

The Law and Judiciary Quick Guide

REGULATORY PRACTICE ESSENTIALS



At a glance

The law underpins all regulatory work. Regulators need to know, understand and apply the law with credibility, reliability and competence.

New Zealand has two main sources of law: common law and legislation.

- **Common law:** common or judge-made law arises from decisions made by judges in court. These decisions show how to interpret legislation.
- **Legislation:** refers to laws created by Parliament, or those authorised by Parliament, to regulate various aspects of society. Its purpose is to establish rules, rights and responsibilities for people within New Zealand.

Legislation can be further divided into primary and secondary.

- **Primary legislation** is an Act, also called a statute, made by Parliament.
- **Secondary legislation** is law which can be made outside Parliament. It includes regulations, rules, notices, standards and by-laws.

The judiciary: refers to all judges in the Aotearoa New Zealand court system. The role of the courts is to resolve disputes. It is independent from Parliament and the Government to ensure impartiality. Court decisions lead to case-law and precedent.

Judicial review: in a judicial review a court checks whether an authority (such as a regulator) made a decision lawfully. It focuses on the process the regulator followed. The principles of natural justice lie at the heart of judicial review.

Appeal: an appeal is a request to review the decision of a lower court, tribunal or regulator. An appeal looks at whether the decision on the law or facts was consistent with the law.

Why this is important for regulatory work

Regulators face complexity and challenge as they apply the law in their day-to-day work. Knowing and applying the law well leads to robust regulatory outcomes, provides guidance and helps you to do your job well.

Reading legislation

At first, the law can be challenging to read and understand. Becoming familiar with the law and discussing it with your team helps to build expertise. The law is evolving and it's important to stay up to date with changes.



New Zealand law

New Zealand has two main sources of law: common law and legislation.

Common law

Common or judge-made law arises from decisions made by judges in court. These decisions show how to interpret legislation. Common law evolves over time and can be read alongside legislation. It can become legislation, or it can be overridden, by an Act of Parliament.

Legislation

Legislation is laws created by Parliament, or those authorised by Parliament, to regulate various aspects of society. Its purpose is to establish rules, rights and responsibilities for people within New Zealand. Legislation ensures order, protects rights, prevents harm, promotes justice and guides behaviour. It serves as a backbone of the legal system.

Legislation gives regulators powers and functions which ordinary citizens do not have. These powers and functions are generally conferred by an Act of Parliament.

Legislation can be primary or secondary.

A. Primary legislation

This is an Act, also called a statute, made by Parliament. Parliament holds sovereign authority in New Zealand. The principles of parliamentary sovereignty mean that Acts of Parliament are the supreme law of the land. Parliament can amend, repeal or replace any primary legislation. Once Parliament has passed a Bill, it receives Royal Assent by the Governor-General to pass it into law.

Law is usually created because of concern that existing law does not adequately protect the public interest, to address a new issue, opportunity or

social changes. Global events also drive the need for new or amended legislation.

Legislation which addresses a particular topic or area of the law are called principal Acts. For example, the Civil Aviation Act 2023 is the principal Act which governs all aspects of civil aviation law in New Zealand.

B. Secondary legislation (also called delegated legislation)

This is law which can be made outside of Parliament. The authority to make secondary legislation is set out in the specific Act, called an empowering Act. The Act also specifies who has the power to create secondary legislation such as a regulator, a Minister of Parliament or a local authority. Some examples are regulations, rules, notices, standards and by-laws. Local authority by-laws are made under an empowering Act, such as the Local Government Act 2002.

While an Act focuses on principles and policies secondary legislation helps to 'fill in the details', for example, any fees to be charged, procedures to be followed and technical information.

Secondary legislation is often easier to change than an Act. It is used where the content needs to be changed quickly or on an on-going basis.

There are several types of secondary legislation.

I. Regulations

Regulation can have different meanings. Regulation is any government intervention that is intended to order or influence people's behaviour, or how they interact with each other, including by directing the use and exchange of private property, resources or capital to pursue a desired policy objective.¹ Whereas regulations (with an 's') refers to a type of secondary legislation.

