



Better Regulation
Victoria

Equipping Best Practice

A companion paper for Departments

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How can Departments support regulators to deliver 'best practice'?

This paper is a companion and support to the Best Practice Guide for Regulators (*Towards Best Practice, BRV, 2022*) with specific suggestions about how its principles can be used by departments to support policy development in terms of regulatory settings, having regard to Statements of Expectations.

Background

In 2022, Better Regulation Victoria (BRV) released the *Towards Best Practice Guide* for regulators. This Guide supports regulators to improve their performance by setting out ten principles of Best Practice on which regulators can base their strategies and operations.

It meets regulator needs through clear expectations about what Best Practice means for regulator practice and operations. It is available at: <https://www.vic.gov.au/towards-best-practice-guide-regulators>

The Guide has been well received by regulators and has been incorporated into their strategic development work.

Relevance to departments

Departments' work in policy development often impacts on regulation settings and design, and departments also develop – for Ministers' consideration and approval – regulators' Statements of Expectations. Departments may also be involved in a range of other roles including as author of the regulator's statute, policy development relating to the regulator, providing advice on funding decisions, delegating powers, and advising on the appointment of people to key roles, and advocate. This paper helps departments by outlining considerations for these varied roles.

Departments may also have specific regulatory roles including as a duty holder or regulated entity, advocate for other duty holders or stakeholders, peer in the broader regulatory or policy environment, or source of data or information relevant to the regulator's role. Departments should exercise these roles with regard to their essential contribution to supporting regulator integrity and performance.

Given the importance of effective engagement between departments and the regulators in their portfolios across these varied roles, BRV has outlined in this short paper how each of the ten Best Practice principles for regulators is relevant to the way in which departments undertake sound policy development for regulations and regulatory operations.

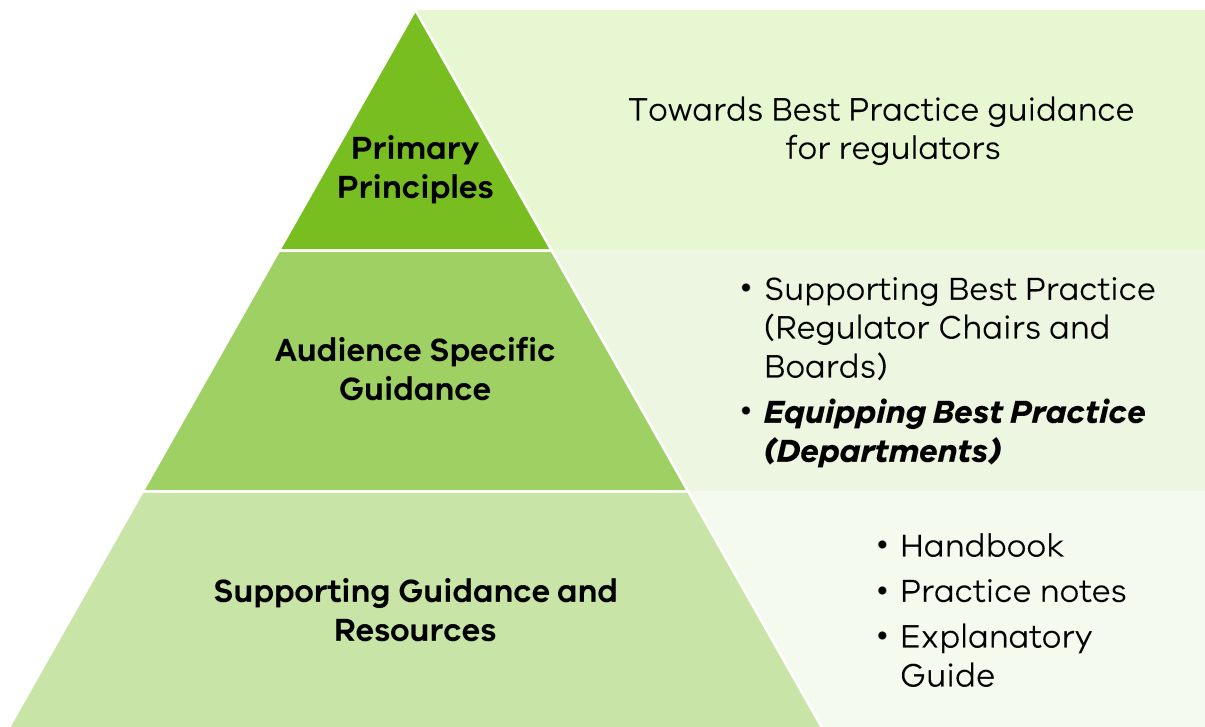
In BRV's experience, the best regulatory outcomes are achieved when regulators and departments support and respect each other's roles and have genuine engagement.

