



Better Regulation  
Victoria

# **Towards Best Practice**

A guide for regulators

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## The role of this guidance

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. Accordingly, regulators are expected to maintain the highest standards of conduct and integrity.

The role of a model regulator is challenging. Regulators are expected to protect against harms arising from the behaviour of duty holders, principally by holding these parties to account. Businesses and the community expect that they do this effectively, and efficiently use their available resources in doing so.

Through their choices and regulatory approach, Victorian regulators need to ensure that they are effective in shifting duty holder behaviour, they are responsive to those they regulate, they collaborate and share information, and they strive for continuous improvements in their operations and supporting systems.

This guidance sets out 10 principles of regulatory practice that will support all Victorian regulators to improve their activities towards best practice. They describe the high-level approaches for regulators to orient their work around regulatory harms, and to meet their objectives, functions and duties.

Delivering on these principles is part of a continuous improvement approach that is intrinsic to 'best practice', recognising the different contexts in which individual regulators operate.

Regulators should consider how well they meet these principles at all levels within and across their organisation. They need to ensure that these principles are the basis of their activities and their culture. This will involve regulators dealing with their specific constraints, including legislative, policy and resource challenges. Addressing such constraints involves collaboration with and support from policymakers and agencies that oversee regulators.

This guidance sets out principles that regulators may need support to deliver – through stakeholder feedback, departmental support, and policy making that is responsive to the unique challenges that they face. The nature of this support will depend on the specific role, governance, and independence of each regulator – from embedded departmental functions to independent statutory bodies.

This guidance was developed by Better Regulation Victoria with a dedicated working group from a cross-section of Victorian regulators. This engagement helped ensure that these principles would apply to and represent the breadth of regulatory functions in Victoria. Better Regulation Victoria will support regulators to put this guidance into effect through resources and ongoing collaboration.



## Ten principles of good regulatory practice

This guidance sets out 10 regulatory practice principles under three themes, with sub-elements that detail how these principles may be put into effect.

This guidance is written to support leaders in regulators tasked with the goal of improving performance. These are addressed to those who are responsible for regulatory improvement – ‘you.’

You may be a CEO or Executive, manager, or regulatory specialist, or may be delivering an improvement project or building regulatory capability. Whatever the circumstances, you need to prioritise attention to regulatory improvement at highest level of operations and in governance.

Whilst they apply to all, regulator objectives, scale and situations vary. You should consider what are proportionate and appropriate approaches in context.

This guidance has principles relevant to strategy setting (page 5), operations (page 8), and enabling practices (page 11). These are supported by guidance on implementation (page 14) and definitions (page 16).

<b>Strategy</b>	1. Be clear on your regulatory outcome and the harms you are trying to minimise
	2. Establish and refine your approach to minimising harms
	3. Ensure your regulatory regime is fit for purpose
<b>Operations</b>	4. Support duty holders to understand the value of compliance and harm reduction
	5. Support duty holders to comply
	6. Target regulatory effort based on risk of harm
	7. Evaluate and communicate your efforts and their impact on your regulatory outcomes
<b>Enabling Practices</b>	8. Work with regulatory peers and partners on shared harms and risks
	9. Be transparent and accountable for how you perform your activities
	10. Continuously improve your regulatory operations



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## Strategy

Effective delivery of these principles relies on a robust understanding of the regulator's operating context and objectives, and how these guide regulatory approaches. It also involves applying this understanding to the design of regulatory approaches and ensuring that commitments around approach are translated into internal systems, practices, and culture.

To deliver against **principles one and two**, consider co-design activities with staff to define the regulator's objectives, focus and approach, and assess how to appropriately document and translate these into practice. This might involve the creation of strategy or policy documents, or review of existing policies and external commitments to assess how they are put into practice.

Where regulators develop positions to describe their understanding or approach, these may be internal, or externally facing, depending on the operational context. In some cases, regulators might develop high-level external commitments or statements that are supported by comprehensive internal policies.

You should assess what is a proportionate and fit-for-purpose approach to these activities in your operational context. In doing so, account for situations where you have significant discretion about your regulatory approaches or the exercise of powers. This includes examining how enforcement relates to, supports, and reinforces your other regulatory approaches.

