deliver observable outputs (Kudrna, 2025).

Regulatory management, like any innovation, is fraught with risk and uncertainties. Manch, and also Steel and Mumford, note that regulatory management is inherently political, as ministers decide on regulation and are publicly answerable for regulatory decisions – even if the decisions were taken by a public official or an independent regulatory agency. Regulatory management thus continuously requires finding a sweet spot between what is politically doable, administratively feasible and substantively effective (Nixon, 2016). This makes progress uneven, as politically appealing or safe options often get too much attention. Ayto documents the appeal of framing regulatory objectives in terms of customer service. This makes regulatory obligations less visible in strategic, governance and budget debates, the dangers of which were demonstrated in the regulatory failure at the New Zealand Transport Agency. Similarly, McMinn argues that focusing on politically safe aspects of regulatory stewardship, such as staff training, reduces attention to the more demanding leadership decisions on trade-offs, funding and performance.

The progress in regulatory management may be uneven, ad hoc, inconsistent, and vulnerable to shifts in political priorities (as Manch describes), but there have been undeniable improvements since the Productivity Commission's milestone inquiry into regulatory institutions and practices (Productivity Commission, 2014). Regulatory impact assessment and stewardship remain central and continue to evolve with every hard lesson, argue Steel and Mumford. The Ministry for Regulation and the (politically contested) Regulatory Standards Act build on them, adding the next round of regulatory policy experimentation. Moss provides a case study of the Ministry for Regulation inquiry model, which exposed overlapping statutes, inconsistent enforcement and out-of-date risk models. She argues that one year on, approvals are faster, requirements are updated, and the review provides a replicable blueprint. McMinn tries to pinpoint factors that may enable the Ministry for Regulation to push the regulatory management frontier – its status as a permanent central agency with a budget and cross-cycle continuity, the legislative mandate in the Regulatory Standards Act, and a system-of-systems view that covers the gaps between agencies that are seemingly nobody's problem.

New Zealand is constrained and enabled by others

New Zealand may be an island nation, but we are not isolated from the rest of the world. Epps and Mumford document here how the pragmatic 'why shouldn't we' approach to international regulatory collaboration built the Single Economic Market (SEM) with Australia – a regulatory integration unrivalled outside the European Union. The SEM is more selective, with a narrower focus on business and not reliant on a central bureaucracy, which makes it replicable across more goods and services and more countries. In a similar vein, Gill discusses the transformative potential of digital standards, which could play a role for trade in the early 21st century similar to that of containerisation and bar codes in global trade in the second half of the 20th century. However, government regulators need to lead the adoption of international standards to ensure interoperability, network effects and scale.

Exposure to international standards has led to pragmatic adaptations of regulatory policy goals. Thirty years ago we aimed for 'best of breed' stand-alone regimes. Today, for a small economy embedded in a complex web of international regulatory arrangements, interoperability with international systems and standards is both the binding constraint and enabler of change.

More lessons to come

The international and domestic search for a regulatory management system that replaces 'set and forget' with 'adapt and keep fit for purpose' is set to continue. Despite the fraying of the rules-based international order and the rising weight of national security and resilience considerations (see Steel and Mumford in this issue), the collaboration with Australia, other countries and international organisations is likely to continue and evolve. At home, the Ministry for Regulation will test the more centralised approach while striving to deliver improved regulatory outcomes. The Regulatory Standards Act may surprise its critics and actually deliver meaningful improvements that would make them sustainable across electoral cycles and governments. Or not. Either way, New Zealand is set to contribute to the global stock of knowledge on regulatory systems management at least as much as it has over the last three decades.

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Keith Manch

A View of Developments in Regulation

through the trees to the woods

Abstract
Regulation has evolved significantly over recent decades. The quality of regulation and its implementation is critical to our wellbeing and is in the spotlight now more than ever. While significant developments have occurred, enduring challenges remain relating to the complexity of regulation, its political nature, regulatory capture and regulatory failure, institutional design, regulatory policy design, and the quality of regulatory practice. Whether creating or responding to these challenges, all involved are driven by their view of what is best for the purpose and the people they serve. New Zealand is reasonably well placed to make regulation a more positive force if we can find a way to build effectively on recent efforts in a more sustainable way.

Keywords regulation, regulatory complexity, politics, capture, institutional design, policy and practice, stewardship

Keith Manch has worked in the public and in law enforcement and regulation since 1976, including in the Police, the Commerce Commission, the Ministry of Consumer Affairs, Department of Internal Affairs and Ministry of Social Development, and as chief executive of the Real Estate Authority, Maritime New Zealand and the Civil Aviation Authority. He has had a long involvement in and maintains an interest in regulatory system stewardship and capability development activities. Now retired from full-time work, he has spent a brief period acting as deputy director land transport at NZTA and has recently joined Iti Kōpara – Public Governance Aotearoa as a trustee.
Nothing in this article represents the views of organisations he has been involved with. Any conclusions and inferences are his own, as are any errors or omissions.

Regulation is a pervasive and evolving feature of society. As van der Heijden (2019) notes, despite varied definitions, there is broad agreement that regulation seeks to influence behaviour to make social and economic interactions more predictable by establishing expectations, rules and consequences. Over time, regulatory systems have evolved as governments pursue improved social and economic outcomes aligned with their political philosophies, in the name of the public interest, often through changes to policy, practice and institutional arrangements.

In principle, regulation – in both its design and its implementation – serves the public interest. It aims to benefit society as a whole rather than particular groups (Ministry for Regulation, n.d.b), protecting communities from harm and improving living standards by balancing competing objectives such as safety, productivity and wellbeing. In practice, regulatory design (of laws, regulations, rules and institutions) is inherently political. It is shaped by political philosophy, vested interests, policy advice, past experience (both success and failure), impact analysis, and, more recently, assessment against the politically contested and controversial Regulatory Standards Act 2025 and its principles.

Regulatory implementation operates within the resulting legal and institutional frameworks and is typically independent, with regulators making decisions in the public interest, following guidance such as Crown Law's *Te Pouārahi: the judge over your shoulder* (2019) and *The Solicitor-General's Prosecution Guidelines* (2015). However, implementation is still influenced by government preferences and expectations – sometimes driven by minority views – expressed through mechanisms such as letters of expectation provided to policy and regulatory agencies, and by resourcing decisions.

Regulation is complex not only due to its political context and the tensions between that and the public interest.

High-level influences on regulation

Since the late 20th century, regulatory change has accompanied a broader shift from deregulation, market liberalisation, new public management and fiscal discipline, to whole-of-government approaches (Christensen & Lægreid, 2007) – which may be regarded as an antidote to one of the outcomes of new public management, siloed government structures. Within regulation itself, reform has included variations of 'better' or 'less' regulation agendas, modern legislative design, and a shift from prescriptive to performance-based approaches. More recently, attention has turned to regulatory stewardship and systems thinking (Searancke et al., 2014), reflecting a move from command-and-control compliance towards the application of discretion to achieve outcomes.

Regulatory stewardship promotes a whole-of-system perspective, ensuring that frameworks remain fit for purpose in a complex, rapidly changing environment. This approach was strongly influenced by the New Zealand Productivity Commission's 2014 inquiry into regulatory institutions and practices (Productivity Commission, 2014), which found widespread deficiencies, complacency and resource challenges in the regulatory system, alongside increasing expectations and complexity. Key responses included the establishment of the Government Regulatory Practice Initiative (G-Reg) and *Government Expectations for Good Regulatory Practice* (New Zealand Government, 2017), which set out expectations for the design of regulatory systems, regulatory stewardship and regulatory practice. Stewardship was further supported by the Treasury's *Starting Out with Regulatory Stewardship* (Treasury, 2022).

These initiatives have improved regulatory design and practice but have yet to mature into the powerful forces they can be to ensure that regulation plays its role as effectively as would be ideal. For example, G-Reg was regarded as a leading approach internationally to developing professional regulators and improving regulatory practice during its existence during the period 2014–24. It partnered with the Treasury and Victoria University of Wellington in supporting a chair in regulatory practice, saw the development of a body of vocational qualifications for front-line regulators, led efforts to support regulatory organisations to improve through peer-learning activities, supported governance-level masterclasses and supported a developing sense of regulators being part of a regulatory profession.

In 2024, the Ministry for Regulation was established following the 2023 National Party–ACT coalition agreement, with the closure of the Productivity Commission and G-Reg and resources shifted from the Treasury and the Ministry for Business, Innovation and Employment, noting advice from Treasury that alternative arrangements (a branded business unit or a departmental agency) would have significant benefits compared with a stand-alone ministry (Treasury, 2024). The new ministry's mandate is to improve regulatory quality, transparency and capability. Its work includes regulatory reviews and regulatory capability development, including developing guidance, such as on artificial intelligence (Ministry for Regulation, n.d.a).

In 2026, building on the advice in the 2014 Productivity Commission report, the ministry released *The State of New Zealand's Regulatory Systems* (Ministry for Regulation, 2026), mapping the regulatory landscape and enabling potential future steps in relation to regulatory systems, described as including understanding, strengthening, reducing complexity, and reform.

Against this background, the contemporary focus of regulation in New Zealand requires regulators to achieve their main purposes, such as harm reduction, while acting in a way that facilitates economically beneficial activity. This mirrors international developments: for example, in 2025 the Australian government announced a focus on improving Australia's productivity performance and encouraging regulators to enable innovation and growth as well as focusing on risk management (Department of Finance, 2026); in the United Kingdom the chancellor unveiled an action plan to cut red tape and kick-start growth (HM Treasury, 2025); and in Canada the government began steps to address regulations that raise costs, reduce productivity and stifle economic growth (Government of Canada, 2025).

Regulation is a complex field

Regulation is complex not only due to its political context and the tensions between that and the public interest. Broadly defined, regulation includes laws, regulations and rules, and their implementation – using regulation first as a noun, then as a verb (Coglianese, 2024). It is a means of shaping behaviour, drawing on disciplines such as economics, law, public policy and sociology. Narrowly defined, and thought of only as a noun, it may appear simply as rules, but this understates the complexity of both design and implementation.

Freiberg's *Regulation in Australia* (Freiburg, 2025) illustrates this complexity. Despite its 771 pages, he describes his book as only a ‘brief introduction’ to the field, noting that the bibliography expanded from 40 to 60 pages between editions yet still ‘barely reflects what is available or relevant’. That bibliography references work from academics who have in varying degrees influenced the design and implementation of regulation in New Zealand and who will be familiar to many New Zealand regulators.

Those listed who have influenced me significantly include Ayres and Braithwaite (1992) in respect to responsive regulation, with particular reference to the regulatory pyramid; Black and Baldwin (2010) in respect to really responsive risk-based regulation; Cary Coglianese (2017) on achieving regulatory excellence; Peter Mumford on performance-based regulation and sources of regulatory failure (Mumford, 2011); Grant Pink in respect to developing a common regulatory language to support the professionalisation of the regulatory profession (Pink, 2025): Graham Russell and Christopher Hodges on regulatory delivery, particularly ethical business regulation, intervention choices, risk-based prioritisation, outcome measurement and regulatory culture (Russell & Hodges, 2019); Malcolm Sparrow in respect to the regulatory craft, with particular reference to the limits of customer service framing of regulated parties and problem solving (Sparrow, 2000); and Jeroen van der Heijden through the range of writing he undertook in his role as professor of regulatory practice at Victoria University of Wellington, captured in his blog *From the Regulatory Frontlines*.

However, translating theory into practice remains difficult without a contemporary, coherent and accessible body of theory that leaders, managers and front-line regulators can refer to. Front-line regulatory staff come from a range of backgrounds, including law enforcement, other public sector roles and roles in the sectors they regulate, with various professional backgrounds across a range of disciplines that don’t automatically create a professional regulator. Building individual and organisational system-wide regulatory capability is therefore essential.

The 2011 handbook *Achieving Compliance: a guide for compliance agencies in New Zealand* (Manch et al., 2011) sought to address this gap by providing a foundational and practical guide ‘by regulators, for regulators’. Developed under the Compliance Common Capability Programme (discussed below), it complemented capability-building initiatives later continued by G-Reg. Although not since updated, revisiting and maintaining it as a contemporary handbook through collaboration with regulatory practitioners could enhance regulatory practice at the individual and organisational level.

Regulation is a political activity

As discussed above, regulation is inherently political. As Short (2019) notes, it ‘emerges from political demands and struggles and is shaped by competing ideas and theories’. While regulation ideally serves the public interest, its design is ultimately determined through political processes involving debate, competing interests and trade-offs.

A contemporary example is firearms regulation. Laws introduced in 2019 following the Christchurch mosque attacks were passed with near-unanimous parliamentary support, with only one ACT party MP opposing the Bill – not in opposition to changing gun laws, but on process and unintended consequence grounds. Implementation was led by the New Zealand Police through the Firearms Safety Authority.

In 2026, the government proposed changes to this legislation to ‘provide greater protection of public safety’, ‘simplify regulatory requirements’ and ‘improve compliance’, as outlined in the general policy statement of the Arms Bill. This illustrates the interaction between politics and regulation over time.

The reform process has been controversial. Critics have described it as ‘non-democratic’ and ‘suspicious’, citing a 14-day consultation period and limited engagement. The responsible minister has rejected these criticisms, arguing that reform is needed to address burdensome and unclear regulation (Frykberg, 2024). The proposed reforms arise from the National Party–ACT coalition agreement. The current minister – an ACT party MP – previously held roles connected to firearms advocacy, including with the Mountain Safety Council and the Council of Licenced Firearms Owners.

The bill proposes significant institutional changes, including:

- establishing an autonomous arms regulator located within the police, with the police providing resources but with no executive role for the police commissioner;
- a chief executive appointed by the governor-general on ministerial recommendation, with statutory independence for specific decisions; and
- ministerial responsibility for overall conduct and general policy direction.

These arrangements align generally with the departmental agency model under the Public Service Act 2020, and the Public Service Commission considers the departmental agency model suitable for regulatory functions with stable policy settings (Public Service Commission, 2024).

The bill also provides for: a statutory review committee to review licensing decisions, appointed by the minister and chief executive; and continuation of the Arms Advisory Group, established under

> … regulation is shaped by political philosophies and imperatives; that regulators operate in politically sensitive environments; and that institutional design can both protect and expose regulatory independence.

the 2019 legislation, to advise the minister, and appointed by the minister.

Commentators have suggested that the minister's approach reflects regulatory capture by vested interests, noting, for example: 'The latest revelations around her hand-picked appointments to a key firearms advisory group have exposed what looks like naked cronyism, casting doubt on political integrity and the influence of the gun lobby in our democracy' (Edwards, 2026), consistent with a broad definition of capture across the policy and practice cycle (Doole et al., 2024). Whatever the merits of such claims, the example illustrates that regulation is shaped by political philosophies and imperatives; that regulators operate in politically sensitive environments; and that institutional design can both protect and expose regulatory independence.

Overall, arms regulation highlights the reality that regulators operate within political contexts (Hawkins, 1984, p. 9). They must maintain integrity and statutory independence while responding to government policy direction, pressures and sensitivities. This is often a tension point: where it is not possible to respond effectively to government policy directions, pressures and sensitivities due to the requirements of the extant regulatory framework and the application of independent, good regulatory decision making, explaining system conditions and 'why things are as they are' can risk losing ministerial confidence. Offering ministers options for change while maintaining a focus on the public interest is more constructive and can help secure support for necessary reforms that are beyond the remit of operational regulators on their own.

Regulatory capture is discussed widely in the literature, indicating its many forms, including economic, cultural, structural, procedural, political, social and capacity-driven.

Regulatory capture and regulatory failure

Regulatory capture

Regulatory capture is discussed widely in the literature, indicating its many forms, including economic, cultural, structural, procedural, political, social and capacity-driven. Two local authors (New Zealand and Australian) – both former practitioners and now academics – provide complementary perspectives that span design through to implementation.

Doole et al. (2024) take a broad view, defining capture as excessive influence by vested interests at any stage of the political or policy cycle. This influence may be subtle or overt, cumulative in effect, and capable of undermining public interest outcomes across policy design, implementation and review. Doole & Stephens (2025) subsequently offer mitigation strategies for dealing with such capture.

Pink (2025), focusing more on implementation of regulation, describes capture as a form of misconduct arising when regulators overidentify with regulated parties, become overly sympathetic, or fail to maintain appropriate toughness. It often occurs when assistance functions – such as advice, guidance and licensing – are prioritised over enforcement. Pink's 'regulatory capture continuum' – collaboration, conflicted, compromised, captured, corrupt – provides a practical tool for identifying and discussing capture in practice.

Regulatory failure

Regulatory failure occurs when a system's outcomes are compromised (van der Heijden, 2022b) or when it fails to achieve its intended purpose due to inaction, poor judgement, weak design, or undue influence (Lodge, 2015). While regulatory capture is one form of failure, it is not the only one. As with regulation itself, regulatory failure is complex.

In New Zealand, the 2014 Productivity Commission report examined regulatory failure in depth, identifying common contributors across 18 major inquiries. These included outdated legislation, unclear roles and weaknesses in regulatory practice, alongside broader issues of regulatory architecture and institutional design (Bailey and Kavanagh, 2014). Although not the focus here, understanding the drivers of regulatory failure is essential to designing effective regulatory policy, institutions and practice.

The link between regulatory capture and regulatory failure

Commentary on the minister's approach to firearms regulation suggests possible regulatory capture, drawing on the Doole et al. (2024) and Doole & Stephens (2025) papers.

Consistent with Pink's definition, the 2019 *Review of the New Zealand Transport Agency's Regulatory Capability and Performance* (MartinJenkins 2019) illustrated a form of capture driven in part by an excessive focus on customer service (indicating lack of consideration of what an appropriate regulator–regulated party relationship involves), alongside factors such as organisational priorities competing against significant transport infrastructure and investment functions that received most governance and leadership attention, alongside weak regulatory capability and culture.

This article does not assess the commentary about capture relating to firearms regulation or delve into the NZTA example. Should there at any point be another significant event involving misuse of firearms, no doubt policy, institutional and practice arrangements will be examined, just as the MartinJenkins independent review of the regulatory capability and performance of NZTA (cited above) did when questions of regulatory performance were raised. That review led to policy, institutional and practice changes at NZTA.

Rather, the article highlights the importance of understanding regulatory capture and its relationship to regulatory failure on the basis that the concept warrants attention from politicians, policy advisors, and regulators across all aspects of regulation, informed by Doole et al.'s illustrative scenarios, Doole & Stephens' mitigation approaches, Pink's continuum, and the wider literature.

Regulatory institutional design

Regulatory institutional design – New Zealand's 'machinery of government' – is complex. The Productivity Commission report described a vast regulatory landscape, and *The State of New Zealand's Regulatory Systems* (Ministry for Regulation, 2026) confirms that this complexity persists 12 years on, with responsibilities spread across departments, Crown entities, statutory bodies, local government, and some nongovernment organisations, each with distinct governance arrangements and priorities.

Two broad institutional design models operate within central government:

- integrated – design, implementation and review sit within a single agency; and
- separated – design and oversight sit with a ministry; implementation sits with a Crown entity or other statutory body.

There is no optimal structure. Current arrangements reflect historical developments and governments' desire for focus and accountability, as outlined in Public Service Commission advice (Public Service Commission, 2024). These arrangements perhaps also reflect new public management principles and evolving political philosophies and priorities.

That 2024 Public Service Commission report recommends:

- a more strategic approach to machinery-of-government reform;
- an evolutionary (not revolutionary) approach to minimise costs and risks;
- greater use of sectors or clusters of related functions;
- more strategic use of departmental agencies;
- clearer use of interdepartmental executive boards; and
- that departmental agencies are well-suited to regulatory and service-delivery functions with stable policy settings.

Recent changes – such as the merger of the Ministry for the Environment, Ministry of Housing and Urban Development, Ministry of Transport, and local government functions of the Department of Internal Affairs into the Ministry of Cities, Environment, Regions and Transport – reflect a move towards integration, in this case a cluster of functions put together to tackle 'some of New Zealand's greatest economic and environmental challenges – from housing affordability, our infrastructure deficit, and adaptation to climate change' (Bishop et al., 2025), albeit with ongoing debate about the intended and likely impacts, with the main criticism being about the impact on the stewardship of the environment (News Wire, 2026).

Drawing on experience across both integrated and separated systems; having observed the potential synergies across transport regulatory functions at first hand; and noting the Productivity Commission's insights on effective regulation, and the importance of regulatory coherence highlighted in Ministry for Regulation report, I believe that where institutional change can potentially create stronger alignment between policy and operational agencies, scale to support effectiveness in like functions, and support clarity of organisational purpose, it should be considered.

> A core requirement for effective regulation is maintaining fit-for-purpose frameworks over time, particularly in fast-moving sectors.

Example: the transport regulatory system

Subject to detailed analysis, a more integrated approach could bring aviation, maritime and land transport regulatory functions into a single transport regulator as a departmental agency, with a chief executive and three divisions led by statutorily independent directors (maintaining independence in regulatory decision making). This would increase the potential for alignment between transport regulatory policy, create scale across similar regulatory functions, and align the land transport regulatory approach with the maritime and aviation approach, each of which have a clear regulatory purpose and are not at risk of being overshadowed by other preoccupations, while allowing effectiveness and efficiency in overall organisational management.

Compared with the current model of separate Crown entities, integration in this way could achieve the following:

- remove the need for multiple boards (noting that NZTA's broader infrastructure and investment roles would require separate consideration);
- reduce administrative and reporting burdens in supporting executive management and a board as well as other public sector accountability processes;
- improve alignment across transport regulatory strategy, policy, planning, delivery and evaluation;
- enable more effective crossmodal responses to emerging technologies (e.g., propulsion and autonomy);
- support shared regulatory information systems, including the considered and careful use of artificial intelligence;
- improve consistency and quality of regulatory practice;
- strengthen workforce capability, career pathways and professional identity;
- reduce fragmentation and achieve economies of scale in enabling functions (e.g., IT, HR, property and administration).

