



Better Regulation
Victoria

Supporting Best Practice

A companion paper for regulator boards
and chairs

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Supporting regulator board members

Regulators play a critical role in protecting communities and our environment from risks of harm. They have a specific status in government, with powers and functions that exercise control or place responsibilities on individuals, businesses, the public, and government bodies, and they are expected to maintain the highest standards of conduct and integrity.

Many Victorian regulators are comprised of, or governed by, boards. Board members bring specific expertise, industry insights and judgement to guide regulator strategy, industry engagement and integrity in operations.

This Paper is an adaptation from the Towards Best Practice Guide for Regulators (the Guide) published by Better Regulation Victoria (BRV). The Guide is available at:

<https://www.vic.gov.au/towards-best-practice-guide-regulators>.

At the request of regulator chairs, BRV has based this Paper on the 10 principles of best practice in the Guide. In developing this Paper, BRV has benefitted from the input of many regulator chairs and boards to ensure that we understand the challenges they face in translating their expertise to a regulatory context, and in applying high standards of governance to their regulatory role.

The Guide sets out the 10 principles which are the key to 'best practice' regulation and, in this Paper, we have set out these principles and then set them in context for chairs and board members: in particular we have outlined relevant questions based on the principles which may be useful for chairs and board members to consider.

I hope that you will find this Paper useful. I would particularly like to thank the chairs and board members of regulators who provided input as well as Eliot Palmer, Manager, Regulatory Improvement, BRV, and Adam Beaumont of With Purpose Solutions for their work in developing the Paper.



Anna Cronin

Commissioner for Better Regulation

The differences for a Regulatory Board

BRV's *Towards Best Practice* Guide (the Guide) sets out principles for regulators covering *strategy, operations* and *enabling practices*. These principles provide a framework for interpreting and applying good governance practice.

Resources relating to 'being a Board Member' are available from the Victorian Public Sector Commission (at boards.vic.gov.au), and other public sector bodies.¹ These cover good board practice, member codes of conduct, obligations of members or directors, and specific requirements on members.

Applying these best practice principles in a regulatory context may involve additional considerations, reflecting the powers of regulatory bodies and their harm reduction purpose.

Regulatory bodies

For the purposes of this Paper, regulatory bodies (including registration boards) are public entities that may do any of the following:

- undertake significant statutory functions
- determine standards and monitor and regulate practice
- regulate organisations, individuals, professionals, practitioners or trades
- grant licences or permissions
- make decisions affecting large groups or significant sectors of the economy
- investigate complaints, review decisions and make enforceable decisions
- determine matters of importance within a regulatory or registration role

Best practice for regulator boards draws heavily from principles for good governance that apply to all boards. Applying BRV's best practice regulatory principles provides a foundation from which we draw important aspects of regulator governance. The figures overleaf provide examples of this alignment.

The following section identifies how board members can support their organisation to move towards best practice. It identifies what board members could reasonably expect of their management under each principle from the Guide (where appropriate to their scale, scope and functions). These include common products to look for, and questions to ask to understand organisational performance. Regulators are often seeking continuous improvement, so where there are gaps, boards may inquire about the regulator's context, and fit-for-purpose plans to address these.

¹ Guidance can also be sourced from public sector commissions in [Western Australia](#), [Queensland](#), [New South Wales](#) and federal authorities such as [Australia National Audit Office](#), [ACNC](#) and [AHPRA](#).