**Principle three** requires regulators to understand the limitations of their framework and how their role interacts with others. Regulators should maximise the effectiveness of their current regulatory settings and advocate for necessary changes. A willingness to innovate and test approaches may be required.

Departments have an essential role in supporting the regulator to communicate, and in responding to identified challenges, such as capability, resource, funding model or legislative issues. Regulators and departments should actively work together to ensure that the regulatory regime is fit for purpose.



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

- 1.1 Understand and describe the causes, characteristics, and impacts of the key harms you seek to minimise.
- 1.2 Define the regulatory outcomes you pursue, including the public benefits of harm reduction, increasing community trust, and improving integrity within regulated industries and the regulatory scheme.
- 1.3 Define your role in addressing these harms and meeting these outcomes, the role or accountability of duty holders, and your relationship to them.
- 1.4 In defining your role, account for the objectives and scope of relevant legislation, broader policy settings, and the role of others. This may include engaging with policy makers, research bodies, peer regulators, government agencies, industry, and the community.

## **Principle 2    Establish and refine your approach to minimising harms**

- 2.1 Thoroughly understand how your regulatory approaches, powers and tools can be used and coordinated to prevent or respond to harms and achieve your regulatory outcomes in an efficient and effective way.
- 2.2 Consider when to apply routine processes and when to develop tailor-made interventions to address harms. Account for and develop the resources and capabilities required to deliver each approach.
- 2.3 When designing your regulatory approaches, account for how duty holder attitude, behaviour, and performance should influence your responses.
- 2.4 Establish a clear approach to monitoring compliance. For inspection programs, aim to maximise the use of preventative, rather than reactive approaches, accounting for the constraints of relevant legislation and the performance of regulated industries.
- 2.5 Develop positions on the use of different enforcement powers within the context of your regulatory approach. Account for legal requirements, risk, proportionality, and effects on broader compliance behaviours. Distinguish how you use remedial tools to change behaviour and secure compliance, from your use of sanctions and penalties.
- 2.6 Communicate your overall approach, so it is understood across your organisation, by duty holders, and other stakeholders and the community as relevant. Explain why and how your approaches are intended to work to address harms.



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### **Principle 3    Ensure your regulatory regime is fit for purpose**

- 3.1 Monitor the environment you operate in to ensure that your approach is responsive to emerging challenges, changes in harms, and new policy settings, and adapts to changes in technology, industry practices and community expectations.
- 3.2 Account for the areas where your activities interface with those of peer regulators, policy makers, service delivery and funding bodies, to address inconsistencies in objectives or in delivery of government functions.
- 3.3 Identify where you can innovate or test new approaches to using your tools and powers to achieve your outcomes, including where you should take strategic enforcement action to clarify the limits of your regulatory framework.
- 3.4 Where your ability to address harms is limited by deficiencies in your regulatory framework, seek to influence and develop other approaches to achieve your goals. This may include collaboration, influence, and explaining your limitations to government peers.
- 3.5 Alert relevant Ministers and departments to capability, funding or other resourcing issues, or problems with legislation, that significantly compromise your ability to meet regulatory outcomes. When doing so, advise on the nature of the risks, and proposed or possible mitigating strategies.



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## Operations

Delivery against these principles involves the translation of strategy and priorities into operational practice, through delivery of regulatory approaches, building or refining management systems and operational policies, and application of decision-making and resource management frameworks. When addressing these principles, the appropriate approach will vary with the powers, functions, and scale of a regulator.

**Principle four** relates to awareness raising activities with duty holders and the community, including how obligations are framed. Prioritising this principle can help increase engagement, especially when most duty holders are cooperative, but may struggle to prioritise compliance, or where the purposes of regulation are not obvious. It may be less relevant to deliberate non-compliances or criminal enterprises.

**Principle five** accounts for the broad range of approaches that may be used to make compliance straightforward. These approaches should be supported and reinforced by appropriate enforcement action, to maximise compliance across the duty holder cohort.

Together, delivery against **principles four and five** can help maximise support for the regulatory settings and voluntary compliance, by making the reasons for regulation clear, making rules easier to understand and follow, and designing and targeting compliance approaches to influence behavioural change.

