



regulatory reform
programme



Transport Regulatory Policy Statement

Expectations for regulatory development and practice



Ministry of **Transport**
TE MANATŪ WAKA



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1.0 INTRODUCTION

The Government's 2009 statement 'Better Regulation, Less Regulation' makes commitments to:

1. introduce new regulation only when the government is satisfied that it is required, reasonable, and robust
2. review existing regulation in order to identify and remove requirements that are unnecessary, ineffective or excessively costly.

The Transport Regulatory Policy Statement (the Statement) responds to the need to ensure regulation is of high quality and is implemented in a cost effective manner. The Statement provides expectations for best practice regulatory development and implementation including:

- transport sector regulatory policy objectives
- principles guiding the development of regulations and best regulatory practice
- regulatory process accountabilities
- best practice regulatory operations
- on-going monitoring, evaluation and improvement of regulation
- managing international obligations.

The aim of the Statement is not to prescribe in detail how the transport sector develops or implements regulation; rather it provides best practice expectations to guide regulatory activities. Other relevant best practice information can be found in:

- 'Achieving Compliance – A guide for compliance agencies in NZ' (publication of the Department of Internal Affairs)
- the Legislative Advisory Committee Guidelines
- NZ Treasury Regulatory Impact Statement Guidance.



2.0 PURPOSE AND SCOPE OF THE STATEMENT

The purpose of the Statement is to convey expectations of best regulatory practices to the Ministry of Transport (the Ministry) and transport agencies¹.

A number of key terms used in the Statement which are defined in the box below. A clear understanding of these terms and their definitions is helpful in framing the application and scope of the Statement.

Definitions

Regulatory practice is the use of legislative and/or non-legislative instruments to encourage or change behaviour to reduce or avoid safety, security and environmental **harms** or to achieve economic outcomes.

Legislative instruments include primary legislation, secondary legislation (transport Rules and regulations) and tertiary legislation.

Non-legislative instruments include advice, administrative processes, education, incentives, rewards, grants, and voluntary codes of practice and other such instruments.

Harms refer to adverse safety, security or environmental outcomes or the *threat* of these harms occurring.

Regulated entities are people and businesses who are required to comply with legislative interventions such as transport users and service providers

¹ Maritime New Zealand, Civil Aviation Authority, New Zealand Transport Agency



The Statement applies to regulatory practices of the Ministry and transport agencies, whether or not authorised by legislation, and to the development of legislation instruments. The statement is to be read in conjunction with any relevant legislation. It does not constrain the exercise of powers vested by statute where it is clear that they must be exercised in a particular manner, or by a person or the holder of a particular office.

Strategies required to give effect to the Statement should be provided for in the Statement of Intent for the Ministry and respective transport agencies, and where required, reflected in their operating policies and procedures.

The Statement is a living document, which from time to time will be reviewed and updated.



3.0 REGULATORY POLICY OBJECTIVES AND BEST PRACTICE PRINCIPLES

This section sets out transport sector regulatory policy objectives and best practice principles to guide the development of transport Rules and regulations, and regulatory practices.

TRANSPORT REGULATORY POLICY OBJECTIVES

The Ministry of Transport is the government's principal transport adviser, providing policy advice and support to Ministers, including advice on changes to legislative interventions. Through its advice the Ministry aims to:

- improve the overall performance of the transport system
- improve the performance of transport Crown entities
- achieve better value for money for the government from its investment in the transport system.

Legislative mandates govern transport agencies and assign them the aim of achieving or contributing to an integrated, safe, responsive and sustainable transport system. Legislation also provides agencies with a wide range of statutory functions and powers, including regulatory responsibilities, to give effect to these objectives.

Policy Objectives

In developing legislative and non-legislative instruments, and in conducting their regulatory practices, the Ministry of Transport and transport agencies should have the following objectives.

1. Intervene to address safety, security, and environmental harms, and to generate economic benefits; where there are net benefits from such interventions for New Zealanders.
2. Enable innovation where appropriate, allowing regulated entities to choose how best to achieve compliance with transport regulatory interventions.
3. Facilitate productivity and growth by enabling the domestic and international movement of goods, services and people.
4. Implement regulatory interventions efficiently and effectively, including minimising administrative and compliance burdens.