Key design issues requiring careful consideration include:

- aligning corporate and enabling functions (e.g., IT, finance, people) with regulatory accountability to maintain culture and prioritisation;
- maintaining integrity of funding models (noting userpays arrangements, particularly in road regulation); and
- ensuring strong apolitical, sector-based engagement in each of the modes

– such as, for example, the Aviation Council, which has broad representation, including government and industry, and a clear action plan (Meager, 2025).

Regulatory policy design

A core requirement for effective regulation is maintaining fit-for-purpose frameworks over time, particularly in fast-moving sectors. Historically, New Zealand has struggled with this, often adopting a ‘set and forget’ approach, as highlighted in the 2014 report.

The increasing focus on regulatory stewardship, improved practice, and the establishment of the Ministry for Regulation are driving change. Empirical research (Kudrna, 2025) shows progress, with nine agencies strengthening stewardship through activities such as defining systems, developing strategies, conducting assessments and reporting progress between 2013 and 2024.

The same research identifies regulatory systems amendment bills as an important innovation arising from the 2014 report. Unlike statutes amendment bills or single-Act reforms, regulatory systems amendment bills enable systemwide legislative updates. They require near-unanimous support and were used 13 times between 2016 and 2024. Kudrna concludes that both these and stewardship are genuine policy innovations and recommends that the Ministry for Regulation take a strategic approach to supporting them.

Since March 2024, the ministry has undertaken regulatory reviews across sectors including early childhood education, agricultural and horticultural products, hairdressing and barbering, telecommunications, product labelling and hospitality. While Kurdna’s research indicates progress, the need for a central agency to undertake regulatory reviews also indicates that stewardship capability and practice is not yet fully embedded across the system.

Despite the overall progress, ensuring that regulatory frameworks remain fit for purpose in a timely way remains challenging, as illustrated by the drawn-out process to modernise the civil aviation regulatory system.

> Regulatory decisions on safety and security must follow legal requirements that do not incorporate broader purposes such as economic prosperity or innovation.

Example: the civil aviation regulatory regime

Following consultation in 2014, the Civil Aviation Act 1990 was replaced by the Civil Aviation Act 2023, with most provisions coming into force in 2025. The Act is said to reflect modern regulatory design, with a primary purpose of a ‘safe and secure civil aviation system’, supported by additional purposes including environmental sustainability, economic prosperity, innovation and national security. The Act clearly allocates responsibilities: safety and security with the Civil Aviation Authority; and additional purposes with the secretary for transport. This addresses a key issue identified in Shipton (2025): regulators often lack precise and meaningful role clarity in their governing statutes.

However, legislative clarity does not always translate into shared understanding. Regulated parties may focus more on government messages about economic growth and innovation than on the regulator’s statutory role, creating tension and unrealistic expectations. This is illustrated by the minister’s comments to the Aviation Industry Association conference in 2024 about how the government is working with the industry to support aviation, ensure its growth and address challenges, which included a significant section on ‘renewing the focus of the Civil Aviation Authority’, with emphasis on economic activity. The minister noted:

> A key part of our plan involves ensuring that the Civil Aviation Authority (CAA) is fully equipped to support our vision for the future of aviation in New Zealand. The CAA plays a critical role in keeping our skies safe and secure, but it must also be a true partner to the industry – one that enables growth and supports innovation. (Brown, 2024)

He went on to talk about delivering better outcomes for the industry, including reducing processing times for certification, particularly in the rapidly evolving area of emerging aviation technologies – developments that are vital for the future of aviation and its ability to innovate and contribute to economic prosperity.

While improving efficiency (such as reducing certification processing times through using technology and optimising decision-making processes) can support growth and innovation by reducing regulatory burden, two important tensions arise. The first is the regulator–regulated relationship. Language matters. As Wauchop and Manch (2017) note, framing regulated parties as ‘customers’ raises questions about whose interests the regulator serves, and can contribute to regulatory failure, as in the NZTA example. Similarly, describing and expecting regulatory relationships generally to be ‘partnerships’ can risk regulatory capture unless carefully bounded. The Port and Harbour Marine Safety Code demonstrates how structured partnerships can work effectively (see Manch, 2017; Maritime New Zealand, 2026). Warner (2025) advances the discussion about the relationship between regulators and regulated parties by focusing on what constitutes effective relationships in the context of the tension between service delivery and regulatory delivery.

The second issue is the limits of decision-making frameworks. Regulatory decisions on safety and security must follow legal requirements that do not incorporate broader purposes such as economic prosperity or innovation. Regulated parties may be disappointed when such concerns are not considered alongside safety and security requirements when the regulator is taking regulatory action.

Additionally, a fundamental way of enabling growth and innovation is through ensuring that the regulatory policy framework (i.e., the applicable law, regulations and rules) is designed in a way that creates the space for this. While the refresh of the Civil Aviation Act reflects an 11-year journey creating a modernised statute, the civil aviation industry relies on civil aviation rules for daily operations. The rules are widely seen as outdated. The Civil Aviation Act reform did not change the substantive rules. Significant rules reform requires a separate process, which was not possible, not least for resource reasons, while work on the 2023 Act was underway.

In 2026, the Civil Aviation Authority began a substantial programme, with the agreement of the minister (who 'owns' the rules) and the Ministry of Transport (which 'contracts' with the Civil Aviation Authority and other transport regulators to undertake reviews and redesign of the rules jointly), to modernise a large portion of the civil aviation rules over two to three years. This scale of reform is well beyond typical annual rule updates. This example highlights the ongoing difficulty of keeping complex, rules-based regulatory systems current, particularly where resources are constrained and processes are cumbersome. A broader reconsideration of how rules are developed and maintained within the transport system may be warranted.

Improving the transport rules framework

Changes to institutional arrangements (as discussed earlier) could enable more efficient rule making. One option is to shift responsibility for decision making on the rules to a departmental agency chief executive, including a requirement to follow proper policy processes and undertake effective industry engagement, with the minister approving an annual programme rather than individual rules. This would be an extension of recent changes to include the opportunity to make transport instruments within rules, which give the transport mode director limited opportunity to manage technical requirements but remain cumbersome. This would improve efficiency by aligning decision making with technical expertise; reflect the operational knowledge of the performance and/or unnecessary regulatory burden imposed by the rules held within agencies; streamline processes for largely technical regulatory rules; and free up the Ministry of Transport to focus on its system leadership and stewardship role more effectively.

The minister could retain oversight through the ability to 'call in' specific rules or direct changes where necessary to reflect political priorities, and maintain constitutional propriety.

> Effective regulatory practice depends on strong capability, sound judgement, and a deep understanding of regulatory craft at the front line and in the leadership of regulatory activity.

Regulatory practice

Effective regulatory practice depends on strong capability, sound judgement, and a deep understanding of regulatory craft at the front line and in the leadership of regulatory activity. New Zealand has made significant progress in building systemwide capability and practice.

The Compliance Common Capability Programme, established in 2008, was a voluntary, crossgovernment initiative focused on developing individual and organisational capability. It produced regulatory qualifications (now managed by ServiceIQ) and the *Achieving Compliance* guide (Manch et al., 2011), which distilled practitioner knowledge and emphasised the importance of organisational systems, culture and leadership alongside individual skills. With the intervention of the Productivity Commission's inquiry into regulatory institutions and practices in 2014, the Compliance Common Capability Programme took the opportunity to advocate for the development of a permanent programme to advance regulatory capability and practice (Manch, 2014). The Productivity Commission's 2014 report subsequently identified the need for a more permanent, systemwide approach, leading to the establishment of the Government Regulatory Practice Initiative (GReg) in 2015.

GReg was also voluntary and clubfunded, and aimed to advance professionalisation of the regulatory workforce between 2015 and 2022. It developed NZQA-recognised qualifications (levels 3–8); supported more than 6,700 level 3 completions; delivered webinars, workshops and masterclasses; enabled peer learning and communities of practice; cofunded the chair in regulatory practice at Victoria University; and promoted a shared regulatory language. A 2023 evaluation confirmed GReg's value and highlighted areas for improvement, including the need for a strategic reset, stronger communities of practice, greater responsiveness to emerging best practice, and stable funding (MartinJenkins, 2023).

In March 2024, GReg's functions were transferred to the Ministry for Regulation and the programme was disestablished. The ministry has since undertaken some capability activities, including providing access to RegRoom (online learning modules); publishing quick guides on evidenceinformed practice, investigations, regulatory tools, the judiciary and compliance; managing a YouTube channel (with more than 80 videos and podcasts); developing guidance on regulatory sandboxes; and engagement with academia, including on AI adoption and publishing an AI guide. The ministry has also signalled an intention to support communities of practice, although these are still emerging.

Recent practitioner-led and governance-focused developments, some of which the ministry has engaged with, have further strengthened the field. These include:

- Iti Kōpara – Public Governance Aotearoa, which delivers regulatory leadership development for governors and senior executives;
- Pink's *Navigating Regulatory Language* (2025), supporting a shared professional language;
- papers by Doole et al. (2024) and Doole & Stephens (2025), advancing understanding of regulatory capture and mitigation, and Warner on 'Regulated experience (Rx)' (2025), supporting the clarification of effective regulator–regulated relationships;
- Beaumont et al.'s *Regulatory Intelligence Handbook* (2025), supporting integration of intelligence into practice; and
- Warner and Pink, *Navigating Regulatory Landscapes* (2023), promoting integrated perspectives for adapting to emerging challenges.

These developments reflect a maturing regulatory community committed to continuous improvement. However, a cohesive and active professional community remains underdeveloped.

Strengthening collaboration – drawing on networks such as the Australia and New Zealand School of Government's National Regulators Community of Practice, the Australasian Environmental Law Enforcement and Regulators Network and the UK's Institute of Regulation – could further advance stewardship capability and practice in a way that is apolitical. Notably, these three networks exist independently of central agencies, and their existence is not subject to political direction. This appears to make them both sustainable and flexible in how they engage with regulatory agencies and regulators, giving them the potential to provide long-term benefit to the success of regulation both as a noun and as a verb.

These features seem significant, noting the apparent uncertainty about the long-term future of the Ministry for Regulation, given its political origins and the clear government direction about reducing the number of ministries and departments, or indeed of any initiatives that rely on the politics associated with regulatory policy, institutions and practice.

A practical way forward would be for the Ministry for Regulation, together with current leaders, to work with existing networks already active in New Zealand ...

Bringing it all together

Looking across recent decades of New Zealand's regulatory system, it is clear that much has changed. Good regulation matters at every stage, from policy design and institutional arrangements through to day-to-day practice. Although many worthwhile initiatives have been introduced, progress has been uneven: improvement has been ad hoc, inconsistent, and vulnerable to shifts in priorities that can slow momentum, underuse earlier investments, and dissipate the energy for reform that exists across the system.

Several key themes and enduring challenges stand out: navigating political influence, addressing the risks of regulatory capture and failure, keeping regulatory policy and practice frameworks fit for purpose, and building the capability needed to do this and deliver sound regulatory outcomes in the public interest.

- *Politics is inseparable from regulation.* Political philosophies shape regulatory frameworks, institutional arrangements, and the expectations placed on regulators. Regulators must meet their statutory obligations while engaging constructively with ministers who may hold different views about what regulation should achieve. Throughout, they must remain firmly focused on the public interest.
- *Regulatory capture and regulatory failure remain persistent risks.* Capture can be insidious, subtle and cumulative or in plain sight, while failure is multidimensional. Both require constant vigilance from politicians, policy advisors and regulators.
- *Regulatory policy design and practice must keep pace with change.* In sectors shaped by innovation and complexity, maintaining fit-for-purpose frameworks is difficult and may require more adaptive approaches.
- *Institutional design matters.* Organisational arrangements shape how regulatory systems function in practice. Separation can weaken accountability and slow system learning; integration can improve coherence and alignment, but only when supported by clear roles, strong leadership and the right capabilities.
- *Regulatory front-line and leadership capability is the system's engine room.* New Zealand has made real progress in building capability, but momentum has not always been sustained. There remains significant scope to strengthen capability, and therefore policy and practice, further.

Next steps

The Public Service Act 2020 makes clear that stewardship is a core responsibility of public service chief executives, and of the public service more broadly (Public Service Commission, 2020). Stewardship of regulatory systems is not optional; it is part of that wider obligation. Stewardship helps guard against short-term thinking in policy and operational decision making. It also strengthens the capability of the public service to serve future governments, the public, and the long-term sustainability of New Zealand's system of government.

Effective regulatory policy, institutions and practice are essential to New Zealand's social and economic wellbeing. These elements will continue to evolve – perhaps more rapidly than ever – and must respond to the politics of the day while also being stewarded with a long-term view.

Regulatory capability remains central to success. Today's regulatory leaders have an opportunity to harness the commitment and energy that already exists and to channel it into a more durable basis for sustainable improvement.

A practical way forward would be for the Ministry for Regulation, together with current leaders, to work with existing networks already active in New Zealand – such as the National Regulators Community of Practice and the Australasian Environmental Law Enforcement and Regulators Network – or to support the development of a New Zealand equivalent of the UK's Institute of Regulation that is set up in a way that endures. Such an approach would not be tied to the responsibilities of any one agency or the ideology of any one government. Instead, it would support good stewardship and help ensure that regulation contributes to a thriving economy and society on a sustainable basis.

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Mark Steel and Peter Mumford

‘Hindsight is a Wonderful Thing’

lessons from 40 years of experience with regulatory management in New Zealand

Abstract

In this article the authors reflect on careers in regulation and regulatory management, drawing on New Zealand and international experience. The emergence of regulatory management and its practice is viewed in the contexts of the growth of the regulatory state, and the institutional environment for lawmaking in New Zealand. The development of regulatory management tools is sketched out and key influences on regulatory policy and practice discussed. The authors conclude that effective regulatory management requires a combination of practices and cannot rely on a single instrument or process. If it is to be successful, regulatory management needs to be firmly situated in a broader environment of robust public institutions.

Keywords regulation, regulatory state, regulatory management, regulatory impact analysis

Authors’ note

This article draws on a wide range of sources, including published literature, our experience of working in New Zealand government, and the experiences and observations of colleagues in New Zealand and counterparts overseas. It does not, however, represent the views of our employer, the Ministry of Business, Innovation and Employment, or of the Legislation Design Advisory Committee. Any conclusions and inferences drawn are our own, as are any errors and omissions.

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The regulatory state is complex. It is ubiquitous, affecting everyone, everywhere. It is often seen by society and the political system as the solution to every problem. In many areas it is so essential that economies would collapse if we did not have it and society would not have the public goods that it expects and relies upon. But it also constrains individual liberties, imposes direct and indirect costs on those who are regulated and the economy and society generally, can become outdated, and can be driven by ideas and ideologies that do not stand up to 'real world' tests.

Regulatory management is at the most basic level a system aimed at ensuring that regulation is adopted only when fully justified, the least-cost regulatory approach is taken, and the need for regulation and the regulatory approach is supported by society as necessary and legitimate.

A narrow scope for regulatory management emphasises regulatory impact analysis (RIA), regulatory principles, regulatory stewardship, and strategies focused on regulatory cost reduction. A broad scope includes a larger set of institutions and accompanying capabilities, which we describe as the 'infrastructure for high-quality regulation'.

In this article we locate regulatory management within the growth of the regulatory state, discuss international influences on regulatory management and provide a history of regulatory management in New Zealand. We then describe the broader infrastructure of high-quality regulation, adopting it as the unit of analysis, before outlining the challenges that regulatory management will need to address over the next few decades, focusing in particular on where the future will be different from the past.

Growth of the regulatory state

The term 'regulatory management' did not exist 40 years ago. The growth of what has come to be called the regulatory state – the ubiquitous presence of state regulation in almost every aspect of our daily lives, the economy and society – was well underway. Regulation was, however, only just beginning to be seen by governments and policy advisors as something to be consciously and systematically managed, like monetary, fiscal and tax policies.

> The adoption of regulatory management ideas and practices by New Zealand has more or less tracked the evolution of the OECD's thinking – deregulation, regulatory reform and then regulatory management.

It is important to appreciate other features of the last 40 years which have shaped our work with regulation. During much of this time the environment for regulatory policy and practice has been benign. It has been characterised by a predictable and expanding rules-based environment internationally, a fair degree of consensus domestically about regulatory policy, and a stable domestic rule-of-law environment, with gradually expanding citizen rights.

This generally benign environment has been bookended by two upheavals, one domestic – the 1984–95 reform decade – and one international: the recent disruption of rules-based internationalism, accentuated by the Covid-19 pandemic and its after-effects. These upheavals have had or are having important impacts on how we think about regulation.

The 1984–95 reforms led to major changes in our regulatory environment, including the introduction of the Commerce Act 1986, Resource Management Act 1991, Employment Contracts Act 1991 and Companies Act 1993, amongst others. The primary lenses through which decisions about regulation were viewed by reformers were neoclassical economics, public choice theory and cost–benefit analysis, applied in rather narrower terms than they are now. In New Zealand, regulatory reform was part of a response to an economic crisis and a period of very intensive government intervention across the economy, leading New Zealand to be described as amongst the most regulated in the OECD.

In these circumstances, regulation was seen as mostly a policy problem, with comparatively little attention to some of the issues which have subsequently become more prominent in thinking about regulatory management, such as implementation and regulatory practice, national and system resilience, and citizen participation in policymaking.

Notwithstanding those limitations, the 1984–95 reforms and the evolution of New Zealand's regulatory environment since then have created a comparatively sound stock of regulation. This is because the changes have taken place in a generally robust institutional environment which lowered (but did not eliminate) the risks of significant change. Notwithstanding its shortcomings, New Zealand's constitutional environment is characterised by a combination of features which are associated with effective governance: unitary government, proportional representation, restraint of the executive by well-regarded courts, low levels of corruption, and relatively high levels of government transparency. While some of these have been introduced or strengthened over the last 40 years, others are long-standing.

In case all of this sounds Pollyanna-ish, New Zealand's regulatory environment and institutions have plenty of shortcomings. These have been documented at length in the New Zealand Productivity Commission's 2014 report on regulatory institutions and practices (Productivity Commission, 2014), by inquiries into specific regulatory failures, and by international organisations such as the OECD. New Zealanders also experience many of the familiar frustrations with the cost, waste, inconvenience and barriers to innovation created by regulation – familiar because we share them with all other comparable countries.

Regulatory management

The adoption of regulatory management ideas and practices by New Zealand has more or less tracked the evolution of the OECD's thinking – deregulation, regulatory reform and then regulatory management. The 1984–95 reforms were in fact a combination of deregulation and regulatory reform. Regulatory management was in its early years, often associated with the ideas that less regulation is better regulation, or, perhaps more precisely, that the market often produces the best outcomes and governments often get it wrong.

These ideas were reflected by an analytical imperative that proposed that regulatory intervention needed to be associated with an identifiable market failure, and the spectre of government failure was used as the counterweight to the view that all governments needed to do was wave the regulatory magic wand and all harms that gave rise to the call for government action 'would never happen again'. A succession of regulatory failures, in areas including building controls, worker safety and financial markets, contributed to a softening of these ideas, but the view that regulation imposed a cost on economic activity and that generally people should be able to go about their business largely unencumbered by the 'nanny state' has endured as part of New Zealand's political culture.

New Zealand's regulatory management journey can be associated with the three institutions that have had policy leadership: the Ministry of Commerce/Ministry of Economic Development; the Treasury; and the Ministry for Regulation. The first stage extended from about 1997 to 2008, when the regulatory quality management function formally shifted to the Treasury. It also represented the start of the journey. In 1997 the minister of commerce, John Luxton, announced that the government would be considering a regulatory impact analysis (RIA) requirement, a code of good regulatory practice, and a generic regulatory policy development process. He also announced that there would be reviews of specific laws with a view to ensuring that they were achieving their objectives at least cost.

From 1997 to 2008 the RIA regime was bedded in and there were successive compliance cost-reduction initiatives, the establishment of one-stop shops for small businesses seeking information on regulatory requirements, regulatory 'hot lines' for people to 'call out' excessive regulatory costs, and sector reviews in areas such as wine and hospitality, predicated on the idea that it was the cumulative cost of many regulations that had the biggest impact on business rather than discrete laws, and even at one stage setting the target of a 20% reduction in compliance costs for business.

The assumption of the regulatory management oversight role by the Treasury represented a material shift in approach. One element of this can be seen in the RIA regime. Regulatory impact analysis was initially conceived as an instrument 'owned' by the minister responsible for bills or draft regulation. They were also intended as a disclosure device: no more than four pages which summarised the problem that the law was intended to address, what the government expected to achieve, the options that were considered, including maintaining the status quo, the costs and benefits of the options, and who was consulted with. This 'disclosure' was intended to empower stakeholders through providing them with information they could use to assess government proposals, and, in doing so, also incentivise agencies to produce good analysis.

During the Treasury stage the ownership of RIAs was shifted from ministers to agencies, and while the disclosure objective remained important, more emphasis was placed on ensuring that agencies undertook comprehensive analysis. RIAs became longer and agencies established internal RIA review functions.

This was also the stage when regulatory stewardship, the idea that regulation was an asset and needed to be maintained, came to prominence, and was ultimately reflected in a new requirement on chief executives in the State Sector Act. Good regulatory principles were again codified, both in the Best Practice Regulation principles and performance indicators which the Treasury used to assess all regulatory regimes, and in two government statements, the 2009 'Government statement on regulation' and the 2013 'Initial expectations for regulatory stewardship' (New Zealand Government, 2009; Treasury, 2017, p. 3).

Finally, this was the period when the practice of regulation, or what regulators did in the field, become more of a focus at the systems level. Previously, the regulatory management focus was on the rules, not on how they were administered, but regulatory failures, as well as the championship of some regulatory practice leaders and communities, such as the Compliance Common Capability Programme, contributed to deeper appreciation that regulatory outcomes were highly dependent on compliance strategies, coordination between regulators, and regulator capability.

The groundwork for a coordinated and concerted programme to improve regulatory capability was the Productivity Commission's 2014 report on regulatory institutions and practices, the terms of reference for which were developed by the Treasury, and the subsequent formation of the Government Regulatory Practice Initiative (G-Reg).