**Principles five and six** can involve the design and delivery of regulatory activities. Delivering these principles may require ongoing improvements in staff and management capabilities, processes, and systems, to create capacity to better prevent harms. Gap analyses, maturity assessments and feedback from stakeholders can inform prioritisation.

Delivery of **principle seven** requires a commitment to evaluation that goes beyond measuring activities, by assessing and explaining how regulatory activities work together to impact on harms and deliver results. This may require new ways of organising regulatory effort, developing measures and interpreting results, accounting for the nature of harms.

Delivering improved evaluation may also require support from departments, recognising the inherent challenges in measuring harm reduction, and the importance of regulators having appropriate discretion to allocate their resources. This may include revising performance indicators from activity quotas to a balanced set of performance indicators.



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

- 4.1 Communicate the impact of harms and the importance of harm reduction to duty holders, to increase their willingness and motivation to comply.
- 4.2 Support duty holders and the community to understand how their actions affect harm reduction and broader regulatory outcomes. This may include explaining the benefits of compliance for duty holders, industry, and the broader community.
- 4.3 Communicate how your compliance and enforcement actions contribute to harm reduction, industry integrity and ultimate social, environmental, and economic outcomes.

## **Principle 5 Support duty holders to comply**

- 5.1 Reduce barriers to compliance through the design of your regulatory standards and requirements, recognising the differing capabilities and needs of duty holders.
- 5.2 Target guidance, information, inspections, and compliance assessments to support or reinforce compliance where it is needed most.
- 5.3 Consult duty holders on existing and proposed guidance, to ensure that it is relevant and supports them to meet their obligations.
- 5.4 Provide guidance in a clear, accessible, and concise format, using communication channels appropriate to the target audience. This may include providing timely, relevant guidance as part of your interactions with duty holders.
- 5.5 Ensure that regulatory officers have the necessary knowledge and skills to help duty holders to understand obligations and compliance requirements, in the context of industry operations.
- 5.6 Deliver a proportionate, focused response to non-compliances based on the degree of risk presented and your intended effect on duty holder behaviour.
- 5.7 Where appropriate to the regulatory framework and the risk, take account of stages a duty holder might need to progress through to maintain or improve compliance, and their willingness and ability to do so.
- 5.8 Consider how you can increase voluntary compliance by minimising burdens and costs of compliance, recognising compliance history, and where appropriate, adopting incentives or earned recognition approaches.



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## **Principle 6 Target regulatory effort based on risk of harm**

- 6.1 Use data, intelligence and insights from staff and stakeholders to enable you to best understand the causes, characteristics and patterns of risks, to enable you to focus your effort and to design interventions, to make the most significant impact.
- 6.2 In defining your approach, express your attitude to different risks, how you assess risks, and set how you treat risks or provide for contingency plans. Monitor and adjust your risk controls and resource allocation as appropriate.
- 6.3 Establish an approach to risk assessment that integrates staff judgement, protocols, and data in decision-making, which strives to improve use of data and intelligence over time.
- 6.4 Communicate the key factors of your risk-based frameworks to duty holders and ensure that your internal processes put these frameworks into practice.
- 6.5 Seek to delegate regulatory decisions to the lowest appropriate level, supported by delegations, training, guidance, assurance and audit frameworks, so staff can consistently assess compliance risks, apply judgement, and determine their response.
- 6.6 Where feasible under legislation, target duty holder reporting obligations and requests for information to what is necessary to evaluate risks with reasonable confidence, recognising that perfect information is not always available.

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

- 7.1 Appropriately communicate your priorities and focus areas to duty holders, the public and other stakeholders. Use your communications to emphasise the harms and outcomes you pursue, and to promote compliance.
- 7.2 Measure the performance of your regulatory activities including inspections, desktop reviews and audits. Account for the focus and contribution of these to monitoring, detecting and acting on non-compliances and risks of harm.
- 7.3 Evaluate the effectiveness of your regulatory activities and tailor-made interventions in changing behaviours and reducing harms.
- 7.4 Regularly publish details of your performance against your commitments, subject to confidentiality and other sensitivities. This may include relevant feedback such as from experience surveys, and summary data of complaints and decision reviews.



## Enabling Practices

These principles relate to collaboration, transparency, integrity and culture, and a commitment to continuous improvement across all areas of operations. Activities under these principles should be supported by leadership commitment and appropriate governance and reporting.