The Parliamentary Counsel Office is responsible for drafting regulations. A regulator can help with drafting particularly where technical expertise is

needed. An empowering Act sets out the regulations that can be made. For example, the Gambling Act 2003 section 114 sets out the types of regulations that can be made ‘relating to the application and distribution of net proceeds from class 4 gambling.’ There is usually an obligation in the empowering Act to consult with regulated parties or the public when making changes or creating new regulations (see Engaging as a Regulator – Quick Guide).

All regulations are published in the New Zealand Gazette and on the New Zealand Legislation website. They usually come into force 28 days after being notified in the Gazette. Regulators are expected to publish links to their regulations on their respective website and ensure regulated parties are informed and understand any changes in the law.

The Regulations Review Committee examines all secondary legislation after it is made and may investigate complaints. Regulators must also monitor and review their secondary legislation as part of their regulatory system stewardship responsibilities.

II. Rules, notices and standards

Rules, notices and standards are types of secondary legislation that are approved by a relevant Minister, the regulator or a statutory officer, for example, the Director of Land Transport. This is set out in the empowering Act. They can be used where operational and technical details change often.

III. By-laws

By-laws are local rules or laws usually made by local authorities (like a Council) and apply to ways that people live, work and play within their local community. By-laws deal with issues that are best suited for local management and cover a range of issues like management of alcohol, waste, water, public health, public places, traffic and parking. Like regulations there is an empowering Act which empowers local authorities to make bylaws, such as the Local Government Act 2022 or the Dog Control Act 1996. The process to create by-laws involves

public consultation to ensure they reflect the needs of the community. By-laws must be reviewed regularly to ensure they remain relevant and effective.

The judiciary

The judiciary is a branch of government made up of all the judges in the Aotearoa New Zealand court system. The role of the courts is to resolve disputes. It is independent from Parliament and the Government to ensure impartiality.

The hierarchy of courts: In New Zealand the main courts are (in descending order) the Supreme Court, The Court of Appeal, the High Court and the District Court. The Court of Appeal and the Supreme Court hear appeals only.

Case law: The courts hear cases and make decisions or judgements on how the law is applied. These decisions build case-law. Case law helps regulators to apply the law in practice. Case law is also created by judicial review.

Precedent: When making decisions judges consider cases decided by other courts. Known as precedents the decisions are binding on lower courts. For example, District Court Judges must follow relevant decisions of the High Court, Court of Appeal and Supreme Court when deciding on similar cases. This ensures the law remains consistent and any gaps or ambiguities are resolved. At the heart of precedent is the principle that the law is fair, consistent and predictable.

Tikanga: This is the set of values, principles, understandings, practices, norms and mechanisms from which a person or community can determine the correct action in te ao Māori. The Supreme Court has affirmed that tikanga Māori is relevant to common law and has also been recognised in some Acts of Parliament. The relationship between tikanga and the common law continues to evolve.

Judicial review

Judicial reviews are heard in the High Court. The court checks whether a decision made under a legislative power was lawful. A legislative power can be carried out by a regulator or an individual authorised under an empowering Act. The judge will review the evidence and decide whether the regulator followed the proper decision-making process and used their powers lawfully. If a decision was made unfairly or outside legal powers the judge can set it aside and require the regulator to reconsider. It can also make a declaration about the regulated party's legal rights.

There is a risk that regulators operate beyond the scope of their legislative power. This is known as acting 'ultra vires'.

Judicial review ensures regulators follow due process reinforcing good decision-making and accountability in regulatory practice.

Natural justice: In a judicial review the court will also decide whether the principles of natural justice have been applied. These principles apply to all regulatory work not just decision makers. The Bill of Rights Act 1990 section 27 (1) sets out the right of natural justice:

'Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.'

The courts have refined the meaning of 'natural justice' through case law. There are three principles:

- **The hearing rule:** Everyone has the right to be heard and present their case before a decision is made that could adversely affect them. People affected by the decision must be informed promptly of the decision and the reasons for it.

- **The bias rule:** Decision-makers must be unbiased and impartial so that everyone can be treated fairly. This means they must not have any conflict of interest or relationships that could affect their ability to make fair decisions. They must keep an open mind and not pre-judge a case.
- **The evidence rule:** Decision-makers must base decisions on all relevant evidence. Some information must be considered while other types of information may or must not be considered.