The groundwork for a coordinated and concerted programme to improve regulatory capability was the Productivity Commission's 2014 report on regulatory institutions and practices ...

The establishment of the Ministry for Regulation to provide greater central oversight and direction for regulation across government represents the third stage. As this is contemporary rather than historical, we won't cover it in any detail here, but note that it is represented by an increase in resources for the oversight and promotion of regulatory management initiatives, and the strengthening of good regulatory practice principles by summarising them in the Regulatory Standards Act 2025.

At one level a survey of the regulatory management initiatives and rationales over the past 30 years suggests that not much has changed. The objectives of only regulating when there is a strong case, minimising regulatory costs and producing high-quality regulatory analysis have been consistent over this period, and many of the initiatives, from regulatory impact analysis to regulatory principles and programmes to identify and resolve unjustified costs in the stock of regulation, are largely the same.

What has changed is that the analysis of market failure and government failure has become more complex, the importance of regulatory practice is now acknowledged, and there has been a significant increase in the resources committed to regulatory management, both within agencies and in oversight agencies, as well as attempts to reflect good regulatory practice obligations and principles in law.

It is important to acknowledge the emergence of international standards for the governance and management of regulation, the 'regulation of regulation'. The OECD has played a leading role here in establishing a body of benchmark standards for regulatory impact analysis, public consultation, transparency, and the independence and governance of regulators (e.g., OECD, 1995, 2012, 2020, 2021).

This has become a significant driver of New Zealand and other countries' approach to regulatory management as benchmarking by international institutions[1] has become a significant measure of the quality of a country's regulatory environment. These comparisons have been more significant for New Zealand than for most developed economies. As a small, geographically isolated economy, New Zealand lacks strategic assets of market size or location. One of our sources of advantage over the last 40 years has been the perceived quality of our institutions. This has given us profile and credibility with trade and investment partners.

> More recently, the role of the Parliamentary Counsel Office in maintaining and promoting the quality of legislation has been strengthened, being constituted as a separate statutory office by the Legislation Act 2019.

While for some time New Zealand's 1984–95 reforms were themselves regarded as a benchmark, conformance with international standards developed for regulatory policy and management has now become the benchmark for quality. For better or worse, it has reinforced a move by New Zealand towards OECD norms for regulation over the past 20 years. It has been one of the more effective levers for the domestic implementation of regulatory management, as New Zealand governments still for the most part subscribe to the need to be institutional exemplars.

The infrastructure for high-quality regulation

Regulation is part of the fabric of 21st-century society and government. To keep it working well, a set of institutions and accompanying capabilities is required. Effective governance and management of regulation depend on the quality of this environment. Our experience of working on regulatory management issues in a range of international forums over the last 40 years is that formal regulatory management processes will struggle to achieve much if the broader institutional environment is weak.

Some of this developed in New Zealand as part of the broader process of improving the transparency and accountability of governments and strengthening citizen's rights. These institutions include the Official Information Act 1982, the auditor-general, ombudsmen and the privacy commission. Others have evolved more directly in response to the need to provide effective disciplines for the regulatory state. These include administrative law, Parliament's Regulations Review Committee (established in 1985), and the progressive introduction from the late 1990s of requirements that new regulatory proposals be subject to regulatory impact analysis.

More recently, the role of the Parliamentary Counsel Office in maintaining and promoting the quality of legislation has been strengthened, being constituted as a separate statutory office by the Legislation Act 2019. In 2015, a Legislation Design and Advisory Committee (LDAC) was created to provide a body of public and private sector expertise which agencies designing legislation could draw on. The committee has developed a set of guidelines for good legislative design which are endorsed by the Cabinet of each government.

Select committee scrutiny of legislation has also been gradually increasing. Since 2021, the Office of the Clerk scrutinises bills and provides select committees with advice about the quality of legislation, using the LDAC guidelines.

The courts have also gradually become more active in scrutinising regulation. As well as judicial review broadening in scope, the courts have been given power to declare enactments incompatible with the Bill of Rights Act. The courts are making gradually increasing use of these powers. The courts have also considered the implications of the Treaty of Waitangi and tikanga for legislation and required account to be taken of them.

These developments have aimed to enhance the disciplines which regulation is subject to. At the same time, they are coming under countervailing pressure from the pace and complexity of the environment, which make good design more difficult. One source of this complexity is the sheer volume of the statute book and its language, which has steadily increased over a long period of time.[2] While all of the above institutions have a collective impact on the quality of regulation, increases in volume and complexity make it hard to keep up.

What are the challenges for regulatory management in New Zealand?

When we consider what is or will be different about 21st-century regulatory policy and practice, it's helpful to think about difference in three ways:

- How are our circumstances different? What is changing from the 20th to the 21st centuries about the physical, social and economic environment we work in, and will be working in?
- How is our thinking different? Even if our physical circumstances aren't that different, do we now have insights that significantly change the way we think about regulation?
- How is New Zealand different from other countries? It is important to use New Zealand as a frame of reference, both to help us think about how our circumstances and thinking might be different, and because regulation is usually applied in one jurisdiction, while being affected by what other jurisdictions do and don't do.

Finally, we need to consider the international influences on regulatory policy and management in New Zealand, as this has been a defining feature over the 40 years.

What's different? The technological and economic environment

The main reasons that the technological and economic environment in the 21st century is different from the environment of 40 years ago are pace, complexity,[3] and concentration and scale, and the way these three factors amplify each other.

Pace

Although there is some debate about how much faster highly significant

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technological change is actually occurring, there is general agreement that it is faster. This increases the risk that regulation isn't fit for purpose. Not only is it harder for governments and bureaucracies to keep up with the effects of technological change; it is also harder for them to simply 'go faster' because the processes and institutions of government have a range of goals and requirements which they need to meet as they respond to change.

This isn't just a case of 20th-century institutions struggling to cope with a 21st-century technological environment. The demands for greater inclusion and transparency which democracies face make government decision making and the processes which support it more complex.

Even with the advantages of much faster communications and transport, and far more sophisticated information technology, legitimate, credible regulation in a more highly democratic environment takes time. Engaging with everyone all the time is not costless; it uses significant resources. The emerging constitutional role of the Treaty of Waitangi over the last 40 years, combined with the increasingly multicultural nature of our society, make this especially challenging in New Zealand.[4]

Complexity

The environment in which regulation operates has become more complex in a number of ways. The 'administrative state' now includes a very extensive array of institutions. The domestic institutional environment of government is as a result much more complex than in the past.

At the same time, globalisation and digitalisation have greatly increased the extent and complexity of international connections between countries, markets and people. This increases the chances of consequences which are unintended either in kind or in scale.

Technological change is blurring or eliminating traditional boundaries between sectors and industries and enabling the development of new business models which conventional approaches to regulation don't fit with. Digitalisation is making increasing returns to scale and spillovers between different markets and activities much more common. This makes the assessment of the costs and benefits of regulation significantly more challenging.

In addition to institutional, economic and technological complexity, there is greater societal complexity. Governments face higher expectations of responsiveness and inclusion from across the community. There is greater demand for regulation to be flexible and customised to the varying needs of different parts of the community.

The centralised state, with its claim to monopoly legislative status, is under pressure to share its authority to a greater extent, accepting greater pluralism in rule making, with multilateral agreements, international organisations, private standard setting and, in New Zealand, Māori all playing a role. At the same time, there is a demand to maintain the general consistency and neutrality of approach which is an important part of the rule of law.

The downside of the consultation, engagement and accountability processes which accompany this societal complexity is becoming evident. Each engagement requirement or accountability requirement may make sense on its own; the cumulative effect, though, can be to make the development and oversight of regulation time and labour intensive, without substantively enhancing accountability.

Concentration and scale

Over the last 30 years there have been a number of trends worldwide which can be described as having the common themes of increasing concentration or scale, and often both. Perhaps most important for regulatory management is concentration in markets.[5] This has been especially pronounced in some sectors, such as financial markets and information technology, but is observed in many sectors. In addition to the competition issues this can give rise to, it can create a 'too big to fail' issue, with significant consequences for regulatory systems. Such large, well-resourced actors also have greater resources – information, skills and capital – to capture regulators.

Globalisation is not new, but it has accentuated the risks associated with concentration and scale in two ways. It has made the scale of risks much greater, and is an important part of the increased complexity of risk: it is harder to predict impacts, or where a problem will emerge.

In recent times, especially post-Covid, there has been much more focus on the risks created by concentration and discussion about deglobalisation, but it is not clear how much this will reduce the effects of concentration and scale. Attempts to localise production and supply chains or move them to allied countries ('friend shoring') may shift issues of concentration and scale around rather than eliminate them.

Differences in our thinking

While the basic principles of good public policy have not changed significantly, thinking about regulation has changed considerably over the last 30 years. Thinking in the late 20th century strongly emphasised the role of markets as the most reliable producer of overall welfare, with the state intervening to the minimum degree necessary to correct market failures where they occurred.

In the last 20 years there has been a growing focus on building inclusion, transparency and accessibility into the core design of regulation, and much greater awareness of the distributional effects of regulating in a particular way.

The neoclassical model provided a framework for important, and necessary, changes to New Zealand's regulatory environment in the 1980s and 90s. It is, however, becoming much more informed by insights from a broader range of disciplines which emphasise the complexity of human decision making, shaped by a wide range of values which can shift over time. As well as correcting market failures, the broader management of a range of risks, including risks relating to health, safety, the environment, and the stability and resilience of key systems such as financial markets and energy supply, has become a key lens through which decisions about regulation are viewed.

There is now more emphasis on the ways in which market and government activity combine to create social and public value. This is still a work in progress, with continuing debate about how complementary efficiency and other goals of regulation, such as inclusiveness, resilience and sustainability, can be, and how the balance should be struck when they conflict.

Increasing attention is being paid to regulatory system resilience and sustainability. Regulation and regulatory institutions need to be durable and adaptable, especially in an environment of rapid change and frequent unexpected events. Concentrating on efficiency at a point in time may lead to underinvestment in these longer-term goals.

Regulators have increasingly been required by the courts to pay attention to procedural fairness, transparency and accountability through the rules of administrative law. These requirements tended, however, to be treated as external to the regulatory policy itself. Issues of distribution of benefits were regarded as being purely for the politicians to consider. In the last 20 years there has been a growing focus on building inclusion, transparency and accessibility into the core design of regulation, and much greater awareness of the distributional effects of regulating in a particular way. The shortcomings of one-size-fits-all approaches to procedural fairness are becoming better understood, and the limitations of the court system as a way of providing redress, because of fundamental problems of access and embedded bias, are receiving more attention.

Differences: how special is New Zealand?

Every country has unique characteristics. National regulatory policies in New Zealand have had two long-standing and sometimes contradictory features. One was a reliance on British models a good deal of the time, on the assumption that New Zealand was essentially an offshoot of Britain. The other, which we shared with most countries, is an overemphasis on the significance of specific differences between sectors, both between New Zealand and other countries, and between different regulatory systems within New Zealand. This 'we're special' argument has been used to justify taking approaches which limited trade, competition and innovation.

The late 20th-century reform period tended to downplay these differences and apply standard models, emphasising that responses to the incentives created by regulation, or the absence of it, were similar everywhere. Experience elsewhere was regarded as directly applicable to New Zealand regardless of differences in size and culture.

More recently we have been seeking to explore issues of both similarity and difference in approaches to regulation in a more nuanced way. New thinking is emerging about which similarities are important, and which differences. Taking a systems approach to regulation stresses the commonalities between different regulatory systems. Most regulatory systems have a shared group of core functions and practices – information provision, service provision, revenue generation, enforcement, etc. As a result, there are opportunities to learn from the experience of one system and apply it to others. A systems approach is cautious about claims by a particular sector or system that it is 'special'.

Developing and maintaining horizontal linkages between different regulatory systems is challenging when public sector governance and practice emphasises vertical accountabilities and communication, and the pressures of day-to-day responsibilities and events reinforce this. The recent establishment of a Ministry for Regulation may help here. At the same time, more attention is being paid to some specific aspects of New Zealand as a country and society which do need to be taken into account in regulatory policy, design and practice, as they may mean that the standard or usual regulatory policy prescription may not be effective or appropriate.

New Zealand's unique characteristics have two main sources. The first is geography. We are exceptionally isolated and small. This has important implications for regulatory policy and practice. Markets for goods, services and labour are relatively small and thin, limiting the intensity of competition and the availability of specialised skills. The latter applies to both market participants and the regulators themselves.

Open trade and immigration policy settings have compensated in part for these disadvantages. One lesson from the last 30 years, however, has been that these policy settings are incomplete or imperfect substitutes for domestic resources.

The most important distinctive feature culturally is the presence of Māori as tangata whenua and the role of the Treaty of Waitangi. The Treaty and the principles derived from it are coming to play an important role in New Zealand's governance.

The second is cultural and historical. Twenty-first-century New Zealand, like the US, Canada and Australia, is evolving from a colonial settler society, and shares some characteristics and issues with these societies. Large-scale European migration began later here, however, and was more homogeneous than in these other colonial societies, leading to stronger cultural and political ties with Britain, and an institutional environment that in many respects has more closely reflected the UK.

The most important distinctive feature culturally is the presence of Māori as tangata whenua and the role of the Treaty of Waitangi. The Treaty and the principles derived from it are coming to play an important role in New Zealand's governance. The Treaty's partnership concept makes New Zealand 'unique amongst post-colonial nations' (Waitangi Tribunal, 2011, pp. 17–19). Constitutional and institutional commitments to partnership with Māori will increasingly influence regulatory policy and practice, as they will other areas of public policy and administration. What this means in practice will depend on the circumstances of each regulatory system, but it will require an approach to regulatory stewardship which will at times differ in some respects from that of the countries we usually compare ourselves with.

In the last 50 years we have also become much more culturally diverse, with the emergence of large Pasifika and Asian communities. These demographic and cultural characteristics mean that regulation in New Zealand, more than in many places, increasingly needs to be effective in a multicultural, pluralist environment. The significance of a recently multicultural society for the context of regulatory policy can be debated, but at the very least regulatory policymakers cannot casually assume a shared cultural and institutional heritage when designing regulation. While the objectives of regulation may generally be shared across different communities at the highest level – higher living standards, reduced risk of harm, protection of the environmental commons – needs and priorities may differ across communities in ways which affect attitudes to regulation.

International influences on regulatory policy and management

One of the defining features of our careers has been the internationalisation of regulatory policy and management. Interconnectedness is one of the principal drivers of a changing environment for regulatory policy and practice. The concept of interconnectedness covers a wide range of trends, including globalisation of supply chains, large-scale worldwide movement of people through international migration and tourism, and e-commerce and the increasing interdependence of the world's financial systems.

This places a high premium on international regulatory cooperation. This cooperation has had multiple objectives, including to facilitate and promote trade and investment, maintain the effectiveness of national regulatory systems, take collective action to address externalities like environmental pollution, and create minimum standards to prevent opportunistic behaviour by individual actors or jurisdictions. Interconnectedness has created new challenges for regulatory management. Many more activities affecting New Zealand are beyond our jurisdiction, and the interdependence creates new and at times unforeseen sources of risk. The resilience of regulatory systems in the face of these risks has become as important as, or more important than, short-term efficiency.

The breakdown of a rules-based international order would therefore have serious consequences for national regulatory policy and systems, especially for small countries like New Zealand. Although commitment to rules-based systems has clearly deteriorated, or even collapsed in some areas, it is also possible to exaggerate the extent to which this is happening. There are many areas of regulation where threshold levels of international cooperation are essential, such as aviation, telecommunications and financial systems, and others remain relatively uncontroversial, such as many of the health and safety standards for traded goods and services.

What is different now is the increased prominence of national interests, national security and resilience considerations in regulatory policy and practice, in common with other areas of government. This poses challenges for regulatory impact analysis, as these considerations can't always be readily incorporated within the conventional efficiency and cost–benefit analysis frameworks which have been central to regulatory impact analysis. The concept of regulatory stewardship, with its focus on whole regulatory systems over the longer term, may help here. Effective regulatory stewardship does, however, require a clear view of the drivers, impact and performance of regulatory systems, which is uneven across regulatory systems at present.

Conclusion

What can we conclude from all of this about the impact, value and future direction of regulatory management? Two things are clear. The first is that no single instrument or institution can deliver a high-quality body of regulation and maintain it. Some of the problems with efforts at regulatory management over the years have been in part a product of expecting too much of individual tools or initiatives. The approach to regulatory impact statements both in New Zealand and elsewhere in the OECD is a case in point. Expectations of comprehensiveness, while understandable, have led to the inclusion of more and more specific factors to be taken into account and a tendency for statements to become longer, but not clearer. This has tended to undermine the value of statements as an aid to decision making for governments.

> In the last 20 years there has been a growing focus on building inclusion, transparency and accessibility into the core design of regulation, and much greater awareness of the distributional effects of regulating in a particular way.

The second is that context matters. The most important drivers of successful regulatory management will remain a robust institutional environment where multiple actors play an effective role, a good blend of centralised standards setting and oversight and decentralised capability, and strong subject matter expertise across the public sector in both the relevant policy domains and in good regulatory and legislative design.

Meeting increasingly diverse inclusion and accountability expectations and reconciling them with consistent approaches to process and practice – traditionally 'one size fits all' – is a key challenge in the New Zealand institutional and political context. Regulatory management needs to achieve this while dealing effectively with the cumulative effects of consultation, engagement and accountability processes on regulatory policy and practice.

Meaningful engagement and procedural fairness are essential if regulation is to maintain legitimacy in the community. While the development of these requirements has had benefits, the accumulation of these processes and requirements in practice has also become complex and expensive, and at times can reduce clarity about accountabilities (or the perception of them) rather than enhancing them.

One of the key challenges for the future will therefore be ensuring that there continues to be enough investment in the development of two distinct kinds of expertise. High-quality regulatory management requires the ability to take account of policy and practice insights, and combine specialist subject matter expertise with broader perspectives on good lawmaking. Together these inform good judgements about issues like responsibilities, legitimacy, discretion and accountability.

These capabilities will be especially important in addressing the emerging importance of artificial intelligence across every aspect of regulation – policy formulation, design, service delivery and decision making. This is not unusual, as AI is affecting every part of government. What makes it especially important for regulation is that regulation involves the coercive power of the state, with the impact that has on citizen rights and freedoms. Judgements about public and constitutional values are central. An environment where AI is playing a ubiquitous role will make effective regulatory management more important than ever.

Finally, New Zealand has learnt, sometimes the hard way, that regulatory systems are experiments. There cannot be complete knowledge of how a new system will work in practice, and how people will respond to the incentives that it creates. A strong institutional environment is very important, but the broader regulatory context changes over time and what was considered 'good law' can become to be regarded as 'bad law'. As experiments, regulatory systems need to be monitored, not just through formal reviews, but also through ensuring that those affected by the law and know how it is working in practice are encouraged to speak up and have their voices heard.

1 The OECD Indicators of Regulatory Policy and Governance (IReg) series and its associated Regulatory Policy Outlook reports are one example. The five-yearly OECD Product Market Regulation Indicators (PMRI) series is another. Other international institutions have produced comparative assessments in specific subject areas, including ease of doing business, taxation and labour market regulation.

2 See, for example, Gill et al., 2025, and also the Parliamentary Counsel Office's work on the growth of the statute book.

3 There is a large body of literature on these developments, which have been characterised as VUCA – volatility, uncertainty, complexity, ambiguity: see, e.g., Bennett & Lemoine, 2014.

4 While the place of the Treaty continues to be vigorously debated, the concept of Treaty partnership arguably makes New Zealand 'unique among post-colonial nations' (Waitangi Tribunal, 2011, pp. 17–19). See also the Cabinet Manual 2023, Appendix A.

5 This feature is especially prominent in New Zealand: see Commerce Commission, 2026.

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Jonathan Ayto

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.

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

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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.

Further, many Crown entities wanted their monitoring department 'to keep them informed about what is going on across their sector and help them understand how their individual performance contributes to their sector's performance'.

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).

Further, many Crown entities wanted their monitoring department 'to keep them informed about what is going on across their sector and help them understand how their individual performance contributes to their sector's performance'. Crown 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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Derek Gill

Government's Role in Developing the Digital Standards Ecosystem

The nice thing about standards is that you have so many to choose from.

– Andrew S. Tanenbaum, *Computer Networks* (1981)

Abstract

Standardisation was yielded transformational change in the 20th century, including through the introduction of barcodes and the advent of containerisation. Digital standards have the potential to deliver similar transformational change in the 21st, but this will require new ways of working. The potential exists because the standards architecture has network effects: the more businesses and government regulators adopt it, the more valuable it is to everyone in the club. Metcalf's law – that the gains raise exponentially with increased uptake – highlights the potential opportunity.

The state has a particularly important role to play as steward of the standards system and ensuring that standards embedded in regulatory systems are fully interoperable with that wider system. The development of the digital standards ecosystem will require the government to enact a number of roles, but the state can't achieve the required change on its own.

The key barrier is that the standards landscape is littered with competing and/or overlapping public and private standards, along with standards embedded in regulations. Cutting through this cannot be achieved by bottom-up incremental changes. It will require a top-down commitment to sustained collaboration from both government and industry.

Keywords digital standards, digital product substantiation, digital public infrastructure, paperless trade, transparency at scale

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Barcodes and standardised containers revolutionised logistics in the 20th century (Gill, 2023). This article explores whether digital standards can achieve a similar economic transformation in the digital age. The potential role of standards raises novel public policy questions. At first glance, the application of standards does not map neatly onto classic market-failure arguments which justify direct government intervention. However, digital standards exhibit policy-relevant features – network effects, thin markets, information asymmetries, innovation system incompleteness – which create space for targeted, facilitative state action.

This article draws policy lessons about when, how and why governments should act in the digital standards space. Transformation requires digitisation, which in turn requires standardisation. The focus here is on digital standards, but the arguments are generalisable to the rest of the standards system. The article suggests that the state needs to enact a range of roles to facilitate the development of the digital standards ecosystem, including being a market enabler, fast follower and honest broker. Achieving transformation requires more than facilitation; it will require a sustained commitment to partnership between government and industry.