**Principle eight** accounts for the many reasons for working with peer regulators and other partners, including to set joint agendas and priorities, to minimise harms and improve compliance, to improve intelligence, to streamline interactions, and to reduce duplication or inconsistency. Operational partnerships can be supported by investment in systems for data and information sharing.

**Principle nine** relates to consultation commitments and transparency about how regulatory decisions – including use of powers and enforcement decisions – are made and can be scrutinised. These approaches help to maintain integrity and accountability and demonstrate procedural fairness. The appropriate level of detail and explanation will vary depending on your regulatory context.

**Principle ten** concerns internal processes and practices, as well as leadership and culture, to ensure operations improve and adapt. It focuses on systems of delegation, decision-making, and performance management. These help regulators to ensure that the strategy and operations principles are translated into practice. Applying this principle can help to optimise routine processes, and deliver other regulatory activities and approaches with appropriate capabilities and support.

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

- 8.1 Understand the limitations of your role, and the complementary roles of other parties including peak bodies, peer regulators, policy makers and service delivery agencies. Actively seek to tackle harms in a coordinated way, by establishing shared agendas and priorities.
- 8.2 For given harms of shared interest, understand which regulator is best placed to influence that harm, and consider establishing lead, coordination, and support roles.
- 8.3 Understand the legal, technological, data, privacy and cultural barriers to information sharing with peers, where these can be navigated, and when it is appropriate to do so.
- 8.4 Where appropriate, facilitate and formalise practices for sharing information and insights to help target efforts, minimise duplication and be most effective.



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- 8.5 Develop your capabilities to utilise and share relevant data, to inform your decision making and regulatory activities and to develop the capability of peer regulators.
  - 8.6 Work with peers to pursue the goal of 'collect once, use many times' when requesting information from duty holders.
  - 8.7 Work collaboratively to assist duty holders impacted by multiple regulators, and resolve cases of overlapping, contradictory, or uncoordinated compliance guidance.

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

- 9.1 Set out the standard of conduct that duty holders should expect from you, so that you are accountable for how you put your regulatory approach into practice in your interactions and responses to non-compliances.
- 9.2 Consider the impact on duty holders, stakeholders, and the wider community before changing policies or practices. As appropriate, engage duty holders, stakeholders and the wider community when making decisions or setting policies that impact on them.
- 9.3 Support your regulatory officers and other decision makers to understand and consistently apply your regulatory approach, when exercising professional judgement and following protocols.
- 9.4 Establish protocols for the consistent exercise of powers, providing guidance, responding to non-compliances, and explaining the reasons for regulatory decisions and the actions required of duty holders to comply.
- 9.5 Provide opportunities for duty holders to query required action and / or decisions. Have an impartial, clearly explained, and visible internal review process for relevant decisions.
- 9.6 Establish appropriate mechanisms to recognise and acknowledge the experiences of duty holders and the wider community who interact with you. When gathering and reporting feedback, account for the different parties and circumstances of your regulatory interactions.
- 9.7 Maintain appropriate mechanisms and supports to mitigate risks of undue influence from duty holders and duty holder groups, and to maintain regulatory independence.



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## **Principle 10      Continuously improve your regulatory operations**

- 10.1 Establish suitable systems for quality assurance and learning as an organisation, within and across your functions.
- 10.2 Consider evolving duty holder and community expectations of regulatory performance, to build trust and confidence in your operations.
- 10.3 Regularly review the effectiveness, efficiency and consistency of your operations and make changes to processes, or invest in management or staff capability, as appropriate.
- 10.4 Set appropriate targets and employ a range of performance indicators, to monitor the effectiveness and consistency of your actions and adjust your various approaches accordingly.
- 10.5 Assess and improve your systems to delegate and manage decision-making and regulatory action. Adjust the settings to support delegation and a proportionate level of control.
- 10.6 Adopt appropriate change management practices when implementing improvements, to ensure effective delivery and change risk management.



## Implementation of the principles

The 10 Principles set out a broad framework that regulators should work towards in their strategy and operations. Consider the following when planning improvements.