Regulatory principles and regulator board considerations

<p>Towards Best Practice strategy principles</p> <ul style="list-style-type: none"> • Principle 1. Be clear on your regulatory outcome and the harms you are trying to minimise • Principle 2. Establish and refine your approach to minimising harms • Principle 3. Ensure your regulatory regime is fit for purpose 	<p>Common expectations for Board Members</p> <ul style="list-style-type: none"> • Supporting development of organisational strategy and clear direction • Acting with reasonable care and diligence • Acting in the best interests of the organisation and its purpose • Understanding the operating environment • Complying with establishing legislation or its equivalent, and acting within your powers and functions • Demonstrating leadership and stewardship 	<p>Applying in a regulatory context</p> <ul style="list-style-type: none"> • Enquire as to key harms we need to minimise and the desired outcome • Act in the public interest to protect the community and environment, aligned to your regulatory objectives and outcomes • The primary purpose of our regulatory actions, interventions and responses is to protect the public, minimise harm and deliver our stated regulatory outcomes • Understand the regulatory culture of the organisation and its alignment to actively delivering regulatory outcomes • Gain a clear understanding of the role or purpose of the Board, and the statutory and regulatory requirements of members carrying out their public duties
<p>Towards Best Practice operations principles</p> <ul style="list-style-type: none"> • Principle 4. Support duty holders to understand the value of compliance and harm reduction • Principle 5. Support duty holders to comply • Principle 6. Target regulatory effort based on risk of harm • Principle 7. Evaluate and communicate your efforts and their impact on your regulatory outcomes 	<p>Common expectations for Board Members</p> <ul style="list-style-type: none"> • Operating strategically and monitoring progress against strategic outcomes • Delegating day-to-day management to the CEO 	<p>Applying in a regulatory context</p> <ul style="list-style-type: none"> • Understand how to organise and direct regulatory activities as a whole to drive strategic change • Consider the importance of maintaining community confidence through demonstrable harm prevention and minimisation • Avoid becoming involved in the day-to-day administrative functions of the entity and its staff whilst empowering teams to minimise harm • Board members are seen as representatives of the regulator, you should not ordinarily appear to speak for the regulator unless specifically authorised to do so
<p>Towards Best Practice enabling practices principles</p> <ul style="list-style-type: none"> • Principle 8. Work with regulatory peers and partners on shared harms and risks • Principle 9. Be transparent and accountable for how you perform your activities • Principle 10. Continuously improve your regulatory operations 	<p>Common expectations for Board Members</p> <ul style="list-style-type: none"> • Acting honestly and exercising powers for their proper purposes • Not improperly using information or their position • Managing financial affairs responsibly • Acting fairly and impartially • Disclosing and managing conflicts of interest 	<p>Applying in a regulatory context</p> <ul style="list-style-type: none"> • Understand who can make regulatory decisions and the importance of independent decision-making • Recognise that regulatory decision-making authority is granted to the board, as a whole, not any member individually • When deciding on regulatory responses we are fair and transparent • Work with regulator peers, partners and stakeholders to protect the public (e.g., through harm reduction, market and professional assurance etc.) and deliver our regulatory mission

Supporting good regulatory practice

Documents you might expect, questions you might ask, and relationships to your role.

Principle 1 Be clear on your regulatory outcome and the harms you are trying to minimise

What you might expect to see

Documents outlining:

- regulatory outcomes, objectives and priority harms
- your role, in contrast to other regulators and government, in minimising those harms
- the duty holder² group(s) responsible for those harms, to guide regulatory effort.

Measures or dashboards that:

- set out a suitable variety of measures to indicate performance in achieving regulatory outcomes.
- infer or account for changes in the significance of key harms to evaluate your regulatory effort.

What questions you could ask

- What are the harms we are charged to reduce and the outcomes we want to achieve in the short, medium and long-term?
- How are these harms or desired outcomes linked to the reason for our existence? Are we tackling the right things?
- How are we making choices to prioritise between these harms and is our role in minimising them clear?
- Do we understand the primary drivers of these harms and associated behaviour of duty holders to act effectively?

Linkages to Board Member good practice

- Be familiar with the Minister's Statement of Expectations for the regulator, and its response.
- Understand the relevant enabling legislation, the context why it was made, and the environment in which it is applied.
- Understand emerging harms and consequential expectations on the regulator to address these harms, and input to the positions on their response.

² *Towards Best Practice* uses the term 'duty holder' to refer to entities who have obligations, which may be used by different parties (e.g. government, not-for-profit, community, or industry) to influence behaviour, or be acted on by government. Duty holders, or 'regulated entities' may be businesses, government, or the broader community. Regulators might adopt different terminology.

Principle 2 Establish and refine your approach to minimising harms

What you might expect to see

Documents outlining:

- your regulatory approach and how you use your influence and direct behaviour to minimise harm/deliver your regulatory outcomes.
- your approach to risk, how you prioritise harms and your regulatory priorities.
- how your regulatory functions (e.g., inspectorate, licensing, approvals, partnership, education, media, communications, investigations, legal) minimise harm and deliver on your regulatory outcomes.
- the delegations framework that articulates the level at which regulatory decisions are made (including any at Board Level) and how decisions are quality assured.

Measures or dashboards that:

- demonstrate application of strategy and regulatory approach into operational activity and how these are being continuously evaluated and reviewed.

