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imposes direct and indirect costs on those who are regulated and the economy and society generally, can become outdated, and can be driven by ideas and ideologies that do not stand up to 'real world' tests.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,

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like monetary, fiscal and tax policies.

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.

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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 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 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]

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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

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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.

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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