The role of digital standards

Digital architectures have multiple layers and digital standards are required to enable connections between layers and platforms. Digital infrastructure is the layer that 'sits between the physical digital infrastructure layer (e.g., an ultra-fast broadband network) and the specific apps people use, such as online banking and passport renewals' (Deloitte, 2024). Digital standards, along with digital identity and payment systems, are key parts of digital public infrastructure. Digital standards used in the infrastructure layer (Digwatch, n.d.) are analogous to the road code that allows vehicles to be effectively used on the roading network.

Standards are technical specifications designed to ensure consistency and interoperability of products, systems or services. They can be public or private, and national, regional or international. Public standards are developed by national bodies (such as Standards New Zealand), or regional or international organisations

The standardisation of container sizes in the mid-20th century revolutionised global trade by reducing shipping costs and enabling the development of global supply chains.

(Food Standards Australia and New Zealand; the International Organization for Standardization or ISO). In addition, regulations often involve the use technical standards, some incorporating public standards by reference but others developed in isolation from the rest of the standards system.

Public, private and regulatory standards

In today's economy, both public and private digital standards are vital. New Zealand is primarily a technology taker and has been active in adopting digital standards largely developed offshore. Organisations like GS1 provide public standards that facilitate global supply chain operations. GS1 standards have, for instance, been instrumental in enhancing e-commerce, e-invoicing, and product compliance and traceability, contributing significantly to New Zealand's GDP. However, the full potential is foreclosed by the use of closed proprietary ecosystems or unique standards in regulatory regimes. There have been times when New Zealand has initiated stand-alone regulatory technical standards, such as a stand-alone farm identification system based on postcodes.

There is also a plethora of competing private standards. ICT development is led by the private sector, and this has produced a wide array of both proprietary and open digital standards. Bluetooth is a classic example of an open private standard, while Wi-Fi is based on an international public standard. Apple is an example of an ecosystem with a mixture of proprietary and open digital standards. Both public and private standards, though voluntary, can have the effect of non-tariff barriers by creating exclusive requirements that businesses must meet to participate in certain markets. Some product claims can be tested (e.g., marine-grade stainless steel against standards such as EN 10204), while credence claims (such as 'organic') require backing from audit certification processes. Either way, substantiation involves significant costs, as there are often multiple overlapping standards required in different markets.

Standards, despite the costs, can significantly enhance productivity and economic growth by reducing switching costs for consumers, enabling economies of scale, and fostering trust between trading partners. Historical examples such as the adoption of barcodes and standard container sizes illustrate how standardisation can drive transformational change. However, poorly set standards can lead to lock-in effects and hinder innovation, particularly if they favour specific technologies or business models.

Barcodes, containerisation and GSM: historical transformations

The standardisation of container sizes in the mid-20th century revolutionised global trade by reducing shipping costs and enabling the development of global supply chains. But achieving this transformation was a tortuous process. It took a dominant player (the United States Department of Defence) and a willing counterparty (the US standards body) to drive through the change (Levinson, 2006). Similarly, when barcodes were introduced in the 1960s, these improved labour productivity by automating checkout processes and reducing errors. This technology not only cut costs but also expanded the capabilities of market research and logistics management (Gill, 2023). In the digital space, the introduction of GSM (the Global Standard for Mobile Communications) by the European Union created a global standard for cell phones. In the 21st century, new technologies like 2D digital barcodes offer the potential for the next step change if leadership is forthcoming and support is provided by other elements in the digital ecosystem.

The potential of digital standards

Information exchange in value chains currently consists of a series of closed point-to-point paper- or PDF-based ecosystems that are not joined up. There are emerging trends for markets to move to a new baseline: trusted, verifiable, digital product information that spans the entire value chain. Gill (2026) provides a more detailed discussion of these trends using mānuka honey as an example.

The widespread adoption of digital standards holds the potential for transformational change at multiple levels. These include better decision making at the micro level of individual product lines, improved meso or firm-level integration of data, and macro-level value enhancement by joining up data across each step in the value chain. For example, more advanced application of digital agriculture would realise a range of benefits. Direct benefits arise from improved input use and more timely decision making at both the macro and herd levels. Indirect benefits include improving the quality of biosecurity, food safety and animal welfare market assurances, and reducing the costs of complying with resource consents around water and nutrients. But achieving this full potential will require a common descriptor for land parcels replacing the current multiple, overlaying descriptors for owners, farms and fields, environmental catchments, soil types, micro-weather forecasting mosaics, and other spatial data.

These benefits would improve a range of outcomes: economic, environmental, biosecurity, animal welfare and food safety (see Gill, 2027). There is also reduced downside regulatory risk from the potential loss of market access if New Zealand does not align with emerging global standards on authenticity and sustainability.

Challenges in standardisation

Creating a single dominant standard is challenging, particularly in established domains with multiple competing standards. History shows that technically inferior standards can sometimes persist due switching costs. Two approaches are possible: bottom-up working sector by sector (wine, kiwifruit, honey) and top-down economy wide approach that maximises the use of global standards in the wider digital infrastructure layer.

The line of argument for a top-down approach is linked to the case for paperless trade supported by a range of international organisations over the last decade ...

Kenneth Irons (former chairperson of AgriTech New Zealand and New Zealand's head of delegation for the ISO technical committee on data-driven agrifood systems) makes the case for a top-down approach as follows:

> While 'bottom-up' initiatives are important, they need to follow top-down digital standards development, prioritisation and adoption. The world's major public digital standards entities, GS1 and ISO already mentioned, but also, the International Telecommunication Union 'ITU', the International Committee for Animal Recording: 'ICAR', and others, all exist for a vitally important reason. Their top-down orientation ensures global alignment and relevance by following robust protocols that have been developed and refined over decades. These include proven processes for the identification, prioritisation, research, development, democratic approval, release, adoption and refreshing of digital standards that facilitate international trade from the global to regional to national to provincial to local levels.
>
> Standards developed from this top-down perspective will ensure that definitions, controlled vocabularies, metrics, ontologies and other attributes are available at the granular level e.g. at farm or factory scale, and that will maintain their relevance, interoperability, trading, compliance and sustainability integrity whether products and services are traded at local, national, regional or global levels.
>
> It is not a New Zealand mindset, but a human condition, that sees bottom-up rather than top-down to be the default mechanism. Problems or constraints can accurately be identified between small cohorts of actors. Without 'looking over the parapet' it is easy to assume that since there is no awareness of already existing standards, a local group or entity can start creating their own introverted or myopic 'standard' or 'technology'. Real disadvantages of a bottom-up approach arise when locally generated standards are developed which aren't interoperable with other locally generated or global standards. (personal communication with the author)

International direction of travel

The line of argument for a top-down approach is linked to the case for paperless trade supported by a range of international organisations over the last decade, including the WTO, UNESCAP, UNCITRAL (the United Nations Commission on International Trade Law), the International Chamber of Commerce and the Commonwealth Secretariat (Nixon, 2024). More recently, this paperless trade approach has been expanded to include the ability to digitally exchange traceability and environmental, social and governance credentials using interoperable standards. Examples of this expanded approach include a recent APEC report, *Improving Supply Chain Transparency* (APEC, 2026), the Economic Commission for Europe's publication for the UN 'Recommendation no. 49: Transparency at scale – fostering sustainable value chains' (ECE, 2025) and a just-released report by Peter Stevens for the Pacific Economic Coordination Council, *Product Claims, Substantiation and Climate-Related Disclosures in the Value Chain through Digital Standards* (Stevens, 2026). These later reports suggest that a profound shift is underway in how firms communicate the attributes of their products, such as physical characteristics (GMO free) and production practices (organic). This shift will involve enhanced transparency, accountability and trust. The reports argue for high quality, verifiable, interoperable product level information such as digital product passports. This would require an open architecture that supports digitally verifiable certificates issued by governments, industry bodies and auditors.

The Economic Commission for Europe report suggests that national policy settings need to include:

- adopting a national transparency at scale framework that prioritises high impact export sectors;
- mandating the use of international digital standards that align with recognised frameworks and seeking to embed digital standards in free trade agreements;
- digitising government services such as export certificates and other regulatory documents using verifiable digital credentials;
- building capability and industry playbooks by providing guidance and templates;
- investing in enabling infrastructure, including APIs, structured data systems and verifiable credentials.

The role of government

The New Zealand government has recently launched a 'digitising government' programme and a Digital Strategy for Aotearoa with a series digital public infrastructure initiatives for the core state sector (i.e., public service agencies and Crown entities).[1] While including important components for the wider digital infrastructure, such as the development of digital identity and digital payment systems, and a commitment to the principle that government agencies be 'open and interoperable' by design, the current focus of these strategies is on core central government systems. While exploratory work is underway, available public documents are largely silent on the role of digital standards in the wider public sector, regulatory systems and the economy as a whole.

The government has a vital role to play in realising the transformation potential through the adoption of digital standards across the economy. By acting as a facilitator leading and supporting the development, awareness and adoption of global digital standards as the primary source of digital standards used in New Zealand, the government can help to unlock significant benefits. However, achieving this requires both a top-down strategy and bottom-up initiatives, leveraging existing infrastructure and fostering collaboration with industry leaders.

The government has a vital role to play in realising the transformation potential through the adoption of digital standards across the economy.

The typology below emphasises a 'facilitator first' stance: the state focusing on working with the industry to set the conditions that allow private actors to both coordinate and compete, avoiding the use of unique, stand-alone proprietary digital standards in regulatory systems, and intervening directly only where genuine market failures prevent socially valuable outcomes or where the state's authority is required to reduce barriers to realising network effects.

The state's roles can be usefully categorised as follows:[2]

- Market enabler/rule maker: provide the general legal and regulatory framework that enables transactions, protect property rights (including data rights), and enforce digital standards.
- Busting barriers/infrastructure provider: invest in or coordinate investments in physical and digital infrastructure that private markets under-provide – rural broadband, shared data platforms and APIs. Public intervention can be catalytic when it reduces fixed costs that block many smaller firms from participating. One area where the state often acts as a 'blocker' rather than an enabler is in the use of unique, stand-alone proprietary digital standards in regulatory systems: this reflects both a lack of awareness of digital standards and how they might be used, also also the 'not made here' problem based on a suspicion of technical standards unless developed internally.
- Icebreaker/risk-sharer: use limited, targeted co-investment or insurance mechanisms to overcome initial market reluctance – venture capital funds, or co-funded pilot projects – while maintaining strong monitoring and sunset clauses. Effective design treats these as portfolios, accepting that some projects will fail while a few succeed.
- Organiser/convenor: bring stakeholders together to build trust and alignment – standard-setting bodies, cross-industry consortia for data governance, and public–private R&D partnerships. Where industry is fragmented, government can provide a neutral convening role to promote collective solutions.
- Authority/international negotiator: represent sector interests in international rule-making (FTAs, mutual recognition of digital standards) to improve market access and reduce regulatory frictions for interoperable digital systems. In addition, support a wide range of pro bono work done by industry volunteers in international forums who do not have the financial or communications resources of central government.
- Fast follower: the state being an early adopter of emerging digital standards and adopting a digital-first approach to engagement will encourage the take-up of digital technologies. New Zealand currently lacks the equivalent of the US National Technology Transfer and Advancement Act. Instead of developing government-unique digital standards or regulations, this law directs all United States federal government agencies to use, wherever feasible, digital standards and conformity assessment solutions developed or adopted by voluntary consensus digital standards bodies and to report regularly on whether they have adopted unique, stand-alone proprietary digital standards.
- Honest broker: maintain policy capability to gather rapidly evolving technical and market intelligence, enabling iterative policy responses in a fast-moving digital ecosystem.

What needs to change?

The New Zealand government has a crucial role in supporting transformation based on standardisation and digitisation by acting as a 'facilitator', not a dictator. This involves leveraging the existing international digital standards rather than developing bespoke regulatory standards, and ensuring that regulatory platforms are interoperable in order to maximise network effects and economic benefits. The partnership on digital agriculture formed in 2020 between government agencies and AgriTech New Zealand – the peak industry body – is a recent example of the government–industry partnership that is needed to drive the transformation required. The experience with the agritech taskforce highlights that success requires more than good intentions (Gill, in press-b). Driving transformational change will require sustained commitment, strong co-leadership and the resources to deliver on a credible action plan.

There have been repeated calls in recent years for central government to take a stronger leadership role in the digital space. This could include introducing a regime that mirrors the requirements in the US National Technology Transfer and Advancement Act by making the default settings digital-first based on open and interoperable standards.

The New Zealand government's experience with digital standards underscores the importance of acting as a steward of the standards system. This involves establishing a regulatory regime that supports digital standards while being agile and responsive to international trends. Government provision should focus on areas with significant network effects, such as digital identity, and providing leadership through a digital-first approach based on open and interoperable standards.

Key themes and conclusions

This article has highlighted the importance of digital standards in fostering improved economic, environmental and social outcomes. The government's role is not merely supportive, but also involves setting up a conducive regulatory framework for digital standards. This includes ensuring that public agencies participate fully in initiatives like paperless cross-border trade and avoid stand-alone regulatory ecosystems.

Additionally, the government should adopt a collaborative approach with industry leaders to drive a top-down strategy to realise the full potential of digital standards. Bottom-up innovation is useful and necessary, but it requires a top-down alignment layer to ensure interoperability. This alignment layer is not about centralised control; it is about enabling interoperability so that diverse sectorled solutions can connect, scale, and participate in global digital ecosystems.

The key to this enhanced leadership role is to find a 'Goldilocks zone' where the government supports but does not dominate the adoption of digital standards, ensuring that the domestic economy can thrive in an increasingly globally integrated environment.

An open standards approach is critical to ensure interoperability and avoid fragmentation. Governance frameworks must balance accessibility with security and trust. Export markets in the EU, US and Asia are increasingly going to require robust, comparable, machinereadable data to verify claims. Product attribute disclosures are impossible to scale manually across global supply chains. A move to wholeofvaluechain transparency will be required. Economies that delay risk exclusion from high value markets including, for our agricultural exports.

1 https://dns.govt.nz/digital-government/digitising-government-programme-dgp; https://dpihub.nz/strategies.
2 Gill (2026) elaborates these enacted roles in more detail.

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Tracey Epps and Peter Mumford

The New Zealand/ Australia Single Economic Market
evolution and future directions

Abstract

New Zealand and Australia have a unique relationship which extends to regulatory cooperation, and, in the context of this article, cooperation underpinning the goal of a Single Economic Market (SEM). There has been a distinctly 'trans-Tasman' way of doing things, which includes an SEM mindset which frames opportunities to cooperate as 'why shouldn't we' rather than 'why should we' and cooperation modalities that assume trust and confidence in each other, while recognising the need for safeguards for those times when sovereign states differ. This article traces the history of SEM and then looks to the future. It identifies and analyses four possible pathways.

Keywords trans-Tasman Single Economic Market, regulatory cooperation, TTMRA, business law coordination, ANCERTA, trans-Tasman relations, Australia–New Zealand

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Successive New Zealand and Australian governments have committed to aligning trans-Tasman regulatory systems that affect business, initially as part of the 1983 Closer Economic Relationship (CER) package of measures and subsequently the 2009 Single Economic Market (SEM) initiative. The aspiration has been high, as reflected in agreement on 'the desirability of ensuring that a firm will only have to comply with one set of rules and will have certainty as to the application of those rules and the regulator (i.e., Australian or New Zealand) with which it needs to deal' (New Zealand Government & Australian Government, 2010).

Since 1983 this aspiration has been achieved in part and the regulatory alignment goal has had a pervasive, but perhaps not fully appreciated, impact on New Zealand's regulatory systems, and the ease with which regulated goods, services, people and investment move between New Zealand and Australia may largely be taken for granted. Despite this, the Single Economic Market remains a work in progress.

However, those expecting alignment objectives to be carried forward by formal institutions of the type seen in the European Union (EU) will be surprised. Rather, regulatory alignment for business activities in the trans-Tasman context are diffused amongst multiple commonwealth, state and New Zealand institutions rather than centralised, and a pragmatic approach has been taken to identifying areas for alignment. This approach has served New Zealand and Australia well in the past, but what is the future?

This article outlines the history of CER/SEM and describes the trans-Tasman regulatory alignment model with reference to the Trans-Tasman Mutual Recognition Arrangement (TTMRA) and business law. It then sets out the case for maintaining the model between New Zealand and Australia but extending it to other regions.

A trans-Tasman Single Economic Market *History*

Often referred to as CER, the starting point for the single economic market objective was the 1983 Australia and New Zealand Closer Economic Relations Trade Agreement (ANZCERTA). This sought to liberalise trade by addressing, among other things, the removal or reduction of tariffs, quantitative import restrictions and export subsidies. In 1988, agreement was reached to accelerate the 1983 commitments, and additional agreements were entered into.

In 2009, the two prime ministers agreed to a Single Economic Market framework, to 'give new intensity and a renewed focus to delivering the practical benefits and outcomes from the Single Economic Market'. A press release stated that the work would be 'guided by key principles designed to deliver more quickly and effectively the benefits of [a] seamless trans-Tasman economy to consumers and businesses in both countries' (Key, 2009).

The prime ministers made further commitments in 2024 and 2025. In 2024, they committed to modernising the SEM 'by expanding the SEM to emerging sectors of the economy; taking active steps to ensure our economic resilience; and considering how to position the SEM within the economic evolution underway across the wider region' (Luxon, 2024). Then, in 2025, in the face of global economic uncertainty, the prime ministers committed to 'further advancing trans-Tasman integration and the Single Economic Market to enhance resilience, growth and productivity, harness new technologies and address new regulatory challenges'. They made reference to further aligning New Zealand and Australian regulatory systems and standards, removing remaining trade impediments and 'coordinating and sharing lessons on best practice approaches to bolster resilience' (New Zealand Government, 2025).

> Mutual interests are defined broadly to include reducing regulatory costs for businesses operating in both markets, achieving economies of scale in regulatory design and implementation, and jointly responding to international risks and opportunities.

Scope

The scope of the trans-Tasman SEM includes most if not all areas of policy and law that have an impact on the mutual interests of New Zealand and Australian businesses. Mutual interests are defined broadly to include reducing regulatory costs for businesses operating in both markets, achieving economies of scale in regulatory design and implementation, and jointly responding to international risks and opportunities. The following illustrate the range of agreements that have been entered into:

- Memorandum of Understanding on Technical Barriers to Trade, 1988
- CER Services Protocol, 1988
- Protocol on the Harmonisation of Quarantine Administrative Procedures, 1988
- Agreement on Standards, Accreditation and Quality (ASAQ), 1990
- Joint Accreditation System of Australia and New Zealand (JASANZ), 1991
- Agreement to establish a joint food standards system, leading to the establishment of Food Standards Australia New Zealand (FSANZ) and the Australia New Zealand Food Standards Code, 1995
- Australia and New Zealand Government Procurement Agreement, 1997
- Trans-Tasman Mutual Recognition Arrangement (TTMRA) – covering goods and occupations – 1998
- Memorandum of Understanding on Business Law Coordination (initially signed in 2000 and amended in 2006 and 2010)[1]
- CER Investment Protocol, 2013.

These agreements demonstrate the scope of the SEM but do not fully illustrate the breadth and depth of both informal and formal cooperation between policy and regulatory agencies, and standards and conformity assessment bodies, in both countries, and the alignment of laws based on a shared view of 'best practice'. Nor do they cover collaboration between New Zealand and Australia in an international context. For example, New Zealand and Australia (along with Japan) led the establishment of the APEC Sub-committee on Standards and Conformance, and, as noted below, jointly negotiated a mutual recognition agreement on conformity assessment with the EU, although this agreement was reflected in a separate treaty.

Relevance of the trans-Tasman SEM

The Single Economic Market has never been just one thing. The starting point (what we refer to as a 'mindset') on both sides is that we are better off working together. The effect of this is three-fold.

1. The threshold for contemplating cooperation is quite low. Ministers and officials have the mindset of 'why shouldn't we' rather than 'why should we'.
2. Ministers and officials have taken a holistic approach to the benefits. It has never just been about reducing regulatory costs to market participants. The strategic benefit to each country has often been a factor, and for New Zealand at least there has been a recognition that small bureaucracies do not have the resources to do everything themselves and that cooperation can compensate for smallness. At a more subtle level, the SEM represents the fact that friends talk to each other, and in situations of adversity help each other out.
3. The two countries cooperate to strengthen themselves vis-à-vis third countries. For example, New Zealand and Australia persuaded the EU to negotiate jointly with them on a mutual recognition agreement on conformity assessment on the basis that we were a single market and had a shared accreditation body (JASANZ).

The many agreements that create formal commitments have been built on an informal alignment of regulatory systems which provided confidence that both governments (or multiple governments when the states and territories of Australia are involved) have broadly the same values, objectives and capabilities.

While the parties have a cooperation mindset, there has also been a strong recognition that New Zealand and Australia are sovereign countries with individual preferences and interests. This means that in agreements involving deep cooperation, such as the TTMRA and the joint Food Standards Code, there are many safeguards aimed at preserving sovereignty. These provide reassurance not only to governments but also stakeholders and the broader community. Safeguards include exemptions and exclusions – for example, to ensure agreements do not cover matters that are more appropriately addressed by national governments; decision-making criteria and hierarchies (certain decisions must be taken by ministers or heads of government); and opt-out provisions – for example, in relation to adopting specific standards.

New Zealand and Australia have achieved both breadth and depth of cooperation without a central bureaucracy, unlike the EU. This is because trans-Tasman cooperation has become an integral part of what government agencies do, not in addition to what they do.

New Zealanders and Australians generally view the SEM very positively, regarding it as a practical arrangement that delivers tangible benefits for both countries. Regulatory cooperation pursuant to the SEM has largely been uncontroversial with stakeholders and the broader community and has attracted cross-party support. It does not necessarily have a high profile but is just accepted as 'the way we do things'. Not every initiative succeeds, an example being the proposal to establish a joint therapeutics agency. However, the relationship is strong enough for parties to be able to agree to step back if the national interest calculation ends up not being in favour of deeper cooperation in a specific case.[2]

The integration is facilitated by close similarities – legal, cultural, and geographic proximity – and is seen as enhancing prosperity, choice and convenience for businesses and individuals. The relationship is largely pragmatic, focused on reducing barriers, facilitating trade, and providing a seamless experience for companies and citizens crossing the Tasman. We consider that this is an important point, as we can contrast the trans-Tasman approach with the European single market which is much more complex and frequently intertwined with debates over sovereignty, identity and political integration.