Existing regulatory practices and new regulatory intervention proposals will be assessed on their ability to deliver against the above objectives. They will also be assessed on the extent to which they meet the best practice regulatory principles outlined in the section below.

BEST PRACTICE REGULATORY PRINCIPLES

Best practice regulatory principles are intended to guide the *design* of transport regulatory interventions and the *conduct* of regulatory practices. These principles are set out in the following:

Establish a case for government intervention — Safety, security and environmental risks per se, do not necessarily warrant a case for government action. The costs and benefits of taking action need to be considered.

Transport regulatory activities are risk-based — Risk assessment and empirical enquiry precedes and informs all aspects of regulatory development, design and implementation.

Encourage and reinforce positive behaviour as a first action — Explore measures to positively encourage desired behaviours, prior to considering legal regulation or increased enforcement in any effort to achieve regulatory objectives.

Ensure any intervention is proportional and set at the minimum level needed — The intrusiveness and restrictiveness of interventions should be minimised as much as possible and regulatory burdens should be proportionate to expected benefits.

Flexible and durable — The regulatory regime should be able to evolve in response to changing circumstances. Regulated entities should be provided sufficient scope to adopt innovative and least costly approaches to meet legal obligations.

Certain — Transport regulatory practices should be predictable, providing certainty to regulated entities, and be consistent with other regulatory practices and policies.

Transparent and accountable — The development of legislative and non-legislative instruments, and associated implementation and enforcement approaches, should be transparent to regulated entities.

Review and engagement with regulated entities improves regulatory performance — Regulatory practice should be reviewed in a timely manner, and dialogue with regulated entities should be undertaken to provide feedback to improve regulatory performance.



It is recognised there are potential tensions between some of the objectives and principles outlined above. For example, it will not always be possible to simultaneously achieve desired degrees of certainty and flexibility.

The Ministry and transport agencies should aim to optimise compliance with the spirit of the objectives and principles in the context of the specific circumstances and statutory powers.

Appendix 1 of this Statement contains a more detailed explanation of the principles.



4.0 TRANSPORT LEGISLATIVE INSTRUMENTS

This section of the Statement outlines accountabilities between the Ministry and transport agencies with regard to the development of new or revised transport legislative instruments.

DESIGN OF TRANSPORT LEGISLATIVE INSTRUMENTS

The use of transport legislation may be considered appropriate in situations that include the following.

- The problem has high risks or has significant impacts, for example, a major transport safety issue with potential for injury or loss of life.
- There is a need to implement international obligations to ensure continued international transport access for New Zealand goods, services and the movement of people.
- The efficiency of transport networks could be significantly enhanced or cost recovery is at risk.
- The community requires the certainty provided by legal sanctions to change behaviour.
- There is a need for comprehensive change that applies universally or at least to one or more sectors of the community.
- There is a history of non-compliance, or a failure of non-legislative instruments to change behaviour.

Prior to development of new transport legislative instruments, consideration should be given to the use of potentially less intrusive ways of intervening. Examples of less intrusive interventions are listed below.

- Changes to administrative processes or introduction of rewards and incentives.
- Quasi-regulation (for example, voluntary industry accords, guidelines) instruments that may be given legal weight by the Courts.
- Co-regulation providing for involvement of industry in setting standards
- The use of non-transport sector regulatory practice to achieve the same outcome sought by a new transport Rule (e.g. use of occupation safety and health regulation).



FORMS OF TRANSPORT LEGISLATIVE INSTRUMENT

Transport legislative instruments can take a number of different forms. Some of these forms are set out below.

Principle based — Containing high level qualitative obligations or standards by which entities must conduct their operations, for example, regulatory obligations to take “reasonable care”.

Performance-based — Containing obligations or standards that specify desired outcomes or objectives, but not the means by which they are met.

Process-based — Containing requirements or standards that mandate planning and risk management processes, without necessarily prescribing requirements for equipment or outcomes.