What questions you could ask

- Does our regulatory approach make clear how we use all of our tools (such as education, permissioning, support, monitoring, enforcement) to influence duty holder behaviour to minimise harms and meet our regulatory outcomes?
- How does our regulatory approach respond to different duty holder groups, their characteristics and motivations? Does it include both persuasive and directive/coercive interventions?
- How are we enabling or empowering third parties to report non-compliance to us to boost our compliance monitoring efforts?
- Does our regulatory approach make plain the difference between seeking remedy of harm(s) (e.g., notices to fix the problem) and applying sanctions (e.g., punishment, penalties, deterrence) when undertaking enforcement?
- Is our approach to sanctioning and prosecuting particular cases strategic? Are we shying away from court action and adopting a conservative legal position? Or are we taking strategic, well-informed and considered risks?
- Are we clear on the purpose of our regulatory functions (e.g., marketing and communications, intelligence, policy, licensing and inspections) and how they contribute to delivery of our mission and reduce harm?

Linkages to Board Member good practice

- Understand where your organisation operates in a contested environment or with competing expectations on its approach (e.g., support vs. enforce), and the varied objectives of key stakeholders (e.g., promoting a sector vs. regulating it).
- Support your organisation to engage with those parties, to explain the regulator's enforcement approach and how this relates to duty holder attitude and actions.

Principle 3 Ensure your regulatory regime is fit for purpose

What you might expect to see

Documents outlining:

- any significant barriers or legislative limitations that are restricting us from delivering our mission, and priorities for resolution
- how our operating model is funded and any pressure, now or in the immediate future, on that model
- critical capabilities needed to deliver on our regulatory mission and any existing gaps, barriers or challenges
- through case studies or other evidence – efforts to identify and demonstrate limitations encountered when applying and testing regulatory tools.

Measures or dashboards that:

- where externally funded – highlight where funding is collected and historical/predicted change.

What questions you could ask

- Are our regulatory requirements flexible enough to recognise differences in capability and capacity across different duty holders?
- What legislative limitations are actually stopping or limiting our ability to deliver against our mission or minimise key harms? How have we tested these limitations? What do we need to do to resolve them and how can the Board's relationships (with the Minister and other stakeholders) support that?
- How confident are we that our funding model and our regulatory approach support us to minimise harm and deliver our regulatory goals? Are we keeping pace with the profile of the harm, changes in duty holder population and expectations of the community?
- Do we have the right mix of skills, capabilities and culture to direct teams and address the problems or harms we care about?
- Do we have line of sight to the emerging trends or risks that may inhibit us from delivering on our regulatory functions into the future (e.g., industry, market or policy changes, legislative limitations, potential impacts to funding model)?

Linkages to Board Member good practice

- Ensure that management is thinking about changing market conditions and if the regulatory approach, legislation or funding model is keeping pace.
- Recognise where to advocate on behalf of regulator staff to increase departmental awareness and engagement with the regulator's challenges and constraints.
- Understand the regulator's limitations, and support the regulator to address issues that impact on its performance.
- Understand the full range of capabilities required to effectively regulate, including intelligence, communications, marketing and other enabling capabilities, and their role in supporting the regulator and then support the regulator in their acquisition.

Principle 4 Support duty holders to understand the value of compliance and harm reduction

What you might expect to see

Documents outlining:

- the regulator's role and the value it provides (this should be available publicly)
- activity seeking to understand duty holder motivations, behaviour and attitude towards harms of concern
- duty holder and community awareness of the regulator, support for its role, the regulatory regime and appreciation of the value the regulator brings.

Measures or dashboards that:

- track stakeholder and duty holder awareness, perceptions, expectations of the regulator.

What questions you could ask

- Do our duty holders and stakeholders understand who we are, what we do, why compliance matters, why it's important to them and to the community and what we expect?
- What proactive awareness raising activities are we undertaking and who is it targeted at?
- Do we understand our duty holders, what drives them and how market forces influence them?
- Are we leveraging the expectations of our duty holders' markets, supply chains and customers to reinforce the value and importance of compliance?

Linkages to Board Member good practice

- Support the regulator to relate compliance standards with industry good practice, and the benefits of compliance to industry performance.
 - Connect with community and community perspectives of the harms of non-compliance, and the benefits of compliance, to help influence duty holder perceptions and dialogue with affected parties.
 - Help establish relationships with industry leaders who can work with the regulator.
-

Principle 5 Support duty holders to comply

What you might expect to see

Documents outlining:

- activity that demonstrates efforts to support duty holders to understand their obligations and comply.