Te Pouārahi Judge over your shoulder² is a guide produced by the New Zealand Crown Law Office designed to improve the quality of government decision-making. It highlights the importance of legal principles and processes. This guide helps regulators to develop policies that ensure the principles of natural justice and correct processes are used in regulatory work.

Appeals

An appeal is a request to review the decision of a lower court, tribunal or regulator. Appeals are heard in a higher court. Unlike a judicial review an appeal looks at whether the decision on the law or facts was consistent with the law. The right of appeal for regulatory decisions is usually set out in the empowering Act.

For example, in the building regulatory system, the Ministry of Business, Innovation and Employment Hīkina Whakatutuki can make legally binding decisions called determinations. If a regulated party disagrees with a determination they can appeal to the District Court or seek judicial review at the High Court.

The decision of the lower court may be upheld in full, in part or overturned.

An Act might also set out an appeal authority. For example, the Customs and Excise Act 2018 sets out a Customs Appeal Authority that hears appeals against the decisions of the New Zealand Customs Service.

Why is this important for regulatory work?

Regulators face complexity and challenge as they apply the law in their day-to-day work. It requires discretion and guidance to apply the law consistently and fairly.

Just like a game of cricket, the rules of the game (the law) guide the players. The umpire makes decisions on how the rules are applied. The umpire considers the players' behaviour, the condition of the pitch, the ball, the weather and other environmental factors that all play a part. Similarly, regulators and the judiciary consider many factors when applying the law.

Like cricket regulatory work is a team sport. When faced with uncertainty it's important to ask for help and advice from people with expertise. This may be with a manager or from legal advice.

Robust regulatory outcomes: If you carry out or support regulatory work the information you create or handle may be used as evidence in future. Your work and decisions can come under scrutiny during court appeals and judicial reviews. It's possible that the decisions you make today may affect court decisions many years in the future. For this reason it's important to understand the law, follow the required process and keep timely and accurate records.

Guidance: Regulators work with the law, public expectation and the judiciary. At times there are competing demands and people doing regulatory work can face uncertainty. In these situations the law provides a source of truth and helps you to do the right thing.

Competence: The law is the foundation of all regulatory work. It continues to evolve as it is interpreted and applied. Knowing about the law in your regulatory system and organisational policies

and procedures that support it helps you to do your job well. This builds public trust in the regulator.

Reading legislation

At first, the law can be challenging to read and understand. Becoming familiar with the law and discussing it with your team helps to build expertise. Regulatory legal teams give advice on applying the law particularly in complex situations. They help with the process of making a good decision.

The Parliamentary Counsel Office (PCO) publishes legislation on the New Zealand legislation website³. This has up-to-date versions of New Zealand Acts, Bills, amendment Acts and secondary legislation drafted by the PCO. Other secondary legislation is published on the regulator's website.

The Legislation Act 2019 provides rules on how to interpret an Act and some common terms. It provides the principles and rules for interpreting, drafting and publishing legislation. It also sets out the requirements for creating and publishing secondary legislation.

Structure of an Act: Acts follow a consistent structure. Like a book, it starts with a contents page which gives an overview. These are highlighted in the diagram on the following page.

Other key sections not highlighted in the diagram are:

- **Commencement:** Once an Act receives Royal Assent, this does not mean it immediately becomes law. The commencement date sets out when the Act or parts of the Act come into force.
- **Purpose:** outlines the objectives.
- **Interpretation:** defines key terms.
- **Schedules:** administrative or technical sections are placed at the end of the Act to improve readability.

Structure of an Act - Contents Page

Notice of repeal and amendments. Click on the 'Versions and amendments' tab for more information.

The regulatory agency that administers the Act.

Click on the 'Secondary legislation' tab to see a list of regulations and rules made under the Act.

Title of the Act and the year it passed into law.

Date of Royal Assent - when the Act passed into law.

Most Acts are divided into parts. Parts may be further divided into subparts. Parts of an Act are numbered and have a descriptive heading. Parts make it easier to understand the structure and sequence of the contents.

The table of contents lists the parts of the Act.

Each Act is made up of sections. Each section has a single purpose or idea.