Prescriptive-based — Containing obligations or standards that precisely state what must be done, how, and sometimes, when and by whom.

The forms listed above are not mutually exclusive. Some legislative instruments combine elements of each. High-level guidance as to which forms might be most suitable and when, is set out in Figure 1 on the next page.

The Ministry and transport agencies should give consideration to which of the forms of transport legislation (in Figure 1) will be most appropriate in particular circumstances to best achieve regulatory policy objectives. Consideration should take into account the best practice regulatory policy objectives and principles outlined in this Statement.



Figure 1: Guidance on form of Transport Legislative Instrument

Form	Circumstances where this form may be suitable
<p>Principle-based</p>	<ul style="list-style-type: none"> • It is not possible to precisely measure the regulatory outcomes sought • Circumstances across the regulated activity vary greatly, mitigating against a one size fits all option • Acceptable practice is likely to vary considerably over time (for example, due to changing transport technologies) • Regulated entities are better placed than regulators to determine how best to give effect to regulatory principles in their circumstances • The regulator is well resourced, capable and appropriately incentivised to support, monitor and enforce implementation • Third parties (for example, consumers) have sufficient capability to understand and, where appropriate, monitor and enforce the standards
<p>Performance-based</p>	<ul style="list-style-type: none"> • The regulatory impact is easily and objectively measured, and contained in a performance based Rule or standard • There is a clear link between what is being controlled and the ultimate impact (for example, Vehicle Emission Standards and public health) • Regulated entities are better placed than regulators at determining how best to achieve regulatory outcomes • Competition/innovation is likely to be a key driver of more efficient compliance
<p>Process-based</p>	<ul style="list-style-type: none"> • There are well understood industry best practice process standards (for example ISO quality assurance standards) or best practice manufacturing practices, that can be linked to achieving desired regulatory outcomes, and evolve over time • There is sufficient commonality and shared interests between regulated entities for them to adopt similar best practice quality assurance processes (for example, common machinery maintenance processes) • The complexity of services and products involved means the development of performance-based standards adds unnecessary regulatory burden



	<ul style="list-style-type: none"> • Competition/innovation is likely to be key driver of more efficient compliance
<p>Prescriptive-based</p>	<ul style="list-style-type: none"> • Ambiguity of existing standards could be too easily exploited, for example, by regulated entities doing less than they are required to do to gain competitive advantage, i.e. there is a need to maintain a level playing field • There is little trust in the system, for example litigation risk is high, and entities require a high level of legal certainty for large investments • Standardisation is important for inter-operability or regulatory outcomes, for example disclosure standards to achieve comparability between entities/products (for example, standardised use of vehicles in the transport system) • The regulator is better able to determine how objectives are to be achieved than regulated entities (for example, toxicity standards for fuels), or it may be very costly for each entity to develop such standards • Those being regulated have little capacity to be innovative in their compliance strategies, and prescriptive standards lower administrative and compliance costs • Appropriate practice is not likely to vary much over time with changes in technology

LEGISLATIVE DEVELOPMENT PROCESS ACCOUNTABILITIES

The Ministry and transport agencies are responsible for working together to develop transport Rules and regulations. In doing so, the Ministry and transport agencies must give effect to the partnership principles outlined in the Ministry/Agency Relationship Protocols. These principles affirm that each party will engage to develop enduring and constructive working relationships underpinned by confidence and trust.



The partnership approach recognises distinctive accountabilities between the Ministry and agencies in the development of legislative instruments:

- The Ministry, as the Minister's principal policy adviser, is accountable for the quality of policy development of legislation, including transport Rules and consequential regulations
- Transport agencies are accountable for the operation of transport legislation, and for the *design* of transport Rules to ensure *effective and efficient implementation*

Accountability is distinct from responsibility for specific functions and tasks. The partnership approach underpinning the transport legislative development process provides flexibility so that tasks can be assigned between agencies and the Ministry, depending on available resources and expertise, on a project-by-project basis.

The operation of the partnership approach, and further detail on associated accountabilities of the Ministry and transport agencies, can be found in the Regulatory Development and Rule Production Handbook.