Trans-Tasman cooperation requires an investment in relationships at both ministerial and agency level. Regular contact between ministers and officials is important, not just to build trust but also to ensure that when opportunities or risks arise, the option of cooperation to address them is top of mind. Such contact also provides a forum in which to raise ideas for cooperation, knowing there will be a willingness to listen.

The SEM aspiration is dynamic and responds to changing circumstances. This can be seen in the language in the prime ministers' statements, from a 'seamless economy' in 2009 to 'positioning the SEM within the economic evolution underway across the wider region' in 2024 (Key, 2009; Luxon, 2024). It is also seen in how the prime ministers committed to 'how Single Economic Market approaches could deepen economic ties, support diversification and provide greater resilience across our region' in the 2025 statement (New Zealand Government, 2025).

Regular contact between ministers and officials is important, not just to build trust but also to ensure that when opportunities or risks arise, the option of cooperation to address them is top of mind.

Figure 1: The cooperation spectrum

Taxonomy of regulatory cooperation

Regulatory cooperation instruments can usefully be conceived of as sitting on the cooperation spectrum shown in Figure 1, which has been developed based on an analysis of the trans-Tasman relationship.[3]

At one end, *unilateral action* involves a country taking action by itself. This might involve, for example, recognising regulatory outcomes from another country, adopting elements of another country's regulatory regime, or choosing to recognise certain international standards. A recent example of this is New Zealand's recognition of the US standards that apply to rocket launch operators and the US Federal Aviation Authority's licensing of Rocket Lab.

> The TTMRA is an example of deep regulatory cooperation that is elsewhere seen only in the EU, and then only in relation to goods. Unlike in the EU, it does not depend on a central bureaucracy.

Moving along the spectrum, *informal cooperation* involves countries collaborating to improve how their regulatory regimes work together without having a formal agreement in place. This may also involve countries working together in regional or international forums. For example, Australia and New Zealand collaborated closely in the development of laboratory accreditation as the international system for assuring the competence of laboratories, which in turn provided the basis of formal agreements for the mutual recognition of test reports, a major trade facilitation measure.

There are degrees of informality in terms of what such cooperation might look like: for example, a meeting of officials would likely be seen as more informal than a meeting of ministers. However, our approach is to view informal cooperation as that which does not involve either a signed arrangement that is politically binding or a legally binding agreement. Taking this approach, even a meeting of ministers will be viewed as informal if no obligations result from it. There will in some cases be a point in time when informal cooperation morphs into something more formal. For example, five years of informal collaboration may eventually result in a written agreement.

At the right-hand end of the spectrum is *formal cooperation*. It is usually governed by legally binding treaty-level agreements (such as CER) or non-legally binding formal arrangements (such as TTMRA) and may be reflected in domestic law. As such, it is generally the most durable form of cooperation. Even non-legally binding arrangements are still considered by governments to be politically and morally binding, and as such, can be relied upon (although of course there will always be exceptions).

Regulatory cooperation instruments

Below we use the TTMRA to illustrate a single instrument that is cross-cutting and formal, of a type unique in the world and which demonstrates the level of SEM ambition. We then use business law to illustrate a broad regulatory domain where a range of instruments have been adopted, as this demonstrates the pragmatic approach that underpins much of the SEM regulatory cooperation.

Trans-Tasman Mutual Recognition Arrangement

The TTMRA was signed in 1996[4] as a means to address then existing regulatory impediments to trade between the two countries presented by measures such as product standards, conformity assessment requirements and occupational registration. Rather than starting from scratch, the TTMRA's approach was to extend the benefits of Australia's domestic inter-governmental Agreement Relating to Mutual Recognition (MRA) (Commonwealth of Australia et al., 1992) to the trans-Tasman context.

The TTMRA is an example of deep regulatory cooperation that is elsewhere seen only in the EU, and then only in relation to goods. Unlike in the EU, it does not depend on a central bureaucracy. While there are important safeguards, it is based on the principle that the governments can have 'confidence in each other's regulations and regulatory systems' and 'confidence in each other's decision-making processes' (Mumford, 2004).

The TTMRA and goods

Under the TTMRA, a good that may legally be sold in the jurisdiction of an Australian party may legally be sold in New Zealand and a good that may legally be sold in New Zealand may legally be sold in the jurisdiction of any Australian party (Recital G and clause 4.1.1). Goods need only comply with the standards or regulations applying in the jurisdiction in which they are produced or through which they are imported and do not have to comply with the other jurisdiction's additional requirements (see clause 4.1).

Goods only fall outside the scope of the scheme if there is an applicable exemption or exclusion. Exemptions are either temporary (up to 12 months on health, safety or environmental grounds) or permanent.[5] Exclusions cover categories of laws that the parties agreed during negotiations would sit outside the TTMRA, such as customs controls and tariffs, intellectual property and taxation.

The TTMRA and occupations

For occupations, a person registered to practice an occupation under a law of an Australian party is entitled to register to practise the 'equivalent' occupation under the law of New Zealand, and a person registered to practise an occupation under a law of New Zealand is entitled to register to practise the 'equivalent' occupation under the law of any Australian party, without the need to undergo further testing or examination (TTMRA, Recital G and clause 5.1.1). An 'equivalent' occupation is one where the activities authorised to be carried out under each registration are substantially the same (Part II, Interpretation). Occupations are covered if some form of legislation-based registration, certification, licensing, approval, admission or other form of authorisation is required in both jurisdictions in order to legally practise the occupation.

Under the TTMRA, differences in registration requirements (such as qualifications) can exist, because what matters is whether the activities authorised under each registration are substantially the same, or 'equivalent'. Regulators can impose conditions on individual registrations to achieve this equivalence: for example, pest controllers from cooler Australian states without termite issues may be restricted from using termite control chemicals in warmer states unless they first obtain the required training or experience (see Commonwealth of Australia, 2014, p. 12).

Occupations only fall outside the scheme's scope if there is an applicable exemption or exception. Currently there is one occupation-wide exemption, for medical practitioners.[6] There are also exemptions for laws that regulate the manner of carrying on an occupation, provided that those laws apply equally to all persons carrying on or seeking to carry on the occupation, and are not based on the attainment or possession of some qualification or experience relating to fitness to practise the occupation (TTMRA, clause 5.1.2). The kinds of laws exempted are those which require individuals to set up a principal office or develop a complaints process in each jurisdiction in which they operate.

The TTMRA's success

The TTMRA's success has been aided by shared history, language,[7] culture, common law traditions and strong political commitment to integration. Further, New Zealand and Australia have a similar approach to protecting the public from risk, and similar levels of risk tolerance. This has meant that recognising compliance with each other's laws raises relatively few concerns (see Gill, 2020a; Australian Productivity Commission, 2015, p. 35).

Relatedly, high levels of trust have made it possible for each country to accept outcomes of the other's regulatory regime as being equivalent. This is fundamental to the day-to-day operation of the arrangement, and also likely played a significant role in its initial negotiation.

Another relevant success factor, particularly on the occupations side, is that New Zealand was essentially able to 'piggyback on the MRA', a model that was already working well in the domestic Australian context. This allowed the arrangement to have broad coverage from the beginning, something that may not have been so easily achievable had negotiators had to begin from scratch.[8]

Even with the above factors, the exemptions, exceptions and exclusions were critical safeguards that ensured governments had policy space to protect their interests, and this eased the way to gaining political acceptance.

Business law

The general category of business law covers many areas of law, from competition to intellectual property.

Coordination between Australia and New Zealand has a long history; it has been both broad and deep, and a mix of informal and formal. A formal framework for

Table 1: Taxonomy of regulatory cooperation instruments

	Competition	Financial markets	External reporting standards	Insolvency	Takeovers	Insurance	Personal property securities
Aligned primary legislation	■		■	■		■	■
Aligned rules and procedures for mergers and takeovers	■				■		
Aligned reporting standards			■				
Formal regulator-to-regulator dialogue	■	■	■		■		
Cross-appointments between regulators	■		■		■		
Formal agreements between regulators	■	■	■		■		
Enforcement cooperation	■	■					
Cooperation to influence international practice			■				
Streamlined procedures				■			
Mutual recognition of security offerings		■					

coordination was the memorandum of understanding on Harmonisation of Business Law 1988. This was renegotiated as the MOU on Coordination of Business Law in 2000 and amended in 2006 and 2010. A large work programme was agreed as part of the later MOUs, and this provides the basis of our taxonomy of policy instruments (Table 1), although some additional instruments have been added.

The primary objectives of business law coordination were to reduce transaction costs, lessen compliance costs and uncertainty, and increase competition. Other objectives, explicit or otherwise, included sharing and emulating best practice, influencing international practice and enhancing enforcement effectiveness.

Business law coordination framework

When the 1988 memorandum was renegotiated and renamed in 2000, three new principles were included 'to determine the suitability of candidates for coordination':

- the desirability of ensuring, for each particular situation, that a firm, ideally, will only have to comply with one set of rules, and have certainty as to the application of those rules in the other jurisdiction, and with which regulator (i.e., Australian or New Zealand);
- whether these situations should be regulated solely through domestic rules or whether a bilateral or multilateral solution would be more appropriate; and
- whether a good reason exists for the law in this area to be different between Australia and New Zealand.

Regulatory cooperation over the past 40 years has resulted in a trans-Tasman regulatory environment which, if not 'seamless' (an SEM aspiration), has relatively few significant barriers to goods, services or investment.

The MOU was further amended in 2006 and again in 2010, this time to include the Single Economic Market principles agreed between the prime ministers of New Zealand and Australia in 2009[9] and a revised work programme (New Zealand Government & Australian Government, 2010). The MOU is frequently referenced as the basis of trans-Tasman business law coordination activities.

Regulatory cooperation instruments

Table 1 [on p. 37] shows our taxonomy of regulatory cooperation instruments in relation to business law. The shaded areas are where action has been taken. It excludes instruments and initiatives that were considered but not progressed, including a single competition regime and regulator and a single regime for stock exchanges (which would have been required if the Australian and New Zealand stock exchanges had decided to merge). It also excludes intellectual property, anti-money laundering and consumer law, all areas where there has been trans-Tasman cooperation. In this respect the table is illustrative rather than comprehensive.

Business law case studies

The following case studies illustrate aspects of business law coordination in more detail.

Competition law coordination

New Zealand's Commerce Act 1986 is based on the Australian Trade Practices Act 1974. Notably, in both the Commerce Act and (now) Australia's Competition and Consumer Act 2010 there are provisions relating to the misuse of market power in trans-Tasman markets. There are cross-appointments to the New Zealand Commerce Commission and Australian Competition and Consumer Commission at associate commissioner level.

Formal cooperation agreements include:

- a 2016 Cooperation Protocol for Merger Review: this contains detailed provisions that the New Zealand Commerce Commission and Australian Competition and Consumer Commission will apply in relation to mergers involving trans-Tasman or global businesses that are subject to review in both New Zealand and Australia, and are intended to assist merger cooperation between the two.
- a 2013 co-operation arrangement between the commissions in relation to enhancement of cooperation and coordination.

In 2004 the Australian Productivity Commission wrote a report on trans-Tasman competition and consumer law and concluded that there had already been 'significant convergence of Australia's and New Zealand's competition and consumer protection regimes, particularly by international standards. Consequently, the regimes are not significantly impeding businesses operating in Australasian markets' (Australian Productivity Commission, 2004, p. xiv).

Mutual recognition of securities offerings

The trans-Tasman mutual recognition scheme allows an issuer in Australia or New Zealand to offer certain financial products in both countries using one disclosure document prepared under regulation in its home country. Issuers who wish to operate under the scheme are able to comply with minimal entry and ongoing requirements agreed to between the two countries and prescribed in each country's law.

The Australian Securities and Investments Commission (ASIC), the New Zealand Companies Office and the New Zealand Financial Markets Authority have established arrangements for cooperation and information sharing between the authorities in administering the mutual recognition scheme.

The aim of the scheme is to promote investment between Australia and New Zealand by removing unnecessary regulatory barriers to trans-Tasman financial product offerings and reducing the cost of capital-raising in both Australia and New Zealand. At the same time, the scheme maintains investor protection through appropriate disclosure and supervision of offerings.

In 2006, ASIC conducted research into the scheme's effects on industry. They concluded that 'the mutual recognition regime was viewed as a welcome policy development because: it had reduced firms' costs; and it had accelerated the regulatory approval process' (Australian Securities and Investments Commission, 2009).

Successes and challenges in the use of instruments

The peak period for business law coordination with Australia seems to have been from the mid-1980s to about 2010. This was the time when New Zealand was establishing new laws and using existing Australian laws as models (unilateral action and informal coordination), and both countries were actively looking for new opportunities to cooperate (formal coordination). While coordination continues, it seems to take the form of 'business as usual'.

While much of the coordination was undertaken within business law 'silos', such as competition law, a cross-cutting initiative was taken with the negotiation of the MOU on business law coordination in 2000, with an associated work programme and a co-chaired officials group reporting to New Zealand and Australian ministers.

One can speculate on why the impetus was not maintained beyond about the mid-2000s, but it is likely to be due to diminishing opportunities for significant gains relative to the costs of negotiating and implementing new arrangements. However, in the 25 years or so of active business law coordination some very significant initiatives were taken, and the business laws of both countries are quite similar as a result.

Discussion

We address regulatory cooperation as one of the foundation blocks of the Single Economic Market, the others being the removal of tariffs and restrictions on services and investment, and retention of the freedom to travel and work in each other's countries.

Regulatory cooperation over the past 40 years has resulted in a trans-Tasman regulatory environment which, if not 'seamless' (an SEM aspiration), has relatively few significant barriers to goods, services or investment. In the light of this success, it is an opportune time to consider the future of the SEM. We envisage that there are four plausible pathways, each of which is predicated on a different end point.

The first pathway would maintain the status quo, which in effect is 'ambitious incrementalism', identifying current or emerging opportunities and applying the SEM 'mindset' that we are better off working together and taking a 'why shouldn't we' rather than 'why should we' approach. This pathway largely eschews joint institutions and favours continued policy and regulatory agency coordination and unilateral recognition, albeit with some joint standards development, in both existing and new areas, such as emerging technologies, and formal cooperation arrangements between regulators.

The business law case study demonstrates the features of this pathway. The end point is a single economic market where trans-Tasman economic activity can take place largely unimpeded by regulatory costs, and both New Zealand and Australia benefit from regulatory coordination that achieves economies of scale and scope, mutual learning and more effective regulatory enforcement. In this scenario, there are few legally binding obligations beyond those that have already been agreed, and few trans-Tasman institutions.

The second pathway would explore step-change opportunities to deepen the SEM relationship. This pathway contemplates deepening integration of regulatory systems and joint institutions. The TTMRA case study provides an example of a highly integrated regulatory system. A step change could be the establishment of joint standards and regulatory institutions. We have two such institutions – Food Standards Australia New Zealand and the Trans-Tasman IP Attorneys Board – but did not proceed with two others that were considered, the joint therapeutics agency and a joint competition authority.[10] In this regard, the SEM differs from the EU single market. Both New Zealand and Australia and the EU have enacted the mutual recognition principle, but the EU has created a central bureaucracy to implement it. This has largely been avoided by New Zealand and Australia to date. If we followed this second pathway, the end point would be a single economic market based on integrated laws and institutions, meaning that in 40 years, trans-Tasman regulatory integration between New Zealand and Australia would look much more like the situation in the EU.

> There still needs to be a case for cooperation and this requires an assessment of trends and future scenarios in relation to trade, investment and the movement of people, and geopolitical factors.

The third pathway would involve deepening the SEM by broadening the range of instruments that New Zealand and Australia use beyond regulatory cooperation. This pathway is predicated on an understanding that 'single' markets require more than seamless regulation, and governments have more capabilities to achieve a single market than removing regulatory barriers. This pathway is foreshadowed in the 2025 Ministry of Business, Innovation and Employment/Ministry of Foreign Affairs and Trade long-term insights briefing on New Zealand's productivity in a changing world, which notes that 'The SEM is evolving to address modern challenges such as digital trade, climate resilience and regional economic security e.g. through work to reduce barriers to collaboration in science, technology and research across the Tasman' (Ministry of Business, Innovation and Employment & Ministry of Foreign Affairs and Trade, 2025). This pathway locates New Zealand and Australia at the 'cooperation' end of the 'cooperation vs competition' spectrum and implies a more integrated economic strategy.

The fourth pathway would extend the SEM to other regions or economies. This would involve taking the experience of the past 40 years in areas such as business law, occupational regulation and technical regulation and applying it in other regions, ideally in partnership with Australia. This experience tells us that there is no 'one size fits all' approach to regulatory cooperation, and that what is needed is a pragmatic, result-driven approach to the choice of instruments. In some cases, for example, unilateral alignment through acceptance of each other's standards will be the most cost-effective approach to reducing regulatory costs, whereas in other cases mutual recognition of each other's approvals may be achievable.

Importantly, the SEM model has always involved development of deep and trusted relationships between policy agencies and between regulators, and a shared commitment to identifying and pursuing opportunities. Ministers provide the mandate and a permissive and supportive environment, but officials have the responsibility for developing and delivering on work programmes. Goals, strategies and work programmes are important, but what the SEM has taught us is that an investment in relationships is of critical importance.

What are our views on these pathways? We assume that ambitious incrementalism will happen in any event, subject to a caveat that relationships cannot be taken for granted and the 'ambitious' aim of incrementalism requires an ongoing investment and what we describe as an 'SEM mindset'. This should not be taken for granted. We do not support the step-change pathway. While we note that more integrated laws and joint institutions may arguably make regulatory underpinnings of the SEM more durable, as integrated laws and joint institutions are hard to unwind, they would be costly and potentially controversial to establish, and we consider that the marginal gains over the status quo are not high enough to warrant the cost.

We support broadening the range of instruments that New Zealand and Australia use to deepen the SEM. The case for an SEM has already been made in many policy documents and associated research over 40 years, and extending the range of instruments simply recognises that an SEM relies on more than the regulatory-focused instruments that have traditionally been used.

We also support extending the SEM to other regions or economies. We have considered the argument that there is something about the trans-Tasman relationship which gives rise to trust and broadly aligned regulatory systems which cannot be replicated with other countries and regions. While we agree that there are features of the relationship that have resulted from our shared history that cannot be replicated, the conditions for regulatory cooperation exist for any country that has modern regulatory systems, and that applies to many countries where we do not currently have the level of cooperation that we have with Australia.

We have considered the argument that there is something about the trans-Tasman relationship which gives rise to trust and broadly aligned regulatory systems which cannot be replicated with other countries and regions.

There still needs to be a case for cooperation and this requires an assessment of trends and future scenarios in relation to trade, investment and the movement of people, and geopolitical factors. In this context, the long-term insights briefing considered the expansion of the SEM to new partners and identified the Association of South East Asian Nations (ASEAN) 'as a compelling candidate'. In 2025 the New Zealand and Singapore prime ministers agreed to 'explore novel ideas such as the concept of a single economic market' (Luxon & Wong, 2025). Based on our analysis of the history of the trans-Tasman SEM, we see no reason why Singapore as a country or ASEAN as a regional grouping should not be viable candidates for an SEM 'mindset' and pragmatic approach to regulatory cooperation.

Cooperation is likely to play out differently across the region, across sectors and across areas of law. Informal cooperation may be the norm for some time, which would involve working together to identify and adopt best practice, with the intent of and ultimately providing the basis for more formal cooperation. That being said, the pragmatic approach could still allow the parties to identify specific areas for formal cooperation. In this regard, Singapore is a special case as it has more similarities than differences to New Zealand in its approach to regulation. Hence, there currently will be more opportunities for formal cooperation with Singapore, with other ASEAN countries potentially participating over time.

Acknowledgment

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1 There was a predecessor agreement, the 1988 Memorandum of Understanding on the Harmonisation of Business Law. While it was acknowledged that this 'provided a starting point for dialogue on business law issues ... it became apparent that harmonisation would not always be the most efficient way of removing the

regulatory barriers between Australia and New Zealand'; hence the shift from 'harmonisation' to 'coordination' (Swain, 2001).

2 The proposed joint therapeutic agency initiative provides a useful case study of the challenges of regulatory cooperation: see Gill, 2018.

3 See MBIE's International Regulatory Cooperation Toolkit at https://irctoolkit.mbie.govt.nz/options; also see Gill, 2020b.

4 Between the leaders of the Commonwealth of Australia, the Australian states and territories and New Zealand.

5 Originally there was also a category known as 'special exemptions', where implementation was delayed pending cooperation to achieve greater integration, but this category is no longer being used and is unlikely to be used in future. Permanent exemptions originally agreed upon include those related to quarantine, endangered species, laws related to firearms, fireworks, indecent material, ozone protection, and agricultural and veterinary chemicals. In addition, new permanent exemptions have been added since 2010, including laws related to therapeutics, South Australia's legislation prohibiting the sale of drug paraphernalia, the Northern Territory's container deposit scheme, and Australia's tobacco packaging regulations. They also cover hazardous substances, industrial chemicals and dangerous goods; electromagnetic compatibility and radiocommunications standards; and road vehicles and gas appliances. (See Australian Productivity Commission, 2015, p. 16.)

6 Doctors with primary medical qualifications obtained in New Zealand are automatically granted general registration in Australia and vice versa under separate arrangements. It is only overseas-trained doctors whose registration is not mutually recognised (Commonwealth of Australia, 2014).

7 Although note that in New Zealand, in addition to English, te reo Māori is an official language (Māori Language Act 1987).

8 Interview notes on file with author, October 2023.

9 Specifically, 'This Memorandum recognises the Single Economic Market Outcomes Framework endorsed by Prime Ministers in their Joint Statement of Intent on 20 August 2009'.

