



4 September 2024

s 9(2)(a)

**Official information request**

**Our ref: MFR-24OIA008**

Tēnā koe s 9(2)(a)

I refer to your Official Information Act 1982 (OIA) request received on 7 August 2024. You requested:

*Please provide copies of*

1. *the documentation that sets out the Ministry for Regulation's mandate and powers,*
2. *terms of reference,*
3. *operating instructions,*
4. *all directions and instructions from the Minister for Regulation, and*
5. *criteria used to assess regulations.*

**Items 1-3- Documentation, terms of reference, operating instructions**

On 1 March 2024, the Ministry for Regulation was established to provide leadership across government for improvements in the quality of regulation and the performance of regulatory systems. The Ministry is a central government agency tasked with improving the regulations imposed by the Government, to make them better, more streamlined, and easier for New Zealanders to navigate. You can access the establishing Orders in Council in the links provided in the table provided under item 4.

The Cabinet paper *Establishment of the Ministry for Regulation* is another establishing document for the Ministry and is also provided in the table. The paper sets out the roles, functions and operating expectations of the Ministry.

Establishment activities are ongoing and some of the documentation you have requested does not exist yet. A new Regulatory Standards Bill which will set out the Ministry's powers is under active consideration and the Ministry's Strategic Intentions will be publicly available soon.

Regarding your request for terms of reference, the Ministry as a whole does not have terms of reference, however we do have terms of reference for both of the regulatory reviews that are underway. The terms of reference for the early childhood education regulatory review and the agricultural and horticultural products regulatory review can be accessed through our website:

Early childhood sector: <https://www.regulation.govt.nz/regulatory-reviews/early-childhood-education-ece-regulatory-sector-review>.

Agricultural and horticultural products: <https://www.regulation.govt.nz/regulatory-reviews/agricultural-and-horticultural-products-regulatory-review>

#### **Item 4- Directions and instructions from the Minister for Regulation**

I have interpreted item 4 of your request as referring to directions and instructions to the whole Ministry rather than those relating to specific matters, such as responses to briefing papers or other Ministerial advice. You can find the directions and advice the Ministry follows in the documents in the table below. The forthcoming Strategic Intentions document will set out the Ministry's objectives and priorities as agreed with the Minister.

<b>Date</b>	<b>Document</b>	<b>Title</b>	<b>Website</b>
Various- 1/11/23- 18/12/23	Proactive release (multiple documents)	Treasury advice on the establishment of the Ministry for Regulation	<a href="https://www.treasury.govt.nz/publications/information-release/treasury-advice-establishment-ministry-regulation">https://www.treasury.govt.nz/publications/information-release/treasury-advice-establishment-ministry-regulation</a>
12/12/23	Treasury Report	Letter to the Prime Minister outlining proposed scope and working arrangements for the Regulation portfolio	<a href="https://www.treasury.govt.nz/sites/default/files/2024-04/mfr-4954042.pdf">https://www.treasury.govt.nz/sites/default/files/2024-04/mfr-4954042.pdf</a>
17/01/24	Cabinet Paper	Establishment of the Ministry for Regulation	<a href="https://www.publicservice.govt.nz/assets/DirectoryFile/Cabinet-Paper-Establishment-of-the-Ministry-for-Regulation.pdf">https://www.publicservice.govt.nz/assets/DirectoryFile/Cabinet-Paper-Establishment-of-the-Ministry-for-Regulation.pdf</a>
15/02/24	Cabinet paper	Public Service (Ministry for Regulation) Order 2024 and Ombudsmen (Ministry for Regulation) Order 2024	<a href="https://www.publicservice.govt.nz/assets/DirectoryFile/Cabinet-Paper-Public-Service-Ministry-for-Regulation-Order-2024-and-Ombudsmen-Ministry-for-Regulation-Order-2024.pdf">Cabinet-Paper-Public-Service-Ministry-for-Regulation-Order-2024-and-Ombudsmen-Ministry-for-Regulation-Order-2024.pdf</a> (publicservice.govt.nz)

#### **Item 5 – Criteria used to assess regulations**

The Ministry uses the *Government Expectations for Good Regulatory Practice* to assess regulations. A copy of this document can be found at: <https://www.treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf>.

The Ministry is also guided by criteria developed when the regulatory oversight function resided with the Treasury, including its *2020 Regulatory Stewardship Reporting Framework*. A copy of the Framework is attached. The Treasury's regulatory functions, including responsibility for the public service regulatory management system, transferred to the Ministry on 1 May 2024. More information and resources associated with developing and maintaining good quality regulation can still be found on the Treasury website: <https://www.treasury.govt.nz/information-and-services/regulation>.

Additionally, the Ministry's regulatory reviews are guided by terms of reference, which are linked above.