CONSULTATION

Transport legislation requires that before the Minister makes an ordinary transport Rule, he or she must consult with persons, representative groups, government departments, and Crown entities, as the Minister considers appropriate.

Consultation provides a formal opportunity, particularly for those affected by the issue that a proposed Rule intervention seeks to address, to provide feedback. It assists identify:

- whether and how the proposed Rule intervention will work in practice
- expected costs and benefits
- any unintended consequences
- potential modifications to the proposed Rule intervention.

The Minister has delegated to transport agencies the responsibility for Rule consultation.



Transport Agencies are accountable for determining consultation form and duration, in accordance with the consultation guidance provided in the Regulatory Development and Rule Production Handbook.

At all times, consultation should be purpose driven. The consultation document, notification and publication, timeline for consultation, and selection of consulted stakeholders should be relevant to the:

- nature and size of the issue and the Rule amendment option
- breadth and extent of the Rule amendment impacts on the parties affected.

[Comment: Applies to both the original Rule as well as amendments.]



5.0 RISK-BASED REGULATORY PRACTICE

A key component of good regulatory practice for the Ministry² and transport agencies is to maintain and implement risk-based regulatory strategies which:

- outline safety, security or environmental risk problems, issues and priorities
- set out regulatory objectives with regard to addressing problems, issues and priorities and an overall level of acceptable risk
- document planned actions, including the mix of instruments used to achieve objectives
- provide for a graduated risk-based compliance and enforcement approach
- outline the approach to performance monitoring, evaluation, review and improvement.

Risk-based strategies should be guided by the assessment of risks and by the best practice regulatory principles in this Statement. Core components of the strategies should be set out in public accountability documents such as a Statement of Intent.

DEVELOPMENT OF REGULATORY STRATEGIES, PLANS AND ACTIONS

Development of best practice regulatory strategies, plans and actions will:

- provide a rationale for selecting the mix of regulatory instruments that are most effective and efficient in achieving regulatory outcomes
- target and prioritise the investment of scarce resources to achieve regulatory outcomes at least cost to society
- be informed by principles of effective risk management and intervention logic, linking potential regulatory actions to intended outcomes
- be supported by information systems, informed risks and potential impacts associated with activities and the performance of regulated entities in meeting regulatory outcomes
- take advantage of opportunities for coordination with other regulatory agencies in order to lower regulatory administrative and compliance burdens.

² Where the Ministry is responsible for the implementation and/or operation of regulation



The above approach may be formalised into one or more risk-management models.

Decide the level of intervention													
Establish Context		Identify risks	Assess risk					Alternative interventions	Assess risk				Determine intervention required
End outcomes and intermediate outcomes	Objectives and sub-objectives		Controls in place				Alternative intervention tools						Overall conclusion

Source: *Achieving Compliance; A Guide for Compliance Agencies in New Zealand; Department of Internal Affairs; June 2011*

TRANSPORT AGENCY GOVERNANCE OVERSIGHT

Boards have a responsibility for providing governance oversight of the development of regulatory strategies, and monitoring and review of regulatory performance. Proposals for new interventions, including Rules and consequential regulations, should generally be aligned to a transport agency’s regulatory strategy.

Where proposals for new transport Rules and regulations may significantly impact on the transport sector or the wider economy, the Board or its delegate/s should be confident that the problem cannot be more effectively addressed with other interventions available to the agency.

