

Regulatory performance and the NZ regulatory management system

“The current system for making regulatory choices is broken. It is largely based on faith, rather than evidence. Many regulations... are only evaluated before they are implemented – the point we now the least about them”

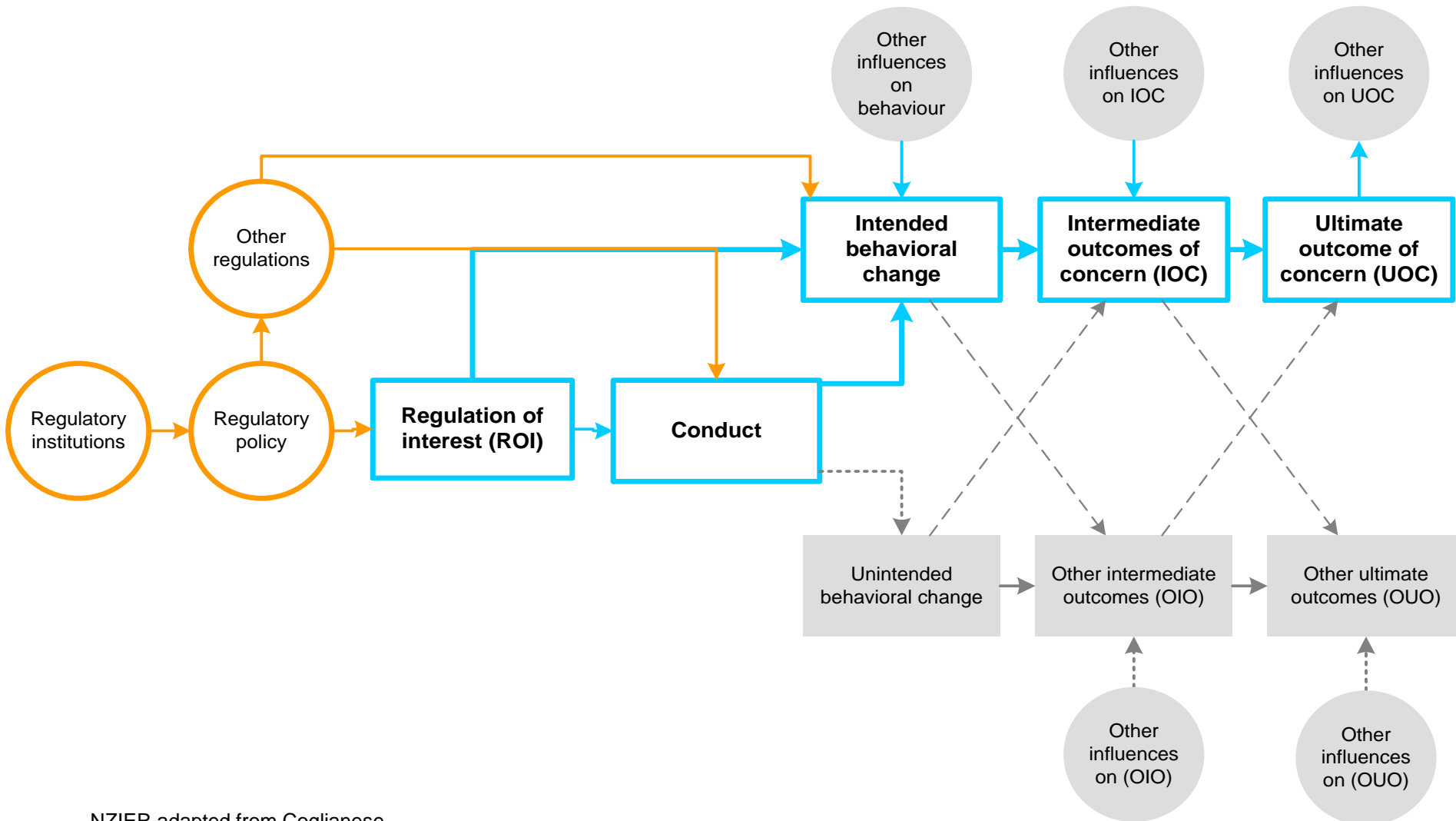
Greenstone (2009)

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Presentation to GEN — 16 April 2013

Regulatory management and performance

- 1) What is regulatory performance?
- 2) Is regulatory performance measured & if so how?
- 3) What is the NZ system of regulatory management?
- 4) What aspects of regulatory performance does the regulatory management system focus on?
- 5) What is to be done?

1) What is regulatory performance?



1) Regulatory performance

- Regulatory *design* does not determine regulatory conduct or outcomes (policy is often made when implemented)
- Regulators *conduct* depends upon perceived critical task and how rules & discretion are applied
- Regulatory *outcomes* are co-produced by regulators and regulatees (citizens & businesses)
- Regulatory *behaviours* are difficult to predict because of risk & uncertainty
- Good regulatory *design* needs to be augmented by skillful implementation & on-going conduct with support from regulatees, interest groups etc.
- There are **many** regulatory performances

2) Measurement of regulatory performance

- Govt. agencies have data on administration & enforcement inputs/processes/outputs
- Little information on private costs
- Significant lacunae on impacts, intermediate and final outcomes
- Reliance on *ad hoc* 'fire alarms' not regular programmed 'patrols'
- Much regulation is a '*faith based*' experiment without a meaningful effort to observe impacts
- Measurement largely relies on *policy & political markets* to surface perceived 'performance' issues

3) What is the NZ system of regulatory management?