**Right of review**

If you wish to discuss this decision with us, please contact [hello@regulation.govt.nz](mailto:hello@regulation.govt.nz).

You have the right to seek an investigation and review by the Ombudsman of this decision.

Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Please note that we may publish this letter (with your details removed) on the Ministry for Regulation website.

Ngā mihi

s 9(2)(a)



Aisling Risdon

**Head of Ministerial Services**

**Ministry for Regulation**

## Regulatory stewardship reporting 2020: reporting frameworks

### Background

The February 2020 Regulatory Stewardship letter from the Minister of Finance and Associate Minister of Finance (James Shaw) asked departments to:

- periodically update (or publish and periodically update) the information on their websites for each regulatory system, including information on:
  - current or recent reviews of these systems, and findings from system assessments as relevant, and
  - on forward plans for regulatory and operational improvements, which should be updated by 30 April 2020.

The letters note that the information published on each regulatory system will ideally be linked to the websites of other agencies with important roles in the particular regulatory system.

### The reporting framework

The framework sets out the expected information, and provides guidance on the type of information sought. While we expect departments to provide the requested information, you don't need to follow the order or the formatting, and don't be constrained to only providing the requested information. Please take the opportunity to include additional relevant information that is not covered by the frameworks.

**Publication:** Agencies working in the same system will need to discuss and determine whether to publish on one or more websites, and how to create the linkages.

**Once your system information is published, please send the link the RQT ([regulation@treasury.govt.nz](mailto:regulation@treasury.govt.nz)) so that we can reference your information on our regulatory stewardship webpages.**

The framework supports the following objectives for the ongoing development of regulatory stewardship:

- Preserving sufficient flexibility to enable stewardship practice to develop in ways that are meaningful to departments, while also providing direction for reporting that is sufficient to enable comparability where appropriate.
- Making information accessible on the state of systems and plans for improvements.
- Integrating regulatory stewardship into business-as-usual departmental management, planning and reporting processes.
- Providing information that helps us identify good practice, monitor progress, and develop advice to the Minister of Finance on the regulatory management system.

Information on each regulatory system for publishing on webpages

Description of the regulatory system	
Requested information	Guidance
<b>1. Regulatory system title, objectives and brief description.</b>	<p>Where different agencies have separately identified what is effectively the same regulatory system or parts of the same system, the agencies will need to agree a way forward.</p> <p>Outline what the system is intended to achieve, what it does and how it's done.</p> <p>Indicate the overall significance of the system for New Zealand.</p>
<b>2. System portfolios and agencies.</b>  <b>How collaboration is promoted between the agencies.</b>	<p>Where policy and regulatory responsibilities are in different agencies there may be more than one portfolio.</p> <p>List agencies (central government, wider state sector, local government, non-government) as relevant, and identify main responsibilities of each agency, ie policy, delivery etc.</p> <p>Outline vehicles/processes to foster collaboration.</p>
<b>3. Regulated parties and main non-government stakeholders.</b>  <b>How the system agencies engage with regulated parties and stakeholders.</b>	<p>Outline who is regulated by the system, who represents the regulated parties, and any other relevant stakeholder groups.</p> <p>Outline vehicles/processes to foster engagement.</p>
<b>4. Key statutes</b>	<p><i>This does not have to be an exhaustive list.</i></p> <p><i>The PCO-led Access project will require that agencies list secondary instruments on their websites. The system description webpages may be a useful place to locate or link to these lists.</i></p>

Information on the fitness-for-purpose of the system	
Requested information	Guidance
<p><b>5. Reviews and/or assessments of the system</b></p> <ul style="list-style-type: none"> <li>○ Indicate when the most recent review and/or assessment was done.*</li> <li>○ Which agencies and stakeholders were involved and how.</li> <li>○ When the next review or assessment will be done.</li> </ul> <p>*Reviews in this context will generally be significant, and often external or at least previously publicly announced. Assessments may range from preliminary to more comprehensive.</p>	<p>Where there has been a recent and comprehensive review of the system, an assessment is probably not necessary, or may be needed only for aspects of the systems not sufficiently covered by the review, or possibly to provide a high-level update to the review findings.</p> <p>The findings of smaller reviews focused on a particular aspect of the system may provide useful input into a wider system assessment.</p> <p>If reviews are still underway indicate the expected timelines.</p> <p>Outline the kinds of information and processes used in the review or assessment, eg was this an expert group preliminary 'health check' or a more comprehensive formal process?</p> <p>Indicate agencies' degree of confidence in the assessment and any plans to improve the assessment processes/information.</p> <p>Given that reviews/assessments are not expected every year, it is useful to indicate when the most recent one was done and when the next is expected.</p>
<p><b>6. Review/assessment findings</b></p> <ul style="list-style-type: none"> <li>○ Comment against each of the four dimensions of fitness-for-purpose (Annex I).</li> <li>○ Where there are differences of view between agencies, and/or different views from</li> </ul>	<p>We are most interested in your comments against each of the four dimensions, rather than comments on the fitness-for-purpose of the whole system, or traffic lights.</p> <p>Comment on systems issues, risks and mitigations, recent improvements and work underway or planned.</p> <p>If you use traffic lights, please use against dimensions only, rather than against the system as a whole, and please also include comments.</p>