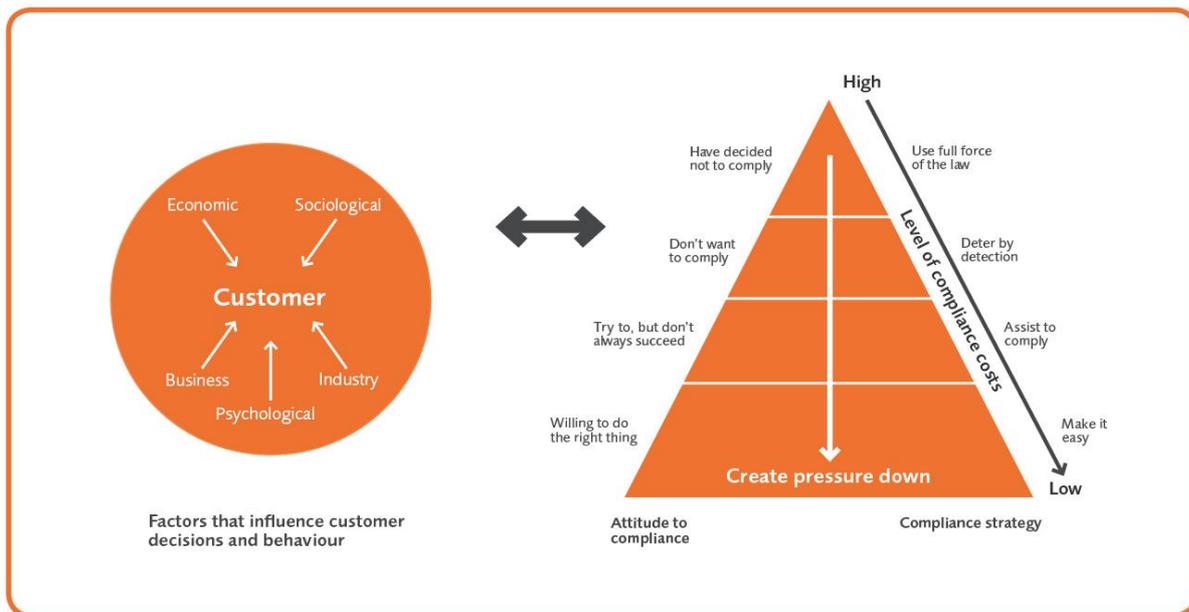
GRADUATED RISK-BASED COMPLIANCE AND ENFORCEMENT

Agencies are responsible for promoting regulatory effectiveness by developing and implementing graduated risk-based compliance and enforcement strategies and policies that:

- are developed in consultation with regulated entities, including those that must administer the regulation or comply with it as appropriate
- ensure clarity and accessibility of the regulatory compliance requirements for regulated entities
- outline methods for facilitating voluntary compliance, including provision of information and ways of facilitating easier compliance by regulated entities
- publish compliance policies, including triggers for taking enforcement actions

- provide transparent timelines and processes for assessing and reviewing compliance by regulated entities, and publish associated performance standards.

The expectation of taking a risk-based compliance approach means transport agencies need to understand their regulated entities (customers) and accordingly tailor their compliance approach to the needs of different regulated entity (customer) segments.



Source: *Achieving Compliance; A Guide for Compliance Agencies in New Zealand; Department of Internal Affairs; June 2011*

MONITORING EVALUATION REVIEW AND IMPROVEMENT (MERI)

Monitoring, evaluation review and improvement (MERI) systems should be embedded in regulatory development and business operations. MERI systems should be implemented in a timely manner, having regard to regulatory risks and burdens, and the age of regulatory stock.

Monitoring and evaluation

The Ministry and/or agencies are to:

- establish measures of regulatory success prior to implementation of new regulatory practice
- establish monitoring and reporting of regulatory practices at the least possible compliance burden to government, businesses, and New Zealanders
- report on and publish the results of monitoring in timely manner to improve regulatory operations.



Subject to the risks, impacts and complexity of the regulatory programs, agencies are to evaluate the:

- effectiveness of their regulatory programmes in contributing to the achievement of reported results, and its alignment to the regulatory principles in this Statement
- efficiency, cost-effectiveness and alignment with best practice principles
- quality of their governance, decision-making and accountability processes, and service standards (for example, timeliness of processing applications etc).

The Ministry and agencies are to provide for, and timetable, MERI systems as part of the annual regulatory planning and scanning processes.

COORDINATION

Inter-agency coordination is not limited to coordination between the Ministry and individual transport sector agencies engaged in the development of transport regulatory practices. Coordination also involves identifying, and consulting with other government departments who have a specific policy or operational interest in a regulatory issue.