Measures or dashboards that:

- demonstrate outreach (e.g., events, seminars), delivery, uptake and effectiveness of support to comply materials
- track duty holders' awareness of obligations, recognition of importance of compliance in organisational management, and prioritisation of compliance.

What questions you could ask

- Do we understand where non-compliance is occurring across our duty holder base, where it is having the biggest impact, and what are the barriers to complying?
- What are we doing to make compliance as straight forward as possible for those who are willing to comply?
- How do we know if we are providing the right level and types of compliance support and advice to those that need it?
- Is our mix and design of interventions (e.g., awareness and education, incentives, remedial, and sanctioning) appropriate to the harm and the motivations and capability of our different duty holders?

Linkages to Board Member good practice

- Seek to understand stakeholder concerns about costs of compliance obligations, and how these relate to shared risk and harm control objectives.
 - Help raise regulator understanding of differences within regulated industries, relationship of compliance expectations to industry practices, and how to make compliance expectations relevant and contextually suitable.
-

Principle 6 Target regulatory effort based on risk of harm

What you might expect to see

Documents outlining:

- how regulatory effort is being directed towards priority harms (e.g., annual/compliance/operational plans)
- a high-level analysis of priority harms that include the causes and patterns of harm
- a description of a methodology or approach that is used to identify and prioritise risks and harms (e.g., harnessing intelligence, evidence or stakeholder views)
- where and how risk is distributed across the duty holder base (e.g., by sector, size or geography)
- a strategic approach to prosecutions based on priority harms and duty holder groups of concern.

Measures or dashboards that:

- track allocation of proactive and responsive regulatory effort against priority harms
- demonstrate how harm has changed over time based on regulatory interventions.

What questions you could ask

- What key harms are we choosing to focus on, why, and how are we allocating our combined regulatory effort – including education, engagement and strategic communications – across multiple channels?
- What is our understanding and acceptance of each harm and how are they shaping our response and prioritisation?
- Who is causing the biggest share of each harm and are our efforts focused there?
- How are we monitoring compliance across our 'known' duty holders (those registered, permitted or authorised) and untracked businesses, individuals or organisations?
- What is our strategy for allocating regulatory effort to prevention of harm versus management and mitigation?

Linkages to Board Member good practice

- Understand the changing risk environment, the nature of emerging challenges, and the government's attitude to these risks, to recognise when to act.
- Understand the role of the regulator's enforcement committee and any prosecutions strategy in management decisions to undertake major investigations/prosecutions.
- Support the regulator to express its attitude to different risks (e.g., eliminate, control, minimise, accept) and influence the risk attitude of relevant stakeholders, policy makers and Ministers.

Principle 7 Evaluate and communicate your efforts and their impact on your regulatory outcomes

What you might expect to see

Documents outlining:

- regulatory priorities and their link to harms of concern (e.g., in an annual plan, compliance strategy, regulatory strategy or statement of regulatory intent)
- the 'pipeline' of compliance and enforcement activity for harms of concern outlining conversation from detection to remedy and sanctioning
- a track record of completed tailor-made interventions to tackle specific harms

Measures or dashboards that:

- report on results against key performance measures linked to harm reduction
- capture activity, conversion of non-compliance into different regulatory tools and any related follow-up
- track proactive media by regulatory priority and regulator relevant media trends

What questions you could ask

- How are we communicating how we regulate, what we regulate, and when, to relevant stakeholders?
- Do we explain our approach to tackling our stated regulatory priorities?
- Do we know the impact our compliance and enforcement activity is having on the harms we care about?
- Are we seeing the expected levels of non-compliance or compliance across our duty holder base?
- Are we appropriately allocating our responsive effort and triaging in line with our risk-based policies and plan?
- How are key stakeholders viewing our efforts to reduce priority harms?

Linkages to Board Member good practice

- Support the regulator to communicate regulatory priorities, wins and successes, through industry and stakeholder engagement undertaken by the board.
- Encourage and facilitate a diversity of views and opinions to enable a better understanding of their performance and effectiveness.
- Help engage with Ministers and departments where performance indicators warrant review.

Principle 8 Work with regulatory peers and partners on shared harms and risks

What you might expect to see

Documents outlining:

- a high-level analysis of priority harms and the roles of regulatory peers and partners in addressing them
- MOUs or agreements between regulators and other government bodies that drive collaboration and active information sharing.