Information on the fitness-for-purpose of the system	
Requested information	Guidance
stakeholders please indicate this.	
Forward plans for regulatory and operational improvements to the systems	
Requested information	Guidance
<p><b>7. Planned regulatory amendments</b></p> <ul style="list-style-type: none"> <li>o Matter name</li> <li>o Lead agency</li> <li>o Type of matter (bill or other legislative instrument)</li> <li>o What it does/why it's needed</li> <li>o Expected timeline and consultation opportunities</li> </ul>	<p>As relevant, outline how the proposed changes address issues flagged in assessments.</p> <p>Indicate type of consultation opportunities planned and when they are likely to happen, eg discussion paper in late 2019, select committee consideration expected in X."</p> <p>Where no initiatives are planned or underway for the coming year, provide brief comment, eg not current priority because system is small with minimal impacts; resources are required for more urgent and significant work; system has no pressing issues; system improvements implemented recently and these are being given time to bed-in etc.</p>
<p><b>8. Key service design and operational changes</b></p> <ul style="list-style-type: none"> <li>o Brief description of the change and the rationale for change</li> <li>o When the change is likely to happen</li> <li>o Lead agency</li> </ul>	<p>Outline non-regulatory initiatives to improve aspects of the system, eg capability, capacity, delivery methods, guidance.</p> <p>Indicate expected timeline, and any opportunities to engage/be involved as relevant.</p> <p>Provide links to further information if relevant/useful.</p>

## Annex I: Dimensions and guidance for assessing fitness-for-purpose

The dimensions and the guidance are the same as those used for regulatory stewardship reporting since 2017.

Dimensions	Guidance
<b>Effectiveness: To what extent does the system deliver the intended outcomes and impacts?</b>	<p><i>This may include looking at elements such as:</i></p> <ul style="list-style-type: none"><li>• <i>The nature, incidence and significance of the impacts, intended and otherwise (who it impacts, how and to what extent)</i></li><li>• <i>The extent of compliance/non-compliance with the system (overall and for different groups)</i></li><li>• <i>The internal coherence and completeness of the system. Gaps, overlaps or inconsistencies that impact effectiveness.</i></li><li>• <i>How the system intersects with related regulatory systems and how this impacts effectiveness.</i></li></ul>
<b>Efficiency: To what extent does the system minimise unintended consequences and undue costs and burdens?</b>	<p><i>This may include looking at elements such as:</i></p> <ul style="list-style-type: none"><li>• <i>The proportionality of the system; ie how well the burden of rules and their enforcement matches the risks to be mitigated/benefits expected. Burden includes restrictions on rights and freedoms, resource and capability requirements, and ease of administration/use/compliance.</i></li><li>• <i>How easy or difficult the regulators and the regulated parties find the system to administer/use/comply with.</i></li><li>• <i>The extent to which the system provides predictability and certainty for regulated parties.</i></li><li>• <i>The degree to which actual outcomes justify the overall economic, administrative and legislative (rights) costs, including unintended consequences.</i></li></ul>

Dimensions	Guidance
Durability and resilience: How well does the system cope with variation, change and pressures?	<p><i>This <u>may</u> include looking at elements such as:</i></p> <ul style="list-style-type: none"> <li>• <i>The responsiveness of the system to changing context and circumstances, eg changes in the regulated community/technology/wider society, changes in demand (increase or decrease).</i></li> <li>• <i>How well the system enables innovation/takes account of different circumstances where appropriate.</i></li> <li>• <i>The continued relevance of the system objectives, the regulatory or market failure, whether it is still the best way to address the failure/opportunity</i></li> </ul>
Fairness and accountability: How well does the system respect rights and deliver good process?	<p><i>This <u>may</u> include looking at elements such as :</i></p> <ul style="list-style-type: none"> <li>• <i>How system respects and delivers on the principles of natural justice, ie accountability, fair and impartial decision-making, opportunities for those affected by decisions to be heard, and opportunities for review or appeal.</i></li> <li>• <i>The clarity and certainty of the regulatory instruments that underpin the system, and the accessibility and transparency of the requirements.</i></li> <li>• <i>How the system supports public and/or stakeholder participation in system design and improvements.</i></li> </ul>