Inter-agency coordination is critical to ensure that similar or related regulatory requirements are identified and assessed to:

- minimise regulatory duplication
- take advantage of potential implementation efficiencies, including streamlining inspection and enforcement activities
- avoid cumulative regulatory burdens and unintended impacts from overlapping regulatory practices.

Coordination requires the Ministry and agencies to:

- identify and consult with other departments and agencies that have a specific interest in the proposed or overlapping regulatory practices
- identify similar or related regulatory practices, either existing or proposed, in the area being regulated
- wherever possible, coordinate regulatory practices to minimise complexity, duplication and regulatory administrative and compliance burdens.



FUNDING POLICIES

To assist in determining the appropriate source and level of funding for any proposed regulatory development or practice, transport agencies and the Ministry should have in place:

- clear and consistent funding policies that accord with principles agreed with the government, including the cost recovery principles published by the Treasury
- procedures to identify their activities, and the related costs and funding sources
- procedures to set fees, charges and levies in accordance with the agreed principles
- published and effectively implemented procedures to collect related revenue
- systems to monitor and undertake timely reviews of their funding policies.

Transport Rules should not be submitted to Government unless accompanied by regulations that recover the revenue required for implementation and ongoing practice.



6.0 INTERNATIONAL TREATIES, CONVENTIONS AND ARRANGEMENTS

New Zealand is a contracting state to some 50 international treaties and conventions that relate to transport. Generally, the international obligations that stem from these must be taken as a whole, with New Zealand endeavouring to consistently implement them. The Ministry and transport agencies must also avoid developing transport legislation that is inconsistent with the key transport conventions.³ New Zealand is often in the position of being a ‘taker’ of international standards and other regulatory obligations; tacitly accepting them, rather than being a ‘maker’ or ‘shaper’ of standards, particularly where conventions or treaties do not provide mechanisms for opting out.

There are a small number of core conventions governing aviation and maritime safety. They generate an extensive number of obligations that require regular updating, and include the following:

- International Convention for the Safety of Life at Sea, 1974/78 (SOLAS)
- International Convention on Standards of Training, Certification and Watch Keeping for Seafarers, 1978 (STCW)
- International Convention for the Prevention of Pollution from Ships, 1973/78 (MARPOL)
- The Convention on International Civil Aviation (ICAO) (Chicago Convention, 1944) which has 18 annexes concerning safety, security and other standards.

‘Obligations’ arising from these conventions generate a wide variety of duties, responsibilities and general expectations concerning the operation of New Zealand’s transport modes. Each of these treaties imposes significant maintenance costs; including generating proposals for new or revised transport legislation. This Statement provides guidance on how to prioritise giving effect to these obligations.

³ For example, the Chicago Convention on Civil Aviation, which New Zealand is a party to, obliges New Zealand to “collaborate in securing the highest practical degree of uniformity with regulations, standards, procedures and organisation.” Section 33 of the Civil Aviation Act 1990 and s39 of the Maritime Transport Act require the Minister to take into account the need that Rules should not be inconsistent with ICAO and IMO conventions and other international obligations.



TRANSPORT SECTOR AIMS IN ADOPTION OF INTERNATIONAL OBLIGATIONS

New Zealand is geographically isolated and depends on international transport to access markets and for inbound tourism to enable economic growth. Failure to enact some convention obligations in a timely manner could have adverse consequences for trade or tourism.

In this context, the Ministry and transport agencies should aim to:

1. adopt and implement obligations in a manner that is not more restrictive than other countries, in particular New Zealand's key trading partners
2. prioritise the adoption of obligations that address the most important security, safety, and environmental harms or provide the greatest economic benefits
3. implement these priorities in an efficient, effective and non-discriminatory manner

Monitoring and prioritisation

The Ministry or agency responsible for an international treaty convention or part thereof, is responsible for monitoring the need to change transport legislation in order to meet international obligations. Accordingly it must ensure these issues are raised as potential items for Rule or regulation making. At times, the pace of IMO and ICAO changes to standards can impose heavy demands on Rule development.