### Implementation occurs at all levels

If reviewing the principles and these examples, regulators should have regard to three levels of roles and implementation:

<b>leaders</b>	Setting regulatory strategies, policies, and approach, confirming scope and role, attitude to risks and harms, form of responses, and engagement with external parties.
<b>managers</b>	Coordinating and running regulatory functions and systems, implementing risk approach, reviewing performance, networking with peers, and optimising delivery.
<b>regulatory practitioners</b>	Delivering regulatory practice and giving effect to policies, providing feedback, and engaging with duty holders.

Approaches should be fit-for-purpose given the regulator's settings, challenges, and support environment. Pursue improvement in a way that is appropriate to your context, and the need to prioritise limited resources.

### Develop fit for purpose approaches

To prioritise effort, you should consider the level of maturity of your systems – whether elements are:

<b>absent</b>	e.g., no policies, statements or defined approaches, or informal approaches only.
<b>emerging</b>	e.g., under development or only in documented in summary form.
<b>fragile</b>	e.g., concepts in place, but reliant on single staff or single points of failure.
<b>maturing</b>	e.g., increasing use of analytics and data to guide decisions.
<b>well established</b>	e.g., continuous improvement, including integration of external lessons learnt.

In general, regulators will need to move through stages of establishing frameworks, ensuring collective understanding of decision-making tools, embedding approaches across staff, and moving into increasingly sophisticated, robust, and embedded approaches.



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Where elements relating to the strategy principles are absent, they should be attended to first, as they provide the foundation for further improvements. Where these are present, you should look to how well they have been translated into other areas of operations.

This includes critically reviewing the systems that drive management and practice. This may involve decision-making, prioritisation and work allocation frameworks, accountabilities, monitoring, training, delegations and appointments, quality assurance and performance reporting.

### **Implementing changes and government priorities**

The approach to improvement should consider the priorities of government and ministers and apply a change management perspective that seeks to continually improve regulatory capability.

Regulator self-assessments against the principles may highlight priorities for reform and improvement. In some cases, these may require support from departments or portfolio ministers to implement or resource.

The Minister's Statement of Expectations for each regulator may be a useful framework for prioritising and implementing improvements. Where applicable, departments should prioritise issues identified under the principles, when developing expectation statements with regulators.



## Definitions

<b>compliance</b>	referring to whether a duty holder meets their obligations, or may relate to a regulator's activities to raise adherence with these obligations.
<b>duty holders</b>	persons who have duties or obligations under legislation, or regulated entities.
<b>enforcement</b>	regulatory activity to act against non-compliance.
<b>harm(s)</b>	problems (such as behaviours leading to non-compliance) that cause detriment to the community or environment, or that undermine the intended regulatory outcomes.
<b>inspections</b>	generally a physical attendance of a site or duty holder. Used broadly in this document to indicate any form of compliance check. May be considered to include desktop, physical and remote assessments.
<b>peer regulators</b>	regulators with intersecting responsibilities and interests, or partner regulators.
<b>regulatory officer</b>	a member of staff who is authorised or delegated to exercise regulatory powers or make regulatory decisions, including authorised officers and inspectors
<b>remedial tools/remedy</b>	a broad term for seeking redress or relief for a non-compliance, typically a measure such as a corrective notice or direction.
<b>regulatory approaches</b>	the overarching methods used to regulate and change behaviour, in the context of the legislative framework; including the form of rules, the mixture of tools, and the points at which risks are addressed.
<b>regulatory framework</b>	an explanation and clarification of how a regulator will generally perform its role, considering what it regulates, who it regulates, how it interacts, and the principles and approaches applied.
<b>regulatory powers</b>	the powers regulators have under legislation.
<b>regulatory outcomes</b>	the outcomes that the regulator is charged with in achieving for the community, accounting for their legislative mandate and aligned with the broader strategic and policy context.
<b>regulatory scheme</b>	a regime that is established, administered, supported or overseen by government that seeks to regulate or control a specific activity
<b>regulatory tools</b>	interventions applied by the regulator to influence behaviour, encompassing information and guidance, cautions and warnings, and compliance tools.
<b>support to comply</b>	aiding duty holders to understand and meet their obligations, including through information and guidance.
<b>tailor-made interventions</b>	an intervention developed under a problem-solving approach, to integrate different regulatory activities to address a harm.