Measures or dashboards that:

- demonstrate planned, current and completed joint activity with regulatory peers (regulators with intersecting responsibilities and interests)
- capture referrals **from** regulatory partners, including actions taken and outcome of any action by regulatory tool
- capture referrals **to** regulatory partners, or sharing of information, and where possible, any indication of activity undertaken.

What questions you could ask

- Who are our regulatory peers? Which other regulators are we working with?
- How are we working our regulatory peers to coordinate activity where we have common duty holders?
- What are the barriers to working with and sharing data with our regulatory peers and what are we doing about it?
- What other partners are/should we be working with to better understand and minimise harm?
- Who are we engaging with externally to identify emerging challenges, opportunities to improve and ways to better understand our regulatory environment in the longer term?

Linkages to Board Member good practice

- Help the regulator to establish relationships with regulatory peers and other partners, and to improve these relationships and understanding of stakeholder needs.
 - Actively engage with departments to help address critical barriers to performance and policy-practice dialogue.
-

Principle 9 Be transparent and accountable for how you perform your activities

What you might expect to see

Documents outlining:

- a Compliance and Enforcement Policy (or equivalent) that articulates how we seek compliance, apply our discretion, and respond to non-compliance with remedy and sanctions
- how to query or challenge regulatory decisions, or make conduct complaints
- how to access information on regulatory activities or actions

Measures or dashboards that:

- track regulatory delivery, including timeliness in relation to enquiries, complaints, public reports, authorisations, follow-up of remedial activity, sanctions and major prosecution pipelines (e.g., from detection to decision to prosecution, brief submission, charges, court action and publication)
- where appropriate, present aggregated outcomes of complaints about staff, internal reviews or internal integrity investigations
- Cover receipt and response to feedback from reference groups or industry or stakeholders' forums.

What questions you could ask

- Is the level and timeliness of regulatory activity preventing or minimising harm?
- How are we supporting affected stakeholders to participate in decision-making?
- How are we enabling duty holders or the community to seek review of our decisions?
- What guidance are we providing our teams to act on non-compliance, remedy harm and escalate enforcement?
- What are we doing to support staff at all levels to recognise, escalate and act against undue influence in regulatory decisions?
- Are there any recent reports from oversight organisations that we can learn from that relate to, or are aligned to our work?
- Are we actively/openly educating other stakeholders (e.g. the broader community) about our role to help establish appropriate expectations and support engagement?

Linkages to Board Member good practice

- 'Boost' regulator messages and influence on duty holders, helping to maximise impact, by actively engaging with stakeholders and networks.
- Reinforce messages of decision-making accountability and independence.
- Play a guiding role as a board to ensure impartial and accountable regulatory decision making unencumbered by conflicts of interest.
- Be familiar with Board decisions that are subject to external merit or judicial review.

Principle 10 Continuously improve your regulatory operations

What you might expect to see

Documents outlining:

- a performance management framework that accounts for regulatory delivery (quality, quantity, timeliness) across regulatory functions (e.g., outreach, monitoring, approvals, enforcement, investigations)
- a capability framework that outlines an approach to learning, development, and workforce planning
- an approach to capturing lessons learnt or improvements from after action reviews, operational debriefs, or public reviews

Measures or dashboards that:

- present regulatory decisions across the organisation (e.g., geographically, by staff level, by team or area, by regulatory tool or instrument)
- demonstrate training, learning and development across the organisation relative to planned activity

What questions you could ask

- At what levels are we making regulatory decisions or taking regulatory action? Are our actions timely? Are we taking regulatory action across all regions, areas, functions or teams?
- How are we investing in our people and organisational culture to improve regulatory delivery, embed changed practice and address regulatory priorities?
- How are we improving performance and embedding lessons learnt from regulatory operations, investigations, internal reviews or regulatory conduct complaints?
- How are we learning from our regulatory peers or equivalents in other jurisdictions or recent reviews into other regulators?

Linkages to Board Member good practice

- Encourage engagement with other regulators on good practice, improvements and learning.
- Provide strategic input on how to best balance internal operational improvement objectives, with other competing interests (e.g., response to new community or ministerial concerns).
- Support the regulator to explain its prioritisation decisions to its Minister.
- Consider when internal continuous improvement may be insufficient to achieve expected performance, and other insight or intervention may be required.
- Support culture and practice changes where required, through communication and engagement with staff undergoing major changes or responding to significant adverse findings or enquiries.