To accommodate international obligations, Agencies should prioritise changes to regulatory practices, taking into account their discretion and having regard to:

- **relevance** – do changes affect domestic transport fleets or operations, or are they required for continued international transport access?
- **material importance** – do changes in standards or other requirements address safety, security, environmental or economic harms?
- **significance of safety, security, environmental or economic harms** – are harms addressed by the standard, significant in New Zealand's domestic and international transport circumstances?
- **legally binding compliance** – is a legislative instrument required to achieve legally binding compliance and obligation or can a non-legislative instrument be appropriately used?
- **reputational damage** – could perceptions that New Zealand is too far behind in its implementation of international obligations, relative to most other States, adversely effect international confidence in the integrity of New Zealand's security, safety and environmental controls?



DISCRETION IN ADOPTION OF INTERNATIONAL OBLIGATIONS

International obligations should be taken as a whole, and New Zealand should endeavour to consistently implement them, however there are important policy choices.

- **Degree of regulatory restrictiveness** - International obligations that affect international and domestic transport operations may often be inappropriate for the level of harm avoided, or not in accord with acceptable risk for NZ. This includes the possibility that on occasion, domestic circumstances might suggest a more stringent approach.
- **Choice of policy instrument** - Depending on the nature of the obligation, they can be given effect to by legislative instruments or non-legislative instruments. These might include administrative changes, recommended codes of practice, authorisation and licensing conditions, or use of transport Rules and regulations – depending on the nature of the obligation.
- **Timing or speed of adoption standards** - Priority should not be given to timely implementation of changes where this process would significantly delay transport agencies in addressing more important harms.

So discharging international obligations may involve various courses of action, depending on what is most appropriate:

- **Deferring adoption** while higher priority safety, security, and environmental harms are addressed.
- **Taking no further action** and documenting that the objectives of an obligation are already met or better met with existing legislative or/and non-legislative instruments
- **Taking a different or modified course of action** other than that envisaged in the obligation, where this is more effective and efficient in achieving its objectives
- **Taking no action** where warranted due to domestic circumstances, and filing a difference where this course of action is available (ICAO).

These choices can influence the effectiveness and efficiency of adopting obligations, and should be considered as part of the monitoring and prioritisation process.

Where issues are prioritised for transport regulation making, transport agencies are to undertake a preliminary impact and risk assessment (PIRA) in accord with the agreed Ministry and agency Rule process (Regulatory Development and Rule Production Handbook).



International Participation

Given New Zealand's size and resources, it is not feasible to participate in, or actively influence all multilateral organisations that exist. The Ministry is accountable for shaping New Zealand's transport participation and, therefore, representation should be directed to the Ministry in the first instance, unless delegated to agencies.

Participation will generally be limited to:

- high priority issues identified by the Ministry as having potentially significant impacts on the transport sector or wider economy
- gaining understanding of international regulatory changes to provide the transport sector with advance warning prior to significant changes being implemented in New Zealand.

Maritime NZ and the Civil Aviation Authority (CAA) have delegated authority from the Minister of Transport to administer Crown obligations in respect of the core conventions. These agencies are expected to:

- monitor work programmes and documentation generated by the IMO and ICAO
- represent New Zealand at technical and specialist committees
- alert the Ministry to potential policy issues for New Zealand
- coordinate with the Ministry on any formal government policy response
- present the New Zealand policy response on the government's behalf at the relevant forum, if so required.

Where practicable, New Zealand's negotiating position on a proposed policy change to an existing convention/treaty obligation should be informed by a needs assessment and ideally a PIRA. This is to ensure that the government is advised of the costs, benefits and risks of regulation to achieve international compliance.

In addition, a cost-benefit analysis may prompt consideration of New Zealand filing a "difference" of view in adoption of an international obligation where possible. This should be undertaken on a case-by-case basis. From a strategic perspective, as a geographically isolated country, New Zealand needs to actively manage its "compliance" in order to gain reasonably clean international audit outcomes.