10 A 2005 report by the Australian Productivity Commission on Australian and New Zealand competition and consumer protection regimes found that further integration of the two countries' regimes (including a single institutional framework) would have high implementation and ongoing costs and only moderate benefits (see Australian Productivity Commission, 2005, p. xxiv).

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Alex McMinn

Don't Build a Profession, Govern a System

rethinking regulatory capability

Abstract

For over a decade, New Zealand built regulatory capability without a central mandate to do it. That work laid real foundations, but it could never reach the leadership and governance where regulatory performance is decided. Training, common qualifications and practitioner networks have all played a part. Regulatory performance is shaped by many factors, including resourcing, statutory design, the political cycle and the capability of the workforce, and no single lever explains success or failure on its own. This article makes a narrower argument: that one lever, the regulatory leadership and governance that determines whether good practice is possible, has been harder to move than the others, and that the arrival of the Ministry for Regulation now provides a stronger platform for shifting it than earlier arrangements were able to. The case for investing in workforce capability is settled. The argument here is about what must travel alongside it.

Keywords regulation, capability, leadership, professionalisation, stewardship

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The appeal of the badge

'Professionalisation' is an appealing idea because it converts a hard problem into a delivery plan. Define the competencies, accredit the learning, stand up a pathway, count the graduates and report progress. It is tangible, fundable and relatively straightforward to show. That is a strength, not a fault. But it also means the most visible markers of progress tend to sit with the practitioner workforce, while the conditions that most shape regulatory outcomes sit higher up, with the leaders and boards who set a regulator's purpose, posture and culture.

Across New Zealand and Australia, a strong and largely constructive conversation has developed about building the regulatory profession, through training, credentials and community among practitioners (Manch et al., 2015; Leavoy, 2026). The better strands of that conversation already reach well beyond credentials, into stewardship, judgement and system care. This article does not argue against that project. It offers a complementary caution: that because credentials and training are the easiest part of capability to fund and measure, the harder and less visible work of leadership and governance can receive comparatively less sustained attention, even when everyone agrees it matters more.

It is worth drawing one distinction clearly. *Professionalising* regulatory work, lifting the knowledge, skills and judgement of the people who do it, is a legitimate and continuing need, and it is what New Zealand's prior regulatory capability initiatives have focused on. That is different from building a *profession* in the formal sense of a closed, licensed occupation, which would sit awkwardly with how regulatory authority is delegated through statute and organisation rather than held by individuals. The caution in this article is not about occupational closure. It is about the subtler risk that credentials come to stand in as the main proxy for a regulatory system's health.

The establishment of the Ministry for Regulation in 2024 reflects a recognition that capability initiatives, however good, needed a more permanent institutional home if their ambitions for system-level improvement were to be realised. It should also be acknowledged that both the ministry and the Regulatory Standards Act 2025 were established in a contested political environment, and views on each differ across the sector and along political lines. This article is concerned less with that debate than with a question that outlasts it: whatever regulatory oversight and quality institution endures, what makes a regulatory system perform?

A fair account of what came before

New Zealand's history of capability work has laid real and lasting foundations from the start, and it is important to say so plainly. The Compliance Common Capability Programme, which took shape from 2008, set out to build a framework of qualifications across the full range of regulatory functions, and it deliberately engaged both central and local government. Crucially, it recognised early that improvement was needed not only at the front line but in the management and leadership of regulatory functions, and that qualified people in organisations that did not understand or follow good regulatory practice would not deliver sustainable improvement (Compliance Common Capability Programme, 2014).

> … the story of the past 15 years is one of successive initiatives which understood the whole picture but lacked the mandate, scale and continuity of resourcing to act on it across many systems at once.

What that programme lacked was not vision, but standing. It operated as a network, running on goodwill and the interest of a coalition of the willing, without a durable mandate or secure funding. Its architects understood this clearly. In its 2014 submission to the New Zealand Productivity Commission, the programme argued for a stronger footing than it could give itself, proposing some form of functional leadership model with a clearer mandate, stronger governance and broader leadership, and explicitly framed its interest as supporting lasting system-wide improvement by building on the work done to date (ibid.). Read now, that submission looks less like a confession of weakness than an accurate diagnosis, one that anticipated the case for the standing institution New Zealand would eventually build.

The Government Regulatory Practice Initiative (G-Reg), established in 2015 when regulatory chief executives agreed to oversee a shared practice initiative, carried this work forward (Manch et al., 2015). While G-Reg as a brand became synonymous with a qualifications programme, and the NZQA-recognised pathway was a visible achievement, its own framing was broader. The business case for the qualifications framework listed, among its benefits, the ability to monitor and exercise stewardship of regulatory capability at the agency and system level, and its authors were explicit that the benefits were 'not narrowly focused on well-trained staff, but rather on the development of a profession and the delivery of regulatory stewardship' (ibid., p. 74). In practice, G-Reg delivered masterclasses for the boards of regulatory organisations, convened communities of practice, co-funded a chair in regulatory practice, and promoted a shared regulatory language.

Seen this way, the story of the past 15 years is one of successive initiatives which understood the whole picture but lacked the mandate, scale and continuity of resourcing to act on it across many systems at once. They did the parts that a voluntary, thinly resourced network could do, and they said, clearly and early, what they could not. The fact that frontline capability advanced further than leadership and governance is a reason to give the latter more focused attention now, not evidence of any fault in the former.

There is a measurement asymmetry worth naming, because it shapes behaviour quietly and without anyone intending it. Training and qualifications are easy to count and report; changes in governance, decision quality and system design are slow, contested and hard to attribute to any single intervention. Capability was rightly recognised as one contributor to stewardship, including through G-Reg's representation in cross-government stewardship forums. The risk is not that anyone mistook training for stewardship. It is subtler: that the part of stewardship easiest to show, capability and credentials, can gradually come to stand in for the part that is hardest to do.

How the hard part gets deferred

The 2014 Productivity Commission inquiry famously described regulation as the 'poor cousin of government', attracting far less systematic scrutiny than fiscal policy and lacking a consistent discipline that forces maintenance of the regulatory stock (New Zealand’ Productivity Commission, 2014). That framing needs care, to avoid overstating the case that regulation has simply been ‘low-attention’ work. The 2013 amendment to the State Sector Act made stewardship of legislation an explicit chief executive responsibility, and Treasury’s ‘Initial expectations for regulatory stewardship’, later succeeded by the 2017 ‘Government expectations for good regulatory practice’, were deliberate attempts to focus attention (Treasury, 2017).

The more accurate diagnosis is that attention was created on paper but not always converted into governed practice. A duty that sits in statute but not in the things ministers and the public service commissioner actively hold chief executives to account for will tend to lose ground to the deliverables that are measured. In that environment, capability that can be commissioned within a budget cycle will tend to move faster than capability that requires sustained senior ownership: clarifying trade-offs, funding stewardship, building feedback loops, and changing what ‘good’ looks like in performance terms. That is not a criticism of anyone’s choices. It is an observation about incentives.

The Productivity Commission was also blunt about one consequence: too much of the system, it found, relied on the goodwill and commitment of dedicated individuals (New Zealand Productivity Commission, 2014). New Zealand’s regulatory baseline has too often been sustained by personal effort compensating for institutional settings that were never quite finished. That is precisely the gap a standing steward exists to close.

> The Public Service Act gestures at collective responsibility, but the Public Finance Act still strongly shapes chief executives’ incentives, rewarding them for managing their own agency’s exposure and treating dependence on agencies they do not control as a risk to be minimised.

The evidence: capable people, unfinished governance

One of the clearest New Zealand cases is the 2019 review of the New Zealand Transport Agency’s regulatory function, conducted after a widely publicised failure (MartinJenkins, 2019). The review found failures across the regulatory cycle and identified, as one contributor, a focus on providing a customer-based service when the primary role was to regulate. It pointed to internal framing in which customers purchased products or services and NZTA then regulated them as network users, and judged this a fundamental misunderstanding of the regulator’s role at the point of entry and re-entry into the system.

These were largely leadership and governance failures rather than workforce failures. The review traced the drift to the top: senior leaders in the relevant group had been recruited primarily for skills in customer service and operations management, not regulatory management or practice, and regulatory issues and risks had low visibility at both the executive and board levels, with little proactive challenge until late in the period. Tellingly, staff at lower levels often held genuine regulatory expertise, but their voice was not always heard at the executive level, and at one point there was no representation of the regulatory function on the executive team. The capability largely existed. What was missing was a governance setting that valued and acted on it.

The Royal Commission on the Pike River Coal Mine Tragedy reached an institutional verdict under far graver circumstances, deliberately broadening its scope to the wider functions, structures and strategies within which regulation occurred. It attributed ineffective regulation to a lack of national leadership, the absence of shared governance responsibility, and insufficient focus and expertise, especially at senior levels (Royal Commission on the Pike River Coal Mine Tragedy, 2012). New Zealand’s response was not a training programme; it was a stand-alone regulator, WorkSafe, established on the commission’s recommendations.

Both cases point in a similar direction. Durable improvement comes less from goodwill and more from exposing boards and chief executives to performance expectations and incentives aligned with public objectives. The Productivity Commission anticipated this, calling for a senior minister with clear responsibility for the regulatory system, backed by strengthened central-agency support (New Zealand Productivity Commission, 2014). Notably, this echoed what the regulatory capability community itself had asked for: the Compliance Common Capability Programme’s 2014 submission proposed a functional leadership model tied to a responsible minister and to stronger accountability and system-wide review (Compliance Common Capability Programme, 2014). A decade later, the creation of the Ministry for Regulation as a central agency is materially consistent with both.

Why this time could be different

A leadership-first reader is entitled to be sceptical, because leadership and governance have been the stated answer before. The 2013 stewardship duty in the State Sector Act and the 2017 government expectations both aimed to shift senior incentives, yet produced only modest and uneven change. Cross-government stewardship groups yielded limited observable improvement, though it is fair to note that progress was rarely measured against clear outcome measures rather than activity, which is itself part of the problem this article describes. Attention tended to spike after each scandal and fade as fiscal and political priorities reasserted themselves. Any honest case for a leadership-first approach has to answer the 'this time is different' challenge rather than assert it.

Part of that challenge is structural. Stewarding a regulatory system requires cross-silo collaboration, yet the machinery of government can pull the other way. The Public Service Act gestures at collective responsibility, but the Public Finance Act still strongly shapes chief executives' incentives, rewarding them for managing their own agency's exposure and treating dependence on agencies they do not control as a risk to be minimised. A stewardship duty that asks leaders to act across boundaries, without changing what they are funded and judged on, will tend to lose to the appropriation. This is why leaders need not just permission but active support to make system-level choices, and why exhortation alone has never been enough.

So what is different now? Three things, in combination, that were not all present in earlier rounds:

A standing central agency rather than a programme

Previous efforts were largely initiatives: hosted, time-limited and dependent on a coalition of the willing, exactly as their own architects observed. The Ministry for Regulation is a dedicated government department and central agency with a system-wide mandate, a budget and an institutional interest in continuity across electoral cycles. A programme has to justify its survival each year; an agency has to be actively dismantled.

A statutory anchor

The Regulatory Standards Act 2025 raises expectations of how regulation is developed and amended and improves understanding of the existing stock and how systems operate over time (Ministry for Regulation, 2026). Where earlier expectations were Cabinet statements a future Cabinet could set aside, a statutory framework creates more durable obligations and a clearer line of accountability.

> The value of a permanent steward with a statutory mandate is that it can keep drawing the system back towards a citizen-centred perspective, towards outcomes and impact, and towards sensible innovation.

A citizen-centred, system-of-systems view

The ministry's first stocktake of the regulatory landscape deliberately starts from how people actually experience regulation, as a single system that either works or gets in the way, rather than from the government-centric view of discrete agencies and statutes (Ministry for Regulation, 2026). When each agency is the unit of account, the space between agencies, where citizens and businesses often get stuck, or left behind, belongs to no one. Starting from the citizen's experience makes those gaps an explicit object of stewardship.

None of this is self-executing. The underlying idea is simply that a permanent steward, equipped with a statutory standard and a shared, citizen-centred picture of the system, can do what episodic programmes could not: keep the governance question on the table after the post-scandal attention fades, and give ministers and chief executives a reason, and a measure by which, to treat stewardship as a real deliverable. That is a hypothesis, not a guarantee. But it is a materially stronger position than any previous round was given, and it builds directly on what those earlier rounds began.

What a leadership-first approach changes

A leadership-first approach shifts the emphasis from improving individuals within existing systems to improving the systems within which individuals work, building on the capability foundations already laid rather than replacing them. It recognises that regulatory system capability is produced, in large part, by leadership and governance choices about purpose, operating model, incentives and feedback. In practice, five shifts follow.

1. Make regulatory purpose and trade-offs explicit, in strategy, operating model and policy settings, so that staff are not left to infer priorities from throughput metrics or a 'customer' narrative. When an operating model states plainly that public safety comes before transactional speed, frontline staff are not left to infer that enforcement is somehow a failure of good service.
2. Appoint and develop regulatory leaders as leaders of practice, not as generic delivery executives, and support boards to interrogate regulatory performance as a core governance duty. This turns today's capable practitioners into tomorrow's regulatory leaders.
3. Pool scarce expertise instead of spreading it thinly. Deep regulatory skill is rare, and asking every agency to build its own from scratch wastes it, especially in small regulators. A permanent system steward can give the mandate and reach that previous voluntary networks could not.
4. Check whether regulation is actually working, not just whether the agency is busy. Counting inspections, licences and prosecutions tells you the agency is active. It does not tell you the harm being prevented or that the burden on the public is reasonable. Leaders need to ask what the regulation is achieving, what it is costing people, and what should change as a result.
5. Use the centre to join the system up and reduce agencies working at cross purposes. Each agency has an incentive to look after its own patch. A system

central steward can help set clear roles, broker the coordination no single agency will lead, and address the funding and accountability rules that quietly discourage collaboration.

There is a deeper point folded into the fourth shift, because it is where capability and governance meet. The hardest thing for any regulator to see is the harm that did not happen and the burden that was never recorded. Good regulation is often invisible: the collapse averted, the unsafe operator deterred, the market that simply functions. Activity counts capture none of this, and a system that manages only what it counts will tend to drift towards the measurable and away from the material. The capability to reason about non-events, about risk, proportionality and intangible cost, cannot be acquired through a certificate alone. It is exercised through judgement, and judgement is shaped by what leaders ask about, reward and protect. This is why a leadership-first approach is not anti-capability. The most sophisticated capability a system can hold, risk-based judgement under uncertainty, only survives where governance makes room for it.

Conclusion: capability is designed, not just trained

Capability, according to this view, is not simply something individuals are trained to hold. It is something designed into a regulatory system through the choices leaders make about purpose, governance, incentives and feedback. The question that follows is less about whether individual regulators are sufficiently skilled or credentialed, and more about whether regulatory systems are being actively led, governed and stewarded in ways that let good practice emerge and endure. New Zealand’s experience suggests that durable improvement comes from leaders taking responsibility for the architecture within which regulatory judgement is exercised, and being held to account for it.

There is a fair challenge to this. The more the Ministry for Regulation must step in, running reviews and choosing which problems to tackle, the more it reveals that agencies are not yet stewarding their own systems as a matter of course. Mature stewardship would see leaders keeping their own systems fit for purpose as ordinary practice, without needing the centre to step in. That is exactly the point. The ministry’s role is not to catch the fish, but to help agencies build the rod: the tools, leadership focus and accountability to steward their systems themselves. On this reading, it should keep actively supporting the learning, standards and connection that prior capability initiatives pioneered, while tipping the balance of its own distinctive effort toward system leadership. The measure of success is not how many reviews the centre runs, but how few it eventually needs to.

None of this has been, or will be, easy. Understanding of stewardship obligations tends to mature slowly, through trial and error, and there is a risk that as agencies come to understand their duties they also learn to manage them down. The value of a permanent steward with a statutory mandate is that it can keep drawing the system back towards a citizen-centred perspective, towards outcomes and impact, and towards sensible innovation. Where the conditions of good governance are present, professionalism and learning take root and matter enormously. Where they are absent, even the most capable workforce will struggle to deliver outcomes the public can trust. Invest in the practitioners, as New Zealand rightly has and should continue to do. But give equal and sustained attention to holding leaders to account, because without that, much of the rest will struggle to hold.

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Gráinne Moss

Real Results
modernising New Zealand’s agricultural and horticultural products system

Abstract
New Zealand’s agriculture and horticulture sectors underpin food security, export earnings and rural livelihoods, yet their regulatory frameworks have long been criticised for complexity, fragmentation and slow adaptation to emerging risks. In 2024, the Ministry for Regulation initiated a comprehensive review to modernise these settings, reduce regulatory compliance burden and enable innovation, while safeguarding environmental and consumer outcomes. This article explains how the review was conducted, and outlines key findings: overlapping statutes, inconsistent enforcement and barriers to sustainable practices. Finally, the article considers the review’s recommendations, focused on consolidation, risk-based regulation and adaptive standards. One year on, implementation is delivering tangible results: more streamlined approval processing, improved requirements for manufacturers, and early signs of investment in sustainable technologies. The review demonstrates the value of system-wide regulatory stewardship and anticipatory regulation in a small, high-trust democracy. Lessons from this process offer a blueprint for future regulatory reform across primary industries and beyond.

Keywords agriculture, horticulture, regulatory reform, Ministry for Regulation, risk-based regulation, adaptive standards, regulatory stewardship, New Zealand, global consolidation, modernising, agrichemicals

Gráinne Moss is secretary and chief executive of the Ministry for Regulation. With extensive experience in public sector leadership and regulatory innovation, Gráinne has led major reforms aimed at improving system stewardship and reducing compliance burden while safeguarding public outcomes.

Key statistics

- New Zealand's market is small: in 2022, New Zealand accounted for 0.1% of global use/distribution of pesticides.
- One of New Zealand's major crops – apples – represents only 0.6% of global apple production, and global apple production is only one-tenth the size of global maize production, the largest global production crop.
- The agriculture and horticulture sector generates NZ$43 billion in export revenue for New Zealand, which is half of all our export revenue and 10% of New Zealand's GDP.
- New active ingredients can cost over NZ$460 million to bring to a major market, including research and development (Agbioinvestor, 2024).
- A scenario considered by an independent consultant estimated that to bring a product such as a novel inhibitor (already marketed overseas) to market in New Zealand would cost between NZ$1 million and $4 million (Sense Partners, 2024).

Introduction: Why modernisation was needed

New Zealand's agriculture and horticulture sectors underpin food security, export earnings and rural livelihoods. These sectors rely on agricultural and horticultural products to protect and manage plants and animals, making them central to both the economy and the resilience of food systems.

New Zealand operates in a small and geographically remote market, with distinct environmental conditions and limited proximity to major manufacturing bases. These factors can constrain access to new products and increase the importance of well-functioning regulatory systems for international competitiveness.

By 2023–24, there were clear signals that regulatory settings for agricultural compounds, veterinary medicines and hazardous substances were not operating as effectively as they could. The approvals pathway, spanning the Agricultural Compounds and Veterinary Medicines Act (ACVM) and Hazardous Substances and New Organisms Act (HSNO), was widely seen as fragmented, slow and insufficiently proportionate to risk. Stakeholders reported long time frames, duplication and limited use of trusted international assessments, with issues often emerging at system interfaces.

The Ministry for Regulation initiated a review in 2024 to modernise the approvals pathway, aiming to reduce unnecessary burdens and improve access to products while maintaining robust risk management. The review took a system-level approach to identify practical improvements.

New Zealand's exposure to export markets is substantial and concentrated: in the year to December 2024, goods exports to China were almost NZ$18 billion (around a quarter of all goods exports), exports to the United States reached about NZ$9 billion, and exports to Australia were approximately NZ$8.9 billion, with food and fibre products dominating all three markets. For a small, high-export economy, these regulatory systems function as critical infrastructure. Weak performance affects not only compliance costs but also market access, reputation and long-term economic resilience.

This article proposes that in small, high-trust systems, regulatory reform is most effective when system-level diagnosis is paired with a clear mandate to deliver measurable improvements.

The Ministry for Regulation inquiry model: key and innovative characteristics

The inquiry model

The Ministry for Regulation uses regulatory reviews to engage with those affected by regulation and identify how existing systems can be improved. Reviews are designed to ensure meaningful participation from affected individuals and organisations.

Review topics are identified using a transparent, risk-based approach, considering economic impact, system performance and stakeholder input. The ministry focuses on areas where regulation is a recognised problem and where reform can deliver clear benefits, particularly where its independence and system-wide perspective add value.

A defining feature is its focus on how regulatory processes operate across the system, including interfaces, decision points and time frames. In the agriculture and horticulture review, this meant analysing how the ACVM and HSNO Acts interact in practice.

The model places strong emphasis on stakeholder co-design, combining workshops, submissions, and targeted engagement with industry, regulators and policy agencies. It also blends formal analysis, such as economic modelling and legal testing, with practical insights from system users.

Ministry for Regulation reviews are time-bound, typically completed within six months, and are undertaken with a clear mandate for change. This enables analysis and implementation planning to proceed in parallel, with a focus on delivering actionable improvements rather than simply informing debate.

