

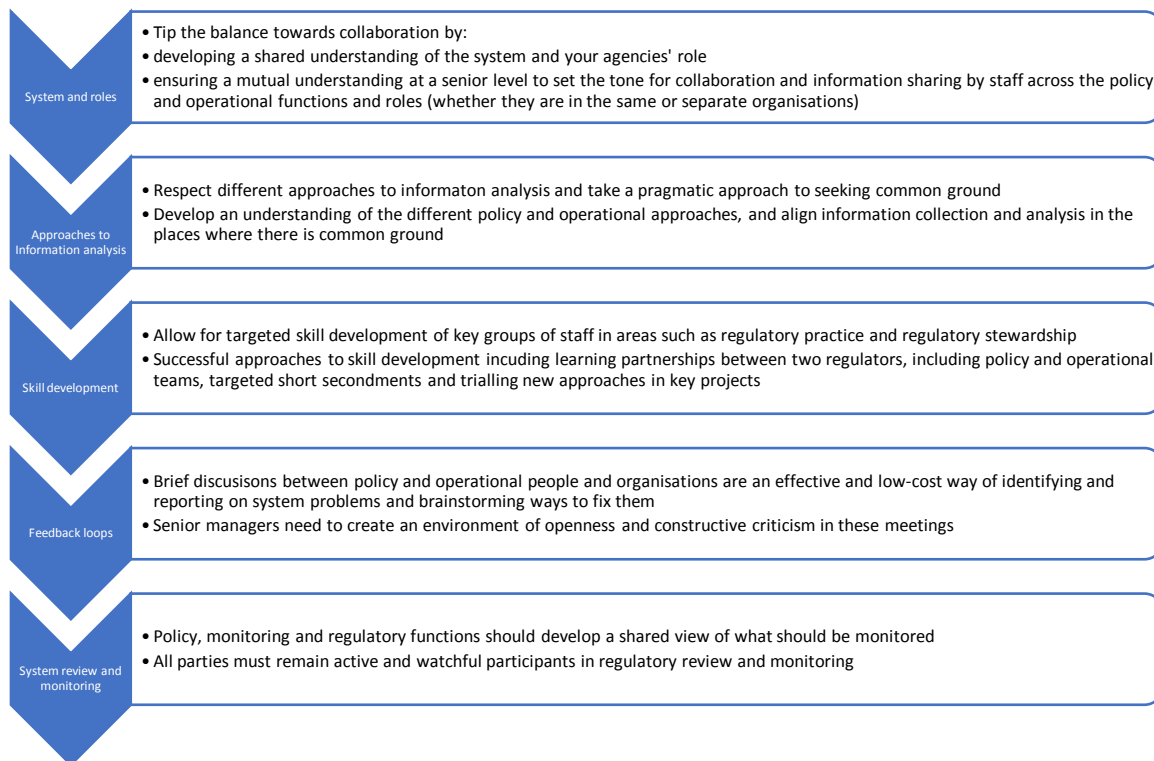
Conditions for Good Regulatory Stewardship

Regulatory stewardship is a responsibility of both regulatory policy and operational functions. It involves adopting a whole-of-system, lifecycle view of the quality of regulation and its implementation, and taking a proactive and collaborative approach to the monitoring and care of the regulatory system(s). Three elements need to be present for Regulatory Stewardship to be successful. Agencies must:



Good Practice steps

These steps assist policy and operational functions to deliver on their regulatory stewardship obligations. They are the “how to” steps for delivering the elements above.



Information about each good practice element

Understand the system and your role

- Tip the balance towards collaboration by:
- developing a shared understanding of the system and your agencies' role
- ensuring a mutual understanding at a senior level to set the tone for collaboration and information sharing by staff across the policy and operational functions and roles (whether they are in the same or separate organisations)

It is critical that all those involved in a particular regulatory system have a shared understanding of the system and the role they play within it.

Many factors impact on the ability to have such a shared understanding. This includes:

- limitations in resources and capability,
- challenges in getting the balance right between a focus on different objectives (e.g. safety and economic performance), and
- accountability requirements which drive a focus on organisational performance, not system performance.

Enabling collaborative efforts increases the ability of policy and operational staff to have a shared understanding of the system and their role within it. Despite the inherent challenges listed above, evidence suggests that mutual understanding is essential to good regulation. Mutual understanding provides the basis for collaboration and information sharing between organisations, functions and roles in the system.