Annex: Best Practice Principles of Regulatory Intervention

Transport Best Practice Regulatory Principles

Establish a case for government action

In and of themselves safety, security and environmental risks do not necessarily warrant a case for government action. Transport safety, security, or environmental risks may not warrant government action when:

- It makes more sense to accept a certain level of risk than to implement measures that seek to minimise or eliminate all risk.
- The magnitude of the risk consequence or impact may be small.
- Problems may, in the medium term, be self-corrected as people and technologies respond and adapt to the emergence of new risks.
- Risks may be more effectively addressed by non-transport specific regulatory regimes.

Transport regulatory activities are risk-based

Risk assessment precedes and informs all aspects of regulatory activity. Risk assessment involves the identification and measurement of harm and an evaluation of the likelihood of the occurrence of the harm:

- Regulatory decision-making is based on an empirical foundation and transport agencies use risk assessment to inform regulatory strategies.
- A risk-based, cost-benefit / cost effectiveness framework is used for transport regulation making, and to guide compliance and enforcement activities.
- Transport users and activities are treated according to risks posed and agencies *target resources* to where they will be most effective in reducing harms.

Encourage and reinforce positive behaviour first

First explore measures to positively encourage desired behaviours, prior to considering legal regulation or punitive measures to achieve regulatory objectives. Where practicable, facilitate voluntary efforts to achieve transport regulatory objectives:

- Support and reward positive behaviour, leadership and industry role models.
- Consider pro-social rewards and financial incentives to encourage desired behaviours.
- Design legal regulatory regimes to support complementary measures to harness opportunities provided by existing social values and norms.
- Seek to reward those transport users that have consistently achieved good levels of compliance by reducing regulatory burdens.

Proportional and minimal level needed

Interventions should be the least intrusive and restrictive possible and regulatory burdens should be proportionate to expected benefits.

- The burden of regulatory obligations, including monitoring, inspections and enforcement should be proportionate to the benefits that are expected to result.
- Legal measures taken in response to risk should be the least restrictive on the rights of the person necessary to achieve the desired result.
- Use of legal regulation in non-transport areas may suffice to achieve desired results.
- Monitoring, inspection and enforcement should not take place without good reason.



Transport Best Practice Regulatory Principles...continued

Flexible and durable

The regulatory system should be able to evolve to respond to changing circumstances. Transport users should have scope to adopt innovative and least cost approaches to meeting legal obligations.

Attributes of a flexible and durable regulatory system include:

- The underlying regulatory approach is principles or performance-based, with policies and procedures in place to ensure that it is administered flexibly.
- Feedback systems are in place to assess how the law is working in practice to enable self-correction of regulatory interventions and activities.
- Decisions are reassessed at regular intervals and when significant new information becomes available.
- The regulatory regime is up-to-date with technological and market changes, and evolving societal expectations.

Certain

The transport regulatory system should be predictable providing certainty to transport users, and be consistent with other legislation and policies.

Attributes of a transport regulatory system that provides certainty include:

- Decision-making criteria are clear and provide certainty of regulatory processes and performance expectations.
- Transport users can reasonably seek and access authoritative advice without the threat of triggering an enforcement action, and safe harbours are available.
- Transport legislation does not conflict with or unnecessarily overlap regulatory regimes in other sectors.
- Transport legislation does not prevent businesses from making long term investment decisions.

Transparent and accountable

Transport regulation development, and associated implementation and enforcement, should be transparent.

Transparency and accountability is aided when transport agencies:

- Consult with transport users, operators and other affected parties when developing or reviewing regulatory activities.
- Make their activities accessible and open to public scrutiny, and are able to publicly justify their approach and decisions.
- Set and publish clear standards and targets for their service and performance, and their performance against these.

Review and engagement with regulated entities improves regulatory performance

Regulatory practice should be reviewed in a timely manner and dialogue with regulated entities is undertaken to provide feedback to improve regulatory performance.

Transport agencies and regulators should:

- Have in place plans to review regulations based on risk, compliance burdens, and other factors relevant to specific regulatory interventions.
- Monitor the performance of regulations, including impacts on intended outcomes.
- Consult with regulated entities in a regular and timely manner on the effectiveness of regulations.