Gambling Act 2003

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If you need more information about this Act, please contact the administering agency: **Department of Internal Affairs**


Warning: Some amendments have not yet been incorporated

Search within this Act

By sections | View whole (1.4MB) | **Versions and amendments** | Secondary legislation

Contents | Previous section | Next section | Tag section | Remove | Previous hit | Next hit

Version as at 1 November 2024



Gambling Act 2003
Public Act 2003 No 51
Date of assent 18 September 2003
Commencement see section 2

Note
The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.
Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Department of Internal Affairs.


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4A	Modification of definition of remote interactive gambling during specified period due to effects of COVID-19 <i>[Repealed]</i>
5	Extended meaning of conduct
5A	Meaning of net proceeds
6	Multi-terminal and multi-player gaming machines
7	Meaning of significant influence in casino
8	Secretary may seek information to assess influence
8AA	Transitional, savings, and related provisions
8A	Act binds the Crown
	Part 2 Gambling
	Subpart 1—Prohibitions and authorisations
9	Gambling prohibited
10	No more casinos
11	No increase in casino gambling

The functions and powers of the regulator are set out in the Act. For example, the Gambling Act sets out the requirements of class 4 gambling. This includes the meaning of class 4 gambling, application of a class 4 operator's licence that regulators must investigate the applicant before deciding on the licence, grounds for granting a class 4 licence, requirements of licensees, procedure for renewal, suspension or cancellation of a licence, the right to appeal decisions and surrender of a licence.

Acts are written using the short title and the year it was enacted, for example, Gambling Act 2003. When referring to a specific provision in the Act, the short title and year are followed by the section and sub-sections, for example, Gambling Act 2003 s 17(1).

Structure of Regulations

Version as at 1 December 2023	
	
Gambling (Harm Prevention and Minimisation) Regulations 2004 (SR 2004/276)	
Silvia Cartwright, Governor-General	
Order in Council	
At Wellington this 30th day of August 2004	
Present: Her Excellency the Governor-General in Council	
<small>Note The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019. Note 4 at the end of this version provides a list of the amendments included in it. These regulations are administered by the Department of Internal Affairs.</small>	
<small>Pursuant to sections 313 and 314 of the Gambling Act 2003, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the advice of the Minister of Internal Affairs after consultation with persons or organisations that appear to the Minister to be representative of the interests of persons likely to be substantially affected by these regulations, makes the following regulations.</small>	
Contents	
1	Title
2	Commencement
3	Interpretation
<i>Restrictions on venues</i>	
4	Unsuitable class 4 venues
5	Restrictions on automatic teller machines in class 4 and casino venues
5A	Gaming machines must not be visible from outside certain class 4 venues <i>Stake and prize limits for class 4 gambling</i>
6	Stake and prize limits for class 4 gambling <i>Requirements relating to gaming machines</i>
7	Gaming machine must display certain messages
8	Gaming machine must include feature that interrupts play <i>Jackpot advertising and branding</i>

Title of the regulations and year it passed into law.

Regulations are made by Order in Council.

Regulations are divided into parts and regulations.

Regulations are structured the same way as an Act. Regulations are written using the full title, year, followed by 'reg(s)' for the regulation. For example, Gambling (Harm Prevention and Minimisation) Amendment Regulation 2023, reg 9.

The structure of bylaws is similar to an Act, however, parts of the by-law are referred to as clauses.

Changes in legislation

Acts and secondary legislation need to be reviewed and updated to reflect best practice, changes in government policy, societal attitudes and the outcomes of court cases. New law can be created and existing law changed or made obsolete.

Amendments: Changes made to an Act are called amendments. An amendment can be a repeal or change to an existing section or adding new sections called provisions. Once new sections in an Act become law they become part of the principal Act and are referred to as sections of the principal Act. The changes are usually shown as shaded blocks of text in the Amendment Act on the New Zealand legislation website.

The word 'amendment' will be in the title of an amending Act. Amending Acts give details of the changes made to the principal Act. For example, the

Gambling Amendment Act 2015 gives details of the changes made to the Gambling Act 2003. Parliament may also pass an Act that will amend more than one Act. For example, the Regulatory Systems (Education) Amendment Act 2023 made changes to several education-related Acts to improve regulatory clarity and efficiency.