This paper also relates to other essential roles in enabling better regulatory practice, through:

- ensuring that policy changes which will impact on regulators are feasible in terms of regulator capacity and capability, and the tools and powers they require to be effective
- ensuring appropriate funding arrangements which recognise the functions of regulators, and the costs regulators bear in terms of compliance with internal-to-government requirements
- defining the scope of discretion for regulators, in relation to statutory decisions
- facilitating discussions with Ministers and other departments
- providing appropriate support and access to departmental capabilities
- listening to regulator needs, and responding to their challenges
- setting performance measures which enable benefits and costs of regulation and regulator activity to be clearly understood.

Regulator guidance package

This paper is part of a package of guidance that support the different parties involved in regulatory delivery. It should be read in conjunction with *Towards Best Practice*. The Explanatory Guide can also assist with interpretation of the principles.



In the table below, BRV has set out the ten Best Practice principles, highlighted the relevance of each of them for departments and made specific suggestions about actions departments could take to support the Best Practice principles in underpinning their own work and that of regulators.

Better Practice Principle	Theme	Action
Principle 1: Be clear on your regulatory outcome and the harms you are trying to minimise	Engaging with regulators to understand their regulatory context and ensure any regulatory changes support them in their role	<ul style="list-style-type: none"> Actively support the regulator to meet its objectives to minimise harms, and any specific ministerial expectations. Account for the regulator's activities in their broader service delivery and policy responsibilities. Assist the regulator to identify new harms and to adapt in challenging policy and regulatory contexts. Adequately account for the expectations on the regulator and the nature of harms, in resourcing and funding arrangements
Principle 2: Establish and refine your approach to minimising harms		<ul style="list-style-type: none"> Consult regulators on the design of policy and regulations, considering feasibility to implement and enforce, and the different regulatory approaches required to implement (e.g., compliance monitoring, intelligence, and communications). Account for the regulators' experience and perspectives when designing policies and legislation, and in implementation planning and resourcing. Understand and respond to the range of regulatory approaches the regulator needs to be effective at minimising harms. Ensure compliance monitoring and inspection program design is built into policy design, considering the practicalities of monitoring and enforcing compliance. Account for this range of regulatory approaches in governance, evaluation and budget processes, accounting for both front-line delivery and supporting capabilities including intelligence, strategy and operations management.
Principle 3: Ensure your regulatory regime is fit for purpose	Regulators and departments should actively work together to ensure that the regulatory regime is fit for purpose.	<ul style="list-style-type: none"> Prioritise legislative improvements, whether standalone or as part of broader amendments and legislative reforms. Identify opportunities to harmonise regulatory requirements across regulators and portfolios, such as in approvals, verification of applicants, assessments, evidence and reporting.

Better Practice Principle	Theme	Action
		<ul style="list-style-type: none"> • Support the regulator to take strategic risks in testing its legislation. • Establish reporting channels to support the regulator to express its challenges, and establish dialogue around Ministerial expectations. • Prioritise policy and operational resources to address highlighted gaps. • Address the interface between service delivery and regulatory operations, to minimise risks of gaps, overlaps or conflicting objectives. • When managing policy, funding and service delivery functions, account for the objectives and operations of the regulator, so that duty holders do not experience inconsistent or conflicting messages. • Provide a channel for regulators to voice concerns and issues around their powers, funding or other policy issues impacting on their performance, • Escalate challenges of inconsistency or inefficiency between funding, service delivery and regulatory functions, so that they receive appropriate focus within the department's plans and activities. • Specifically account for the costs to regulators of meeting internal-to-government compliance standards and obligations, and their implications for funding and fees, especially for smaller regulators with limited capacity.
<p>Principle 4: Support duty holders to understand the value of compliance and harm reduction</p>	<p>Evaluating and recognising the on-the-ground impacts of their legislation and policies.</p>	<ul style="list-style-type: none"> • Make the goals of the regulator visible and connected to other policy and social objectives relevant to the portfolio. • Explain how the regulator contributes to broader objectives. • Explain the importance of regulatory compliance when interacting with duty holders in other contexts, such as funding and service delivery. • Where applicable, provide capabilities and resources to support regulator communications and avenues for educating duty holders.