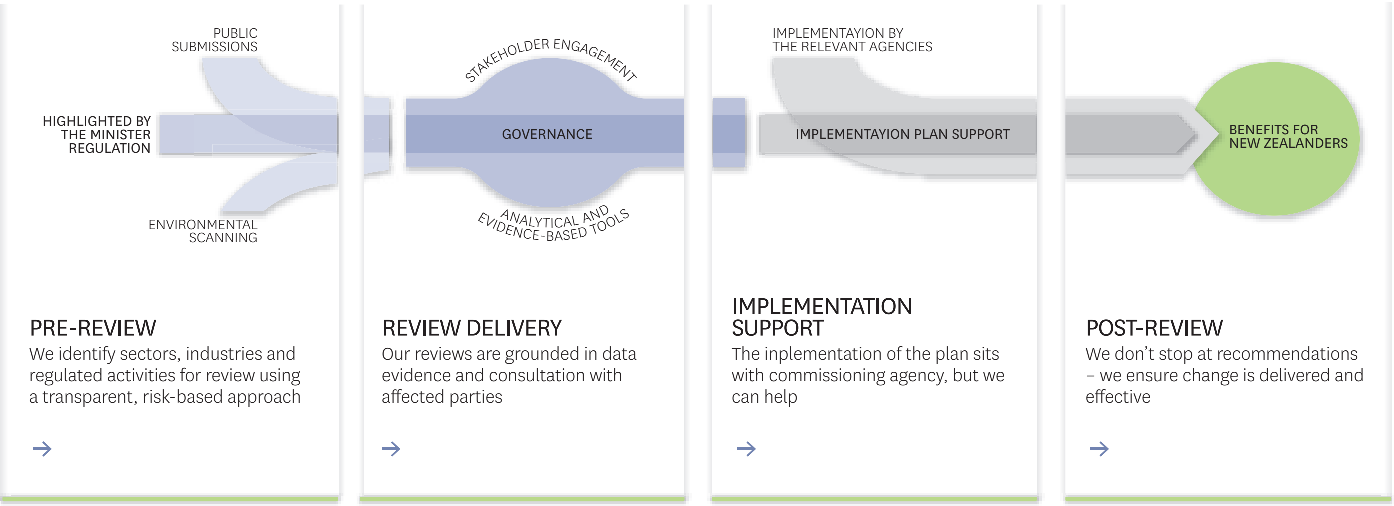
There are four types of regulatory review:

- whole sector: e.g., early childhood education sector;
- whole industry: e.g., hairdressing and barbering industry;
- a regulated activity: e.g., agricultural and horticultural products approval process.
- system focus: e.g., product labelling, which cuts across sectors and industries.

How the agricultural and horticultural products review was conducted

The review unfolded over three phases. The first was diagnostic, where we undertook a stocktake of statutes, decision nodes, queues/time frames, international comparators and historical knowledge. The second was engagement and analysis. We received 84 submissions and held multiple workshops/meetings with agencies, industry and experts; economic modelling was commissioned (from Sense Partners) to estimate productivity gains from faster access. The ministry worked closely with core agencies (the Ministry for Primary Industries (MPI),

Figure 1: The Ministry for Regulation review process



Ministry for the Environment and the Environmental Protection Authority (EPA)) throughout the review. It was supported by a sector reference group, which had membership from across product user groups, and a senior officials advisory group.

Our final and third phase was compiling a final report with recommendations and a roadmap which was presented to Cabinet, which endorsed the full set of 16 recommendations.

How does Ministry for Regulation work differ from Productivity Commission inquiries?

Ministry for Regulation reviews differ in important ways from those that were undertaken by the Productivity Commission. The reviews are similar in that they are independent, evidence-based and objective. However, the purpose, timing and role of the reviews are different.

Productivity Commission inquiries typically ran for around 18 months. They were designed to inform and stimulate public debate, with findings often considered by Cabinet as part of broader policy deliberations. In this sense, they tended to mark the start of a conversation about reform. Ministry for Regulation reviews, by contrast, are more targeted and time-bound, typically taking only six months and designed to deliver change.

What enables Ministry for Regulation inquiries to drive change?

The experience of the agriculture and horticulture review and other reviews undertaken by the Ministry for Regulation indicates that the distinctive contribution of Ministry for Regulation inquiries is not any single analytical tool or process. Rather, it is a combination of institutional position, mandate and delivery focus.

First, Ministry for Regulation reviews are undertaken with a clear mandate for change already in place. Unlike earlier inquiry models, which were often designed to inform debate, Ministry for Regulation reviews are commissioned on the basis that a problem exists and that reform is expected. This shapes both the scope and the pace of the work. It allows effort to be directed towards identifying implementable solutions, rather than establishing whether change is needed. In practice, this means that engagement, analysis and recommendation development occur alongside implementation planning, rather than as sequential steps.

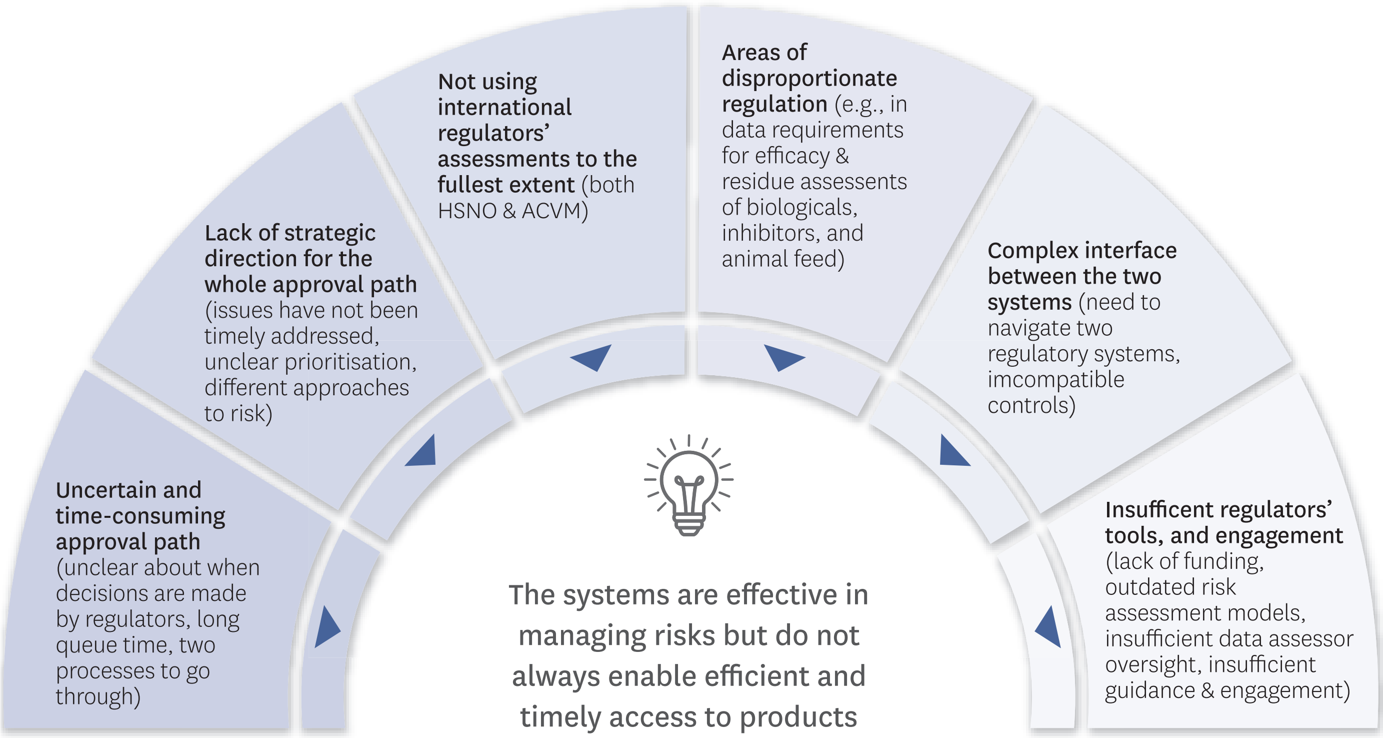
Second, the ministry's position as a central agency enables a whole-of-system perspective that is difficult to achieve through line agency-led reviews. Many regulatory problems arise not within a single statute or organisation, but at the interfaces between them. In the agriculture and horticulture case, the approvals pathway spanned two regulatory regimes and multiple agencies, with delays and inconsistencies emerging at these handoffs. The ability to map the system end to end, and to work across institutional boundaries, was a key enabler of reform. This convening role also supported more productive cross-agency discussion about trade-offs, particularly where objectives relating to safety, speed, environmental outcomes and innovation intersect.

Third, Ministry for Regulation reviews combine independence with proximity to decision making. Being separate from line agencies responsible for the regulatory systems under review helps to create space for challenge, particularly where there are established practices or incentives that favour the status quo. At the same time, the Ministry for Regulation operates within the system, working closely with agencies and ministers. This allows recommendations to be tested for feasibility as they are developed and supports faster translation into Cabinet decisions and operational change.

Fourth, the inquiry model places a strong emphasis on delivery. Reviews are time-bound and structured around producing a set of recommendations that can be implemented in practice, often with indicative roadmaps, sequencing and performance measures. This contrasts with more open-ended inquiry processes, where the pathway from recommendation to implementation can be less defined. In the agriculture and horticulture review, early improvements in queue management and time-frame performance were achieved alongside the development of longer-term legislative and system changes, illustrating how analysis and delivery can proceed together.

Formal analytical tools, including cost–benefit analysis, are used where they add value, but they are complemented by system mapping, stakeholder engagement and international comparison. This combination is particularly important in small and complex systems, where data may be incomplete, and where understanding lived

Figure 2: Issues with the approval path for agricultural and horticultural products



experience – such as how approval processes operate in practice – can be as important as formal modelling. The ability to triangulate across these sources helps to identify issues that may not be visible through any single lens.

Finally, it is important to acknowledge that this model also involves trade-offs. Time-bound reviews can constrain depth in some areas, and a centralised approach may weaken line-agency ownership if not carefully managed. Addressing this requires deliberate collaboration, testing of findings and shared ownership of solutions.

Taken together, these features explain the model's ability to deliver cross-system, time-sensitive reforms.

Findings: What was working and what was broken

Overall, the review found that the existing regulatory systems were effective in managing risks to human, animal and plant health, trade, agricultural security (biosecurity) and the environment. However, it found that there were some material issues to address.

Long and uncertain approval times

The review found that introducing a product with a new active ingredient could take up to 5.6 years, reflecting process duplication and interface inefficiencies across the ACVM and HSNO Acts. A significant portion of this time frame was attributed to the EPA's waiting list, highlighting the need for targeted changes to effectively reduce the queue.

Lack of strategic direction for the whole approval path

The approval path was split across two regulatory systems and needed strategic oversight to ensure it remained effective, proportionate and responsive to changes. Strategic direction would be best supported by proactive industry engagement.

Insufficient leverage of international decisions

Regulators did not consistently use trusted overseas assessments to avoid relitigation of risk where appropriate, which increased the difficulty of obtaining approvals. In a small market like New Zealand, geographically distant from manufacturing bases, this increase in difficulty mattered acutely.

Opportunities for efficiency with a more risk-based approach

A greater proportion of low-risk applications could be triaged to proportionate pathways (e.g., HSNO rapid routes, ACVM registration exemptions, self-assessable changes), allowing faster access to products without materially changing risk outcomes.

Insufficient regulator resources, tools and engagement

- HSNO technical models needed modernisation. Stakeholders and ministers noted the need to upgrade ecotoxicological risk assessment models to contemporary scientific standards to improve both timeliness and quality of decisions.
- HSNO emergency approvals were not used as envisaged. Emergency provisions, important for biosecurity responses, were underutilised due to design frictions.
- The ACVM independent data assessment framework needed to be strengthened. Industry sought more oversight to ensure the quality of assessments and avoid duplication.
- Regulatory functions should be adequately funded. Funding came from both the Crown and regulated parties through fees and levies. The review independently assessed the regulators' cost-recovery levels and reflected industry's concerns that cost recovery should be transparent, which would

lead to improvements in product assessments, and that industry funding should be efficiently used.

Recommendations: A blueprint for change

The review's recommendations were grouped into four pillars, each with implementation steps and performance measures.

Consolidation and clarity

Legislative changes should be made to streamline HSNO and ACVM approvals, clarify interfaces, and authorise faster routes where risks were well understood. Some opportunities the review identified include combined guidance and process maps, joint pre-application meetings with both regulators, and staff members who are a first point of contact to provide initial guidance for both regulatory systems.

Risk-based regulation and triage

The review recommended greater use of rapid HSNO pathways; ACVM registration exemptions and self-assessable changes for appropriate cases; and prioritisation frameworks to manage queues.

Adaptive standards and international leverage

The review recommended the use of trusted international regulators' assessments where appropriate to save time; updating HSNO risk models; strengthening the ACVM independent data assessment framework; and enabling adaptive technical standards responsive to science and market changes. Recommendations included more frequent training workshops and more active management of independent data assessors; prioritising engagement with international regulators to support harmonisation; and consideration of whether existing international risk models can be adapted for New Zealand's climate.

System leadership, transparent performance and effective industry engagement

The review recommended establishing a Sector Leader Forum to improve engagement and collaboration between regulators and regulated parties. This forum was expected to improve strategic direction and transparency of regulators' performance. This aligns with the review's recommendation that the regulators explore a strategic priority pathway to ensure that the products that are needed the most are not held up by the existing first come, first served queue.

Modelling by Sense Partners suggested that halving approval times would generate benefits to the New Zealand economy with a net present value of around $272 million over 20 years. This supported the case for triage and the greater use of international risk assessments.

One year on: tangible results

With Cabinet decisions in place and agencies mobilised, the early outcomes are encouraging.

Queue and time-frame performance

ACVM registration approvals meeting 40 working day statutory time frames rose from 74% to 91% during 2024/25 (acknowledging variation for complex/novel compounds). ACVM met the 20% queue reduction target in June 2025, with a 30% reduction target set for June 2026. HSNO queues reduced 29% in 2024/25, with targets set for further improvements (37.5% queue reduction) in 2025/26 as additional staff are taken on and begin to work on more complex applications. In practice, reducing queue times required both process changes and additional resourcing; neither was sufficient on its own.

Operational upgrades

The EPA moved to prioritise and resource hazardous substances applications; risk model upgrades were funded and work planned (a new bird-risk calculator tool is now publicly available to improve some HSNO assessment processes). MPI's New Zealand Food Safety unit improved triage and time-frame performance, including progressing work to increase the use of exemptions and self-assessable changes. Work has also started on strengthening the external data assessor framework, with stakeholder engagement undertaken in March 2026. The two regulators are working closely together to improve the interfaces between the two systems. They are also strengthening their partnership and collaboration with international counterparts for efficiency gains.

In November 2025, MPI and the Australian Pesticides and Veterinary Medicines Authority signed a refreshed memorandum of understanding. Under the agreement, the two agencies are working together on maximising the use of each other's assessments, cross-training staff, and increasing the efficiency of regulatory processes.

> The performance of domestic regulatory systems does not operate in isolation. In sectors such as agriculture and horticulture, global market dynamics play a significant role in shaping outcomes ...

Clarity and confidence

The Sector Leaders Forum is meeting every quarter to discuss systemic matters, including regulators' performance improvements. Industry feedback (from this forum and other engagement channels) has reflected improved transparency, and the distinction between domestic process improvements and global corporate rationalisation. This clarity helps avoid misattribution of plant closures or portfolio shifts to local regulation when the drivers are international.

International consolidation and context

The performance of domestic regulatory systems does not operate in isolation. In sectors such as agriculture and horticulture, global market dynamics play a significant role in shaping outcomes, including product availability, investment decisions and the pace of innovation.

The review found that global factors, including industry consolidation, portfolio rationalisation and changing investment strategies, play a significant role. These dynamics occur across jurisdictions and can affect product availability regardless of domestic regulatory settings. Distinguishing between these drivers is critical for effective policy design. Over-attributing outcomes to domestic regulation risks misdirecting reform efforts, while recognising global dynamics helps target improvements more precisely.

The review's focus – proportionate risk management and adaptive standards – is about ensuring that, whatever global companies decide, the New Zealand system does not add unnecessary time or cost and does facilitate timely, safe access for growers.

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Lessons for future reforms (and for small, high-trust democracies)

Lesson 1: System stewardship requires delivery, not just diagnosis

Experience from the agriculture and horticulture review suggests that the value of a review lies as much in the content and development of the final report as in what follows. Identifying and quantifying potential actions – including targets, resourcing decisions and performance measures – helps to ensure that recommendations translate into change. In this case, improvements in queue management and time-frame performance were achieved alongside the development of longer-term reforms, reinforcing that stewardship is an ongoing process rather than a one-off exercise.

Lesson 2: Risk-proportionate design enables both speed and assurance

A key insight from the review was that delays were not evenly distributed across the system. Significant time was spent processing low-risk or well-understood applications through full assessment pathways. Introducing more proportionate triage – including exemptions, rapid pathways and greater use of existing data – created scope to improve timeliness without materially changing risk outcomes. This suggests that, in practice, speed and safety are not always in tension if effort is targeted more precisely. The *OECD Regulatory Policy Outlook* (OECD, 2025) emphasises risk-based approaches to improve enforcement and innovation readiness – consistent with the Ministry for Regulation's approach.

Lesson 3: In small markets, international leverage is essential, but not sufficient on its own

New Zealand's scale and distance from major markets shape both regulatory challenges and opportunities. Greater use of trusted international assessments can reduce duplication and improve access to products. However, the review also highlighted that international alignment needs to be supported by domestic system capability – including clear pathways, updated risk models and sufficient resourcing – to translate those opportunities into actual improvements in access and timeliness.

Lesson 4: Diagnosis needs to distinguish system issues from global dynamics

Stakeholder concerns often focused on declining product availability or delayed access. The review found that these outcomes were influenced not only by domestic regulatory processes but also by global industry consolidation, portfolio rationalisation and firm-level strategy. Distinguishing between these drivers was important in shaping an effective response. Without this, there is a risk of over-correcting domestic settings in ways that do not address the underlying issue.

Lesson 5: Engagement improves the quality of both diagnosis and solutions

Structured engagement with industry, regulators and other stakeholders played a critical role in identifying issues that were not visible through formal data alone, particularly at system interfaces. It also helped test the feasibility of proposed changes and build shared understanding of trade-offs. Importantly, engagement did not end with the report; ongoing forums and feedback loops have continued to support implementation and system improvement.

Practical next steps

For regulators:

- continue queue reduction targets and publish performance dashboards;
- institutionalise international assessment leverage (mutual recognition/use of trusted dossiers);
- complete risk model upgrades and establish an ongoing technical standards refresh cycle;
- collect and check the experience of regulated parties.

For industry:

- use clarified self-assessable and exemption routes for low-risk changes;
- provide complete and high-quality data up front to speed assessments;
- avoid misattributing global rationalisation to New Zealand

regulation; focus submissions on specific, fixable domestic frictions.

For policymakers:

- maintain and deliver regulatory stewardship improvement and regulatory capability uplift;
- track outcomes against economic modelling assumptions (e.g., realised time savings versus projected financial benefits);
- apply this inquiry model to other sectors where dual systems and small-market dynamics hinder innovation and access.

A final word

This programme shows how a small, high-trust democracy can deliver meaningful regulatory reform by combining system-level analysis with a strong focus on delivery.

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Aisling Gallagher, Mary Breheny, Deanna Haami and Susan Prentice

The Childcare Policy Gap Affecting Low-income Families

Engaged in Non-Standard Work in Aotearoa New Zealand

Abstract

Non-standard and atypical labour is on the rise internationally, fuelled by the proposed economic benefits of a highly flexible, 24/7 workforce. Although many non-standard workers are middle-class professionals, international research suggests that non-standard labour is growing predominantly in low-wage sectors. This article explores the growth of non-standard employment in Aotearoa and considers the pressures that are placed on households to manage their childcare responsibilities around this mode of work. In particular, we highlight how challenging it is for households to access the formal childcare sector while working non-standard hours. We suggest there is a growing policy gap around the childcare needs of non-standard workers. We conclude by arguing that working households in Aotearoa are being differentially affected by unequal access to formal childcare, at a time when its importance for household financial stability has reached critical international awareness.

Keywords non-standard work, childcare policy, low-income families, informal care

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Non-standard and atypical labour is on the rise internationally, fuelled by the proposed economic benefits of a highly flexible, 24/7 workforce. Non-standard employment can be defined as scheduled paid work conducted outside 'normal' working hours (i.e., weekend, evening and night work) and can be further categorised into temporary and part-time work, and work involving multiple parties (e.g., agency work). Alongside non-standard labour, there has been a rise in atypical labour, which is less clearly scheduled and is characterised by a heightened level of insecurity in terms of the available hours and conditions. Currently, it is estimated that almost a third of employed adults in Aotearoa New Zealand regularly work outside the hours of 7am–7pm, Monday to Friday (Statistics New Zealand, 2018a), with non-standard work increasing more quickly than standard employment in the last 20 years (Ewertowska, 2020). This move away from standard working hours has placed largely unacknowledged pressure on many families to meet their care and family life responsibilities.

International research has emphasised the growing importance of accessible and affordable childcare services for household financial stability (Devercelli & Beaton-Day, 2020; Benison & Sin, 2023; OECD, 2018). As parents are increasingly expected to engage in the productive economy, policy interventions are urgently required to meet a widening care deficit for these households (Dowling, 2021; Samman & Lombardi, 2019). Yet, as a policy issue, the scheduling of childcare around non-standard employment has remained largely unaddressed in current 'family friendly' policy in Aotearoa, with most childcare supports tailored towards the typical working day. Considering the changing nature of work for many households across Aotearoa, the aim of this article is to examine the childcare policy gap for low-income families who are engaged in employment 'round the clock'. While this is not a new policy concern (see Callister & Singley, 2004; Fursman & Zodgekar, 2009; Moss, 2009: Ministry of Social Development, 2011), recent work has been limited. By reactivating this field of research, we hope to raise awareness of the differential impact on households in Aotearoa of unequal access to formal childcare supports.

> Research with low-income workers has shown that increased flexibility accords disproportionate power to employers to hire and fire staff in response to economic demand, suppresses wages and employment benefits over time, and overall leads to a casualisation of labour for many …

This article draws on secondary sources on the growth of non-standard work and related challenges of work/life reconciliation, coupled with an overview of the current early childhood education and care provisions in Aotearoa, with a particular focus on hours of available and funded provision. We adopt a feminist political economy lens which focuses attention on the relationship between economic restructuring and family life, and argues for childcare to be viewed as a crucial social infrastructure underpinning economic activity (Foundational Economy Collective, 2022) rather than a privatised resource to be managed at the individual household level.