The work of collaboration in relation to regulatory systems is ongoing and does not finish. Mark Hickford says that “[l]egislative stewardship, properly construed, ought to be seen as a constant work-in-progress, incomplete and never a subject of either satisfied complacency or comfort” (‘Situating stewardship in the State sector’, *New Zealand Journal of Public and International Law*, vol. 15, issue 1, June 2017, p. 56).

Approaches to information analysis

- Respect different approaches to information analysis and take a pragmatic approach to seeking common ground
- Develop an understanding of each different policy and operational approaches, and align information collection and analysis in the places where there is common ground

Information is key to understanding system performance. Information about regulated behaviour has a variety of uses. While those with different roles in a regulatory system may agree on the value of information about regulated behaviour, they tend to find it much harder to agree on how to collect, analyse and use such information.

The operational regulator tends to be more reluctant to make broad generalisations about regulated parties than the policy developer. The operational regulator experiences first-hand how diverse the regulated parties are in terms of size, activity, familiarity with regulation, and attitude to regulation. Policy developers have much less direct experience of regulated parties, and need to divide their attention between many regulatory systems, so are not as likely to see the diversity of regulated behaviour in one system.

Despite the different needs and perspectives on the collection and use of information, it is critical that all those involved in a regulatory system form a cohesive view of the kind of information that is needed to monitor and assess the performance of that regulatory system.

Skill development

- Allow for targeted skill development of key groups of staff in areas such as regulatory practice and regulatory stewardship
- Successful approaches to skill development include learning partnerships between regulators, including policy and operational teams, targeted short secondments and trialling new approaches in key projects.

An effective regulator needs to have a range of skills as part of its regulatory practice, including an understanding of people and how they respond to regulation. Stakeholders have different capabilities and attitudes to regulation and this requires regulators to adjust their approaches in order to be effective. These are nuanced skills relating to the ability to make judgements based on understanding what's driving behaviour, uncertain information and the ability to shift between regulatory tools depending on the situation.

One way that the regulator can seek to continue developing skills is through interaction with other New Zealand and overseas policy and operational regulatory people and teams. Examples include a learning partnership with another New Zealand regulator to get another regulator's view of the world and promote diversity of thinking, and short secondments to overseas regulators to get experience in newly developing areas of regulation.

Feedback loops

- Brief discussions between policy and operational people and organisations about regulatory systems are an effective and low-cost way of identifying and reporting on system problems and brainstorming ways to fix them
- Senior managers need to create an environment of openness and constructive criticism in these meetings

Making time for brief discussions about regulatory systems and regulatory approaches can provide effective ways to address system performance and regulatory practice. They are a low cost way to generate system insights, compared to the alternative approach of requiring detailed reports to be prepared, shared and acted on (or not).

A commitment by senior managers to creating an environment of open and constructive reflection facilitates system review and whole of system dialogue. This includes the involvement of senior managers in such system discussions.

Formal reporting has an important role in regulatory systems, not the least of which is providing transparency when the reports are published or released. However, the role of reporting should not crowd out the use of reflective discussions between parties in a regulatory system.

System review and monitoring

- Policy, monitoring and regulatory functions should develop a shared view of what should be monitored
- All parties must remain active and watchful participants in regulatory review and monitoring

Monitoring and review of regulatory regimes is typically undertaken by policy groups, whose resources are limited and can dry up when there are competing calls on the same policy resource. In this context, operational regulators may need to consider new approaches to the monitoring and review of regulation.

In some instances, if policy and operational regulatory functions have a shared view of the system and what should be monitored the review of a regulatory system may be devolved from the policy function to the operational regulatory function. This arrangement can work where the legislation is seen as well-settled and reasonably durable in the face of changes in the regulatory environment, and where the operational regulator has the resources for regulatory monitoring and review.

Even where an operational regulator is involved in monitoring and review, to be a vigilant steward the policy function needs to maintain enough knowledge and experience of the system to be able to judge when there are problems with the legislation. It also needs to ensure it stays flexible enough to quickly devote additional policy resources to the system in periods where active development of regulation is required. Finally, the policy function needs to stay open and attentive to information coming from the operational regulator-as-reviewer, in order to identify when to act.