Better Practice Principle	Theme	Action
<p>Principle 5: Support duty holders to comply</p>		<ul style="list-style-type: none"> • Support reforms to regulator systems, processes and technology that seek to improve efficiency and reduce costs for duty holders. • Support and equip regulators to reuse technology capability already funded by government, for example through Service Victoria • Support regulators to approach duty holders and citizens as a 'customer' of government rather than solely a 'customer' of the regulator and support channels/methods that enable streamlined interactions with government, having regard to the regulator's specific requirements and obligations. • Have regard to regulatory capability requirements in development of position descriptions, training and professional development programs. • Support the regulator's knowledge management and document management needs. • Support workforce capability development, and accounting for the regulator's needs in broader departmental workforce strategies, as appropriate. • Provide specialist expertise such as in behavioural insights and engagement.
<p>Principle 6: Target regulatory effort based on risk of harm</p>		<ul style="list-style-type: none"> • Establish risk-based frameworks in policy and regulation setting that can be put into practice by regulators. • Partner with regulators to establish and an end-to-end perspective of risk management, where evaluation of delivery informs future policy-making. • Assessing where departments can access and provide relevant education and training on risk management and decision-making, to support regulator officer capability and consistency. • Consult closely with regulators in policy-making processes. • When producing regulatory impact analysis, provide risk assessments and analysis to regulators for their ongoing use. • When designing policy and legislation, have regard to compliance behaviours and how inspection and compliance monitoring is designed.

Better Practice Principle	Theme	Action
<p>Principle 7: Evaluate and communicate your efforts and their impact on your regulatory outcomes</p>		<ul style="list-style-type: none"> • Design policies and legislation with integrated evaluation plans that incorporate regulator reporting and other sources of information, to provide a comprehensive understanding of the efficacy of that policy or legislation. • Adequately resource mid-term and end of life evaluations of legislation and regulations, as appropriate to their significance. • Have an ongoing work program with the regulator to capture data and insights, including trend analysis, to inform these evaluations. • Have a clear framework for understanding the contribution of the regulator’s activities to long term outcomes and objectives, and the role of other elements or factors. • Provide sufficient autonomy to the regulator to conduct its own performance assessments and to develop suitable indicators of performance and results. • Equip the regulator to evaluate their performance and implement changes were necessary to improve harm reduction, other outcomes, or Ministerial expectations. • Support regulators to develop and utilise different ‘performance accounts’ for general operations and tailor-made interventions. • Support regulators to mature evaluation from activity quotas to a balanced set of performance indicators.

Better Practice Principle	Theme	Action
<p>Principle 8: Work with regulatory peers and partners on shared harms and risks</p>	<p>Supporting partnerships across government and at all levels</p>	<ul style="list-style-type: none"> • Consider institutional settings, co-ordination and consolidation during policy-making and legislation design, and seek to avoid duplication of functions and mandates • Develop legislation that facilitates sharing of information for a range of purposes. • Support and facilitate agreements to share information, including leadership of service delivery and funding bodies in information sharing. • Prioritise system reforms to improve information management and sharing, considering cross-government protocols. • Review consent notices and data retention and collection rules • Support regulator improvements in information management and security. • Develop and coordinate initiatives that improve duty holder experience of regulation, by reducing overlap or duplication among regulators and other functions. • Support efforts to align and integrate information technology systems ensuring appropriate privacy and security protections are in place.
<p>Principle 9: Be transparent and accountable for how you perform your activities</p>	<p>Recognising the full range of activities needed to perform</p>	<ul style="list-style-type: none"> • Enable suitable governance of regulators. • Support the publication of key regulatory documents, of key engagement activities, and of reporting against government requirements including for Statements of Expectations. • Provide engagement and service design expertise to support regulator improvement efforts. • Support regulator capabilities and approaches to inclusive and culturally appropriate practices. • Provide necessary legal services support, where regulators are embedded in departments. • Assess the needs of small independent regulators for legal support, and provide where appropriate, particularly for complex compliance matters that they could not reasonably be expected to manage. • Ensuring that corporate services have the authority to engage with independent regulators to provide appropriate advice or services. • Raise and respond to clear risks of misconduct, corruption or capture and where appropriate working with the regulator to improve its safeguards.

Better Practice Principle	Theme	Action
<p>Principle 10: Continuously improve your regulatory operations</p> <p>Responsible department actions to support regulators</p>		<ul style="list-style-type: none"> • Review the regulatory system that the regulator operates within, including services, policy settings, legislation and regulatory responsibilities within the scope of influence or control of the department. • Support regulators to adapt and respond effectively to evolving risks, pressures and challenges as society changes. • Support regulators to plan for continuity of operations, including in response to emergency situations. • Account for the costs and burdens of establishing quality control relating to internal-to-government compliance expectations, including implications of meeting these expectations for delivering regulatory activities.