- Meta regulation – *regulating the regulation makers*
- Augment the formal government system by applying **special measures** to primary, secondary & tertiary regulations
- *Special measures* include:
 - Policy – The 2009 Government Statement “Better Regulation, Less Regulation”
 - Institutions – Treasury RIA team (RIAT), the Legislation Advisory Committee (LAC), Legislation Development Committee (LDC), Regulations Review Committee (RRC)
 - Procedures (Ex ante) –Regulatory Impact Analysis (RIA) and Regulatory Impact Statement (RIS) annual regulatory plans
 - Procedures (Ex post) – Regulatory scanning, annual regulatory reporting, Regulations (Disallowance) Act 1989, RRC reports.

3) Regulating the regulation makers - what special measure apply by phase?

- I. ‘Big’ Policy Design** – Regulatory scanning & plans, PIRA, RIS, RIS IQA, Agency disclosure, Ministerial certification, LDC **(8)**
- II. ‘Little’ Policy Design** – LAC, Regulations (Disallowance) Act 1989, **BORA (3)**
- III. Deliberation** – RIS published, **RRC (2)** [new disclosures regime proposed](#)
- IV. Implementation** – no special measures
- V. Conduct (Administration and Enforcement)** – regulatory reporting, **judicial review (2)**, [New CE regulatory stewardship duty proposed for SSA](#)
- VI. Review** – case level reviews, ad hoc reviews, **RRC reports (3)**

4) What aspects of regulatory performance does the regulatory management system focus on?

- Main focus of regulatory management regime is on **‘big’ policy design phase**
- New CE regulatory stewardship duty (in SSA Bill) would focus on **conduct**
<http://www.treasury.govt.nz/releases/economy/regulation/inforeleases>
- Main focus is on **executive branch** rather than **parliamentary** or **judicial** processes
- Increased **parliamentary** disclosures possible under ‘Regulatory Disclosure Regime’ (Treasury’s Option 5)

5) What is to be done?

- Refocus the system from ex ante ‘appraisal’ of new regulations to ‘learning the way forward’ about the performance of the stock of regulations
- Increase *learning* by final RIS’s including
 - an implementation plan
 - a monitoring & measurement plan
 - a discussion of review options
 - an evaluation plan
- Introduce a ‘functional leader’ for regulatory conduct (administration & enforcement)

Concluding comments

- The 'drunk and lamp post' – the faith that regulatory performance is a policy problem

Want to know more:

- 'Recalibrating Behaviour: Smarter Regulation in a Global World' Conference - 23-24 April
 - Sponsored by NZ Law Foundation
 - Collaborative partnership of VUW Law School, NZIER, Chapman Tripp

Questions???

References

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- Gill & Frankel *Learning the way forward? The contribution of monitoring, evaluation and review to regulatory effectiveness* (forthcoming 2013 VUW)
- Greenstone, B. *Towards a Culture of Persistent Regulatory Experimentation and Evaluation* (2009) In D Moss and J Cisternino Ed. *New Perspectives on Regulation*
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- Mumford, P. *Enhancing Performance Based Regulation Lessons from New Zealand's building control system* (2011) Institute of Policy Studies.
- Eppel, E. Wolf, A. and Turner, D. *Policy Implementation* (2011) IPS WP 11/04.

Supplementary information

- Administration and Enforcement – formal case reviews –
 - QA & complaints mechanisms (within agency)
 - specialist tribunals (Social Security Appeal Authority)
 - specialist investigators (SFO, SSC, HDC, IPCA, PC, JCA, coroners, **RRC, ombudsman, OAG,**)
 - ADR, **courts**
 - Informal mechanisms – traditional media, social media, leaks etc
- Formal system reviews
 - i Departments, public oversight bodies (LC, HRC, PC, PC for E, HDC, RC) Ministerial Reviews – SSC, taskforces, Commissions of Inquiry, Royal Commissions, **RRC, OAG, select committees**
- Informal mechanisms – academics, think tanks, traditional & social media

APC suggest three types of regulation reviews

1. Programmed reviews – sunseting, embedded in statute, post implementation reviews
2. Ad hoc – stock takes, ‘principal-based, benchmarking, in-depth reviews
3. Stock management – RIA, red tape reduction, Reg. Budgets, in/outs

Supplementary information

<u>Concentration of costs and benefits</u>	<i>High Concentration of Benefits</i>	<i>Low Concentration of Benefits</i>
<i>High Concentration of Costs</i>	Highest likelihood of review (e.g. workplace safety)	High likelihood of review (e.g. leaky buildings)
<i>Low Concentration of Costs</i>	Lowest likelihood of review (e.g. occupational regulation)	Low likelihood of review (e.g. weights and measures)

Supplementary information

Figure 2.1 Multiple potential burdens of regulation
Costs to business and the community