Repealed legislation: is any law no longer in force due to expiry, revocation or that has been replaced. Sometimes secondary legislation is made under an Act that is then repealed and may continue to be in force under the new replacement Act.

Consolidation (formerly known as a reprint): is a version of an Act or secondary legislation that incorporates amendments. The New Zealand legislation website shows consolidated versions of an Act.

There may be several amendments which come into force at a later time. This means there may be multiple consolidations with different dates.

Keeping up to date

Is the legislation current? It is important to check you're reading the most up to date version. The New Zealand legislation website is the official source. Bookmark this site on your web browser and use it as your 'go to' source. Repealed law is shown on the site with repeal dates. Checking the status of legislation, amendments and commencement dates are good habits to get into.

Printed copies, unofficial websites, internal guidance and third-party summaries are at risk of being outdated.

Is regulatory practice current? Court decisions, legal interpretations and developments mean the law is constantly evolving. The role of the regulator is to stay current with changes and ensure

regulatory practice reflects the law. They do this by regularly updating their policies and procedures, having legal briefings and case reviews.

What you can do to learn more about the law and judiciary

- Search for the Acts and secondary legislation administered by your organisation on the New Zealand legislation website. Search for links to secondary legislation on your organisation's website. Read them and make notes about questions to ask your manager. What parts of the law do you need to know more about?
- Learn from senior colleagues about how the law is applied in your team. Ask them how they stay up to date with changes in the law. What tips do they have for you?
- Review your organisation's website to learn about any regulations, rules, notices, standards or by-laws.
- Reflect on your work – What are the gaps in your knowledge about the law? How will you address these? What support do you need to help you learn more about the law?

Resources

↗ [Strategic Intentions 2024/25 - 2028/29¹](#), Ministry for Regulation Te Manatū Waeture (Sep 2024)

↗ [Te Pouārahi/The Judge over your shoulder²](#), Crown Law Te Tari Ture o te Karauna (2019)

↗ [New Zealand Legislation³](#), Parliamentary Counsel Office Te Tari Tohutohu Pāremata

[New Zealand Parliament Pāremata Aotearoa:](#)

- ↗ [How laws are made](#) (Jan 2016)
- ↗ [Spotlight on Parliament - How a Bill Becomes Law](#) (Dec 2022) (YouTube, 4 mins)
- ↗ [Introduction to the New Zealand Parliament](#) (YouTube, 5 mins)
- ↗ [Parliament versus Government: What's the Difference?](#) (Feb 2021) (YouTube, 3 mins)

↗ [Cabinet Manual](#), Department of the Prime Minister and Cabinet Te Tari o te Pirimia me te Komiti Matua (2023)

↗ [Cabinet Guide](#), Department of the Prime Minister and Cabinet Te Tari o te Pirimia me te Komiti Matua (2023)

↗ [Turning Policy into Law](#), Parliamentary Counsel Office Te Tari Tohutohu Pāremata (2025)

↗ [Making Secondary Legislation](#), Parliamentary Counsel Office Te Tari Tohutohu Pāremata (2025)

↗ [Legislation Guidelines](#), Legislation Design and Advisory Committee (2021)

↗ [Prosecution Guidelines](#), Crown Law Te Tari Ture o te Karauna (Dec 2024)

[Courts of New Zealand Ngā Kōti o Aotearoa:](#)

- ↗ [About the Judiciary](#)
- ↗ [The courts](#)
- ↗ [The courts videos](#)
- ↗ [Judgements](#)

↗ [The judge over your shoulder](#), Ministry for Regulation Te Manatū Waeture (Apr 2022) (YouTube, 18 mins)

↗ [The Paul and Henry Show, Episode 1: Natural justice](#), Ministry for Regulation Te Manatū Waeture (2023) (YouTube, 16 mins)

↗ [The Paul and Henry Show, Episode 20: Legal guidance for regulators](#), Ministry for Regulation Te Manatū Waeture (2024) (YouTube, 22 mins)

↗ [Standards for policy and regulation](#), Standards New Zealand Te Mana Tautakitanga Aotearoa (2025)

Got questions? Get in touch

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