The growth of non-standard and atypical labour

The extent to which 'standard work' (i.e., Monday to Friday between 7am and 6pm and comprising a 40-hour week) characterises the labour force experiences of most workers in advanced economies is diminishing. Within advanced capitalist economies of the global north, non-standard, part-time and temporary labour has proliferated at pace since the end of the 1990s. The Fordist social compact and the related male-breadwinner household model has been overtaken across much of the global north by the ascendency of neoliberal ideology, bringing an emphasis on flexible labour and a liberalisation of employment relations (Barratt et al., 2020). Today, temporary work, part-time work and self-employment represent a third of all employment in OECD countries, and half of new jobs created since the 1990s have been in one of these three categories (Schoukens & Barrio, 2017). Although many non-standard workers will be middle-class professionals (e.g., nurses, police), a 2016 International Labour Organization study (ILO, 2016) highlighted that non-standard labour is found predominantly in low-wage sectors: the cleaners, carers and retail workers who gained short-lived public visibility during the Covid-19 pandemic.

In step with international trends, Aotearoa has seen growth in non-standard work since the 1980s. This change occurred in line with the expansion of service sector employment, coupled with the deregulation of the economy and the introduction of labour policies like the Employment Contracts Act in 1991 (Anderson, 1991). Intended to make the labour market more responsive to external economic drivers, policies like these had the effect of labour 'liberalisation' in order to increase economic competitiveness. In particular, changes such as the removal of penalty pay rates for weekend work and the diminishing power of the unions undermined workers' ability to be adequately compensated for non-standard hours (Morrison, 2004). A 2018 Statistics New Zealand study of working life noted that a third of workers are now employed at non-standard work times and that two out of ten employees work in jobs where their hours change to suit their employer's needs (Statistics New Zealand, 2018a). This employment hyperflexibility is most prevalent in the hospitality, food, care and service sectors. A Productivity Commission report in 2021 found that New Zealanders were working longer than the OECD average, with one of the outcomes being less time spent with families and communities (Productivity Commission, 2021).

For some economic commentators, these changes in labour relations purport to offer advantages to employees in terms of work/life reconciliation, whereby employees have the opportunity to negotiate alternative working arrangements to suit their diverse family lives (OECD, 2016). Despite such optimism, other research suggests that the employee benefits of such workplace 'flexibilisation' have not been equally experienced, with middle-class professionals most readily advantaged with work-from-home entitlements (Kossek & Lautsch, 2018). Research with low-income workers has shown that increased flexibility accords disproportionate power to employers to hire and fire staff in response to economic demand, suppresses wages and employment benefits over time, and overall leads to a casualisation of labour for many (Bernsten, 2019). Today, one in ten New Zealanders are multiple job holders, often cycling between paid employment and welfare support (Welfare Expert Advisory Group, 2019). Research by the Ministry of Business, Innovation and Employment (2022) suggests that workers with multiple jobs are most likely to also be non-standard workers.

Mirroring international patterns, women, young people and migrant workers are overrepresented in the ranks of non-standard and atypical workers in Aotearoa (Ewertowska, 2020; Tanimoto et al., 2021). In the last decade the number of female night shift workers has increased at twice the rate of their male counterparts (Statistics New Zealand, 2018a), leading some to highlight that the growth in non-standard labour has gone hand in hand with the feminisation of the labour force. This is further evidenced by the growth in highly feminised areas of employment, particularly in hospitality, social care and retail work (Manatu Wāhine, 2025). While some argue that women, especially mothers, benefit from the flexibility afforded by non-standard and part-time hours which can be fitted around their family life (Bunning & Pollmann-Schult, 2016), this is more likely the case for middle- and higher-income earners. For those at the lower end of the income spectrum, this element of 'choice' in the labour market is highly circumscribed. Taking part-time or non-standard work is more likely a consequence of inequities in the distribution of unpaid labour at home (Deloitte, 2021), coupled with the continued high cost of childcare in Aotearoa.[1] Moreover, the likelihood of engagement in non-standard employment is further intersected by ethnicity. In Aotearoa, Māori and Pasifika households are disproportionately represented amongst those who work in non-standard and increasingly precarious employment (Rua et al., 2023). Processes of colonisation which have undermined access to higher education and limited career progression for Māori women mean they are more likely to be underemployed or engaged in low-wage employment (Stubbs et al., 2017). Recent research by BERL (2024) suggests that 43% of Māori women are employed in the service sector, and they earn 20% less on average than other women in Aotearoa.

> The increasing expectation that women engage in paid employment has resulted in less time to meet childcare and other social reproductive responsibilities, culminating in what many have called a 'care crisis'

The ongoing decline in the quality of the working lives of non-standard employees has been overlooked (Bernsten, 2019; Groot et al., 2017; ILO, 2016). The shift away from standard forms of work has also resulted in a reduction in associated social security for employees, with less sickness benefit, annual leave and other kinds of in-work supports which are crucial for balancing work and family life (Cazes et al., 2022). New Zealand research suggests that non-standard workers' earnings are consistently lower than those of permanent employees, and they are the first to be made redundant or have hours reduced in an economic downturn (Bernsten, 2019; Pacheo et al., 2016). This instability compounds as New Zealanders face 'unusually large falls in income compared with other OECD countries in the event of a job loss' (Productivity Commission, 2019). Combined, this employment and income insecurity means that low-income workers experience economic pressure to take work when it is available; the financial insecurity of low-income households is the basis of their labour engagement in the 'flexibilised' economy. When work takes such precedence, childcare supports become crucial for household economic viability.

Early education and childcare supports for working families

As our working lives move increasingly outside the standard working day, for many the alignment of childcare needs is diverging from the current formalised support systems. Today, the male breadwinner/female caregiver model has given way to a 'universal worker' model: a political and social arrangement which obscures social reproductive responsibilities in favour of productive activity, and places work participation expectations on all citizens (Fraser, 2015). Departing from the Fordist social compact where mothers were engaged in home-based household labour, we have now reached a juncture where to be a 'good' mother is to be an economically engaged mother outside the home (Adkins, 2012).[2] As the cost of living rises in Aotearoa (Statistics New Zealand, 2022), women, especially in lower-income households, are taking on yet more employment in the productive economy to keep the household financially stable (Carroll, 2022). The increasing expectation that women engage in paid employment has resulted in less time to meet childcare and other social reproductive responsibilities, culminating in what many have called a 'care crisis' (Chatzidakis et al., 2020; Dowling, 2022).

In response, there is a growing political acceptance that outsourced, non-familial[3] childcare is now a crucial, infrastructural part of our society and economy (Pennerstorfer & Neumayr, 2024). With this acceptance has come the recognition that as a key social service, childcare needs to be both provided collectively and made accessible (in cost and availability) for households (Rostgaard, 2018). As a result, international expenditure on early childhood education and care (ECEC) has increased steadily since the 1990s across the OECD. This spending has been politically motivated by an understanding that as a 'social investment', ECEC provision can offer a single policy response to a range of social and economic issues (Adamson & Brennan, 2014; World Bank, 2024), including gender equality, household financial resilience, childhood educational disadvantage and, more recently, demographic sustainability in the face of diminishing birth rates (Britto, 2015). For many countries, like New Zealand, this investment has been prioritised towards expanding ECEC services, rather than 'childcare' as such. This differentiation places primary emphasis on the educational advantages of good quality, accessible early education for young children in the first instance over the workforce benefits for families which may be accrued (Ministry of Education, 2019). In line with international trends, government expenditure on ECEC services in Aotearoa has increased markedly over the last 20 years to approximately NZ$2.8 billion in 2025, a figure which sits just below the OECD average as a percentage of GDP (OECD, 2024). As a result, just over 70% of children aged five and under are now enrolled in government-subsidised ECEC services.[4]

Government funding for early education began in earnest in Aotearoa in the late 1980s, when the fourth Labour government introduced a bulk funding system to support early education providers (May, 2009). With seven different kinds of services offered, some ranging from sessional part-time hours to full day care, the supply-side bulk funding system sought to support a diversity of services, many of which were already longstanding initiatives in Aotearoa.[5] While a detailed history of the ECEC system is beyond the scope of this article (see May, 2009; Gallagher, 2022), there are two key points which are pertinent in relation to the emerging policy gap for non-standard workers. Funding since the 1980s has been mostly directed by an educational rather than a social or family policy portfolio, which has historically shaped how funding is provided within the system. As ECEC (rather than 'childcare') funding, there are stipulations set by the Ministry of Education around the way this financial support is accessed by providers and parents in the interests of young children. Consequently, funding is primarily available for services that are licensed to offer subsidised early education hours. Apart from a relatively small number of home-based care providers,[6] most licensed services in Aotearoa are centre-based and only cater to the standard working hours of 7am–6 pm, Monday to Friday. Even if the work hours of non-standard employees overlap with ECEC centre hours, most centres will prioritise enrolment of children with stable full day care needs rather than families with flexible and changing schedules (Duff, 2022b; Gallagher, 2022). Based on an impetus to invest in preschool education, in addition to bulk funding, children three to five years old are in receipt of a higher funding payment, the 20 hours early childhood education payment, which fully covers the cost of care for up to 20 hours per child per week. However, services can only use six of those 20 hours per day (Ministry of Education, 2024). For most working parents, their employed hours considerably exceed six hours a day or 20 in a week, meaning that for many the remainder of time in ECEC remains paid for out of pocket.

> Despite the extended [early childhood education and care] system and the steady increase in government funding since the 1980s, the only source of funding specifically targeting non-standard workers is the flexible childcare assistance scheme.

Outside of bulk funding to services, other sources of funding have been made available to parents through the Ministry for Social Development as an in-work or training benefit. However, these benefits are also to be used within the existing licenced ECE sector.[7] The childcare subsidy for low- and middle-income working families covers nine hours per week for parents who are not studying or working, and up to 50 hours for parents in work or study, up to a maximum of $319 per week for a family with one child (Work and Income, n.d.a). For parents under 20 years of age, there is a guaranteed childcare assistance payment to aid reintegration into work and training. Most recently, the Family Boost tax rebate (introduced in 2024) offers a maximum 40% tax rebate to working families on the cost of their childcare, up to a maximum income cap of $230,000.[8] However, these supports can only be claimed against registered early education providers, the majority of which currently do not offer long-hours services. For school-age children the situation is the same. Children under 14 are eligible for before- and after-school OSCAR (out of school recreation and care) payments for 20 hours a week during the school term and 50 hours during school holidays. Again, this support is to be used with registered care providers, which only operate to the standard working day.

Despite the extended ECEC system and the steady increase in government funding since the 1980s, the only source of funding specifically targeting non-standard workers is the flexible childcare assistance scheme. This scheme sits apart from the early education-funded system which most families rely on for their non-familial care, and is intended to contribute to the cost of alternative arrangements for those with non-standard childcare needs. The scheme aims to financially compensate for care given by family members, friends and informal childminders. However, in contrast to the significant funding for the formalised ECEC sector, this scheme contributes $64 per child for one week, up to a maximum of $192 for a family.[9] The scheme makes explicit that families are primarily responsible for organising appropriate care for their children (Work and Income, n.d.b), assuming that non-standard workers do have informal childcare arrangements to draw on.

Finding continuous childcare support for non-standard work patterns thus remains almost impossible without significant financial resources to pay for regular, outsourced home-based childcare or without reliable informal care networks. Moreover, with non-standard working schedules, it is very challenging to access the formalised ECEC services within the existing system in Aotearoa. We suggest that this difficulty in accessing formal ECEC support contributes to new forms of economic inequity between households based on their hours of employment.

... the latest Growing Up in New Zealand study data has highlighted the importance of extended, non-parental relationships for Māori and Pasifika children ...

The challenges of managing non-standard work and informal childcare

Previous research conducted in Aotearoa on non-standard childcare needs has drawn attention to the diverse ways families establish informal childcare resources around their working lives (Moss, 2009; Ministry of Social Development, 2011). This topic has received more recent attention in international literature in response to changing workforce needs. Research suggests that in the absence of access to formal ECEC and without financial resources to afford regular in-home care options, non-standard workers meet their childcare needs through a host of stitched-together arrangements. These include tag-team parenting around work, drawing on family and kin, or using paid informal sources such as babysitters (Gerstel & Clawson, 2018; Richardson et al., 2023). Families employ a patchwork of these options across the formal and informal sector over a given week (Kim & Liu, 2021; Peltoperä & Moilanen, 2024). Although some economic research has argued that tag-team parenting around work has the potential to offer better work–life balance, save on childcare costs, and increase time for fathers to be more involved in household labour (Hattery, 2001; Molina, 2021), other studies have been less optimistic. Evidence from child and family researchers suggests that tag-team parenting leaves little opportunity for families to be together, and over time this parenting arrangement can create significant spousal and relationship stress within households (Luhr et al., 2022). Research on the impacts of non-standard employment for household relations have also highlighted the potential negative social, emotional and cognitive implications for children (Li et al., 2014; Strazdins et al., 2006).

Scheduling informal childcare around work involves time-consuming emotional labour, usually conducted by mothers, to keep household economies stable (Breitkreuz et al., 2021). These informal arrangements reflect a complex 'web of time' (Gerstel & Clawson, 2018) around work and care life, whereby any level of variability can have a cascading impact on the wider household. Acknowledging the ongoing gendered dimensions of social reproductive labour, mothers are more likely than fathers to miss work due to a breakdown in informal care arrangements (Richardson et al., 2023; Sin, 2022). To minimise this risk and establish some ongoing childcare stability, low-income and especially single parents rely heavily on grandparent help as a replacement 'family anchor' (Kim & Liu, 2021; Statistics New Zealand, 2017). In such cases the apparent benefits of the continuity of care offered by grandparents serves to also shift the social demands of workplace flexibility intergenerationally (Tarrant, 2010). These arrangements are enabled by culturally diverse family and whānau structures, such as living in intergenerational households or with extended family, which is more common among and often more valued by Māori and Pasifika families (Kukutai et al., 2020). Indeed, the latest Growing Up in New Zealand study data has highlighted the importance of extended, non-parental relationships for Māori and Pasifika children (Growing Up in New Zealand, 2023). Ongoing childcare arrangements can, however, stretch grandparents physically and emotionally (Craig & Jenkins, 2016), often at a time when their health and economic resources are diminishing. Acknowledging this limitation, recent research suggests that familial interdependence comes with unacknowledged non-monetary costs, and that the pressure on relatives and friends to 'help out' creates a complex landscape of reciprocity for families to navigate (Cosson et al., 2021). Managing these relationships over time infuses the informal childcare arrangement with significant precarity for working households, noting that if these arrangements break down there are few childcare options to fall back on.

A lesser acknowledged, but significant source of support for households to rely upon is children themselves (Harknett et al., 2020). Children are deeply implicated in the success of household arrangements of care. International research on child household participation suggests that the extent to which children are involved in household labour is shaped by class, ethnicity and gender. Family income is a predictor of levels of childhood household engagement, such that lower-income families rely on children to meet social reproductive work to a greater extent than higher-income families (Gager et al., 2009). Moreover, children in single-parent households contribute more of their time to housework and care labour than children in two-parent households (Cordero-Coma & Esping-Andersen, 2018). Young women tend to do more than young men, which reflects the typical household gender division of labour (Schulz, 2021). Indicative of this trend, news articles during the Covid-19 pandemic highlighted how Pasifika teenagers in Aotearoa were missing school to care for younger siblings (Franks, 2021), with Pasifika households having the highest proportion of parents in essential work (Meissel et al., 2021). Noting that the home informs most of the beliefs and scripts about our productive and social reproductive lives, understanding how children participate and view their role in low-income households will give important insights into how non-standard work is being normalised.

> Beyond the formal resources which may be offered, research is emerging around the important role informal grandparent childcare may play in relation to the labour participation of mothers in particular …

International responses to the challenge of non-standard childcare

Countries internationally have been grappling with the issue of childcare for non-standard workers, and attempts to address this issue have varied considerably across social policy contexts (Bunning & Pollmann-Schult, 2016; Verhoef et al., 2016). Some governments have sought to adapt their existing publicly funded ECEC system to meet changing family needs, extending the notion of 'flexibility' into care services to match labour market demands. This tends to be most prevalent in social democratic systems where ECEC is publicly funded and provided and where the right of the child to access quality ECEC is legislated for in policy (see Moss & Mitchell, 2024). For example, Danish municipalities are required to make childcare available to suit parents' working needs within their jurisdiction, 24/7 (Larsen & De la Porte, 2022). This support is offered in conjunction with approved, flexible childminders for parents working night shifts. In Finland, flexible ECEC is legislated as part of their publicly funded system and non-standard hours are offered by trained kindergarten teachers (Rönkä et al., 2019). In 2014, 7% of Finnish children attended ECEC outside standard working hours. Yet how young children respond to the extension of non-familial, centre-based care is also an issue which warrants deeper consideration. Research conducted in these contexts suggests mixed findings for young children's social and emotional outcomes. Negative impacts identified include heightened levels of stress associated with erratic attendance and long hours of attendance at non-standard ECEC. Some positive outcomes noted were that children's emotional states could be better after an overnight stay in an ECEC centre, as they were not engaged in a hurried morning rush.

Studies from more liberal welfare contexts, the UK, Canada and Australia, have also offered some important insights into meeting the demand for non-standard childcare, particularly through extending incentives for paid in-home care, such as nannies or family-based daycare (Adamson, 2016; Brady & Cooke, 2016). Traditional associations of childcare with the home have proven hard to shake despite significant professionalisation in the early education sector, and developing a robust and regulated home-based system has been viewed as more palatable for some parenting communities than extending the hours of centre-based care (Adamson, 2016). However, many feminist researchers have raised concerns that the expansion of this largely hidden childcare workforce may introduce additional problems. Affordable in-home care has historically been based on poor working conditions and work–life balance for the carers themselves in an emerging 'grey economy' (Dowling, 2021; Ehrenreich & Hochschild, 2003), again demonstrating the cascading social and economic impacts of facilitating a low-wage, 24/7 economy.

Research on non-standard childcare conducted by Lero et al. (2019) in the Canadian context included unique interviews with non-standard childcare providers themselves, including hospital-based and employer-provided childcare. The researchers identified that where these services were successful, they were based on local initiative and activism around particular childcare needs. They also highlighted limitations, such as the high cost of paying care staff for working non-standard hours and the reliance on sometimes ad hoc and pilot schemes rather than a planned and integrated system like the aforementioned Scandinavian ECEC ones. Ultimately, they found that non-standard childcare needed to be considered and funded as part of a wider ECEC system for it to meet parental needs in a sustained way, and that the interests of the child should be at the forefront of this system. Moreover, their research also signalled that families valued any level of flexibility in attendance times which could be accorded to them within the existing ECEC system, as they wanted their children to also gain the benefits from early education.

Beyond the formal resources which may be offered, research is emerging around the important role informal grandparent childcare may play in relation to the labour participation of mothers in particular (Hamilton et al., 2025). This work suggests the potential for greater recognition of grandparent care labour in policy and funding, as a means of managing the demands of non-standard work. Yet it is important to acknowledge that this work is primarily conducted by grandmothers (Craig & Jenkins, 2016) and likely to be a potential cohort effect of this retirement generation. Current predictions suggest that in future, older women will be less available for childcare responsibilities as they will be engaged in paid employment beyond 65, and that this may be especially the case for lower-income households (Adamson et al., 2026). In addition, research has shown that there is a relationship between grandparent help and socio-economic status, with grandparents from lower socio-economic backgrounds providing more of the 'hands on' childcare (the cooking, school run, etc.) than economically advantaged grandparents (Zanasi and Sieben, 2024). While an acknowledgement in policy of the important role grandparents play in facilitating non-standard working lives would be welcome, an intersectional understanding of how this support could be tailored to different forms of grandparent help, and ultimately who was benefiting from this support, would be needed to ensure optimum policy outcomes for families and children.

Conclusion

The growth of non-standard and atypical forms of labour creates a childcare gap for many families in Aotearoa. Low-income families who are engaged in non-standard, atypical and increasingly precarious work, where employment is taken whenever it is available, are more likely to struggle to meet their childcare needs. These families are also least likely to have the financial resources to access other forms of paid childcare through the market (nannies or in-home carers). The continued assumption of a standard workday in family policy is misaligned with the flexibilisation of the economy. As access to quality and affordable childcare is increasingly recognised as being central to household financial stability, we suggest that the current childcare gap for non-standard workers produces economic inequities between households.

Research into the kinds of strategies families with non-standard work deploy to reconcile their work and care lives demonstrates the potentially cascading impact non-standard employment has on wider family and kin networks. In this article we have brought together international examples of non-standard childcare to show what could be possible, particularly if it is factored into wider ECEC frameworks as part of a publicly funded system. Without a fundamental reconceptualisation of care as an essential social support for working families today rather than an individualised responsibility, the current approach risks exacerbating inequalities for many families and their children.

1 Data suggests that a couple in Aotearoa working full-time with an average income and two young children will pay 23% of their after-tax income towards childcare (OECD, 2022). It is worth noting, however, that the cost of childcare varies across Aotearoa, from $260 to over $450 per 50-hour week (Taunton, 2022). While these statistics have been debated, public and media narratives echo parental concerns that the cost of childcare has become prohibitive for many low- and middle-income households (Duff, 2022a).

2 Yet, despite the political rhetoric around gender equity in Aotearoa, women are still responsible for most of the social reproductive labour (Deloitte, 2021).

3 By non-familial childcare we mean care outside direct familial relations.

4 This statistic varies by age group, with three-to-five-year-olds reaching approximately 90% attendance through receiving higher rates of government funding.

5 Some services have had a variable funding relationship with government, which has undermined their success. For example, kōhanga reo have been undermined through periods of exclusion from key government funding initiatives (Gallagher, 2021).

6 In 2023 approximately 7% of preschool-aged children attended home-based care in Aotearoa (Statistics New Zealand, 2023).

7 In addition, as Sin (2022) notes, many families do not know they are eligible for these childcare supports, and they can be administratively burdensome to access.

8 See Gallagher, 2023 for a review of the problems with tax rebate schemes for childcare affordability.

9 The 'child' must be 13 years or younger to be eligible and there is no income threshold for this payment.

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