



Better Regulation
Victoria

Towards Best Practice Implementation Handbook

Supporting regulators to implement good
regulatory practice

Better Regulation Victoria
GPO Box 4379
Melbourne Victoria 3001 Australia
Telephone: 03 7005 9772
Email: contact@betterreg.vic.gov.au
Webpage: www.betterregulation.vic.gov.au

Authorised by the Victorian Government
1 Treasury Place, Melbourne, 3002

© State of Victoria 2023



You are free to re-use this work under a Creative Commons Attribution 4.0 license, provided you credit the State of Victoria (Better Regulation Victoria) as author, indicate if changes were made and comply with the other license terms. The license does not apply to any branding, including Government logos.

Copyright queries may be directed to IPpolicy@dtf.vic.gov.au

Published March 2022

If you would like to receive this publication in a different format please email contact@betterreg.vic.gov.au

This document is also available in Word and PDF formats at www.betterregulation.vic.gov.au

The role of this handbook

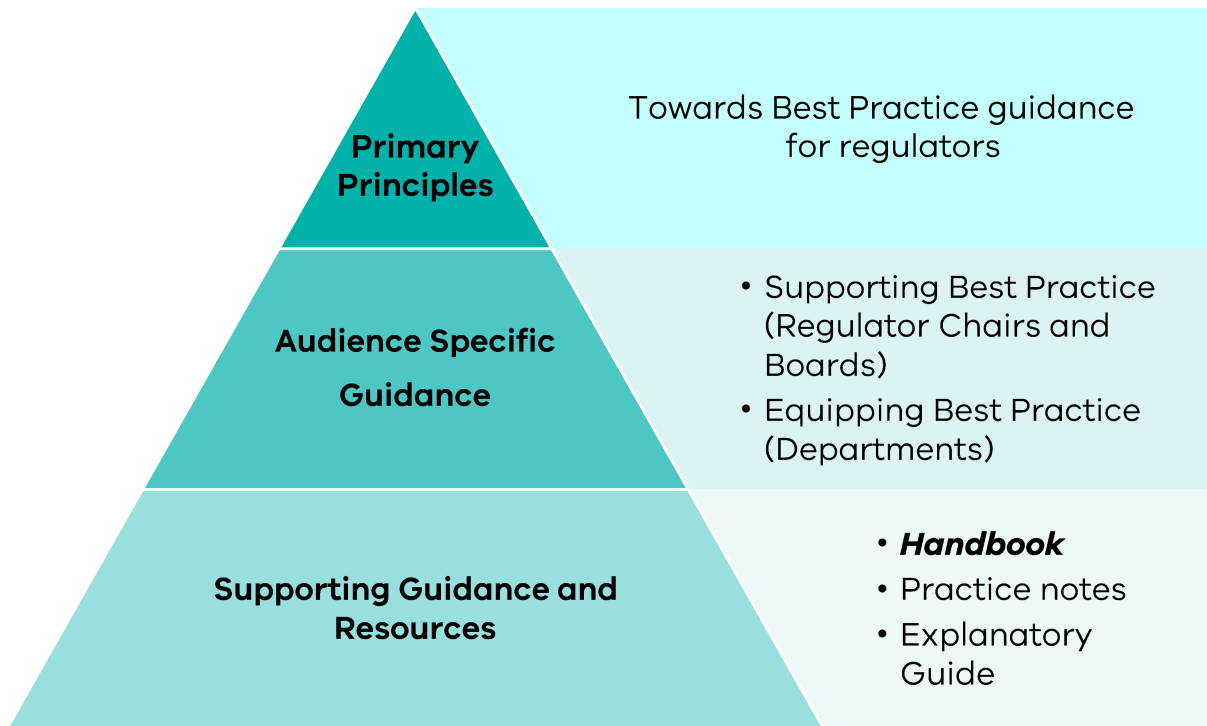
Introduction

This Handbook is a supporting resource to the *Towards Best Practice* guide, for use by regulator staff and those charged with delivering practice improvements.

It has been developed in consultation with a working group of Victorian regulators, to help regulators to identify and deliver products or documents to meet the *Towards Best Practice* principles.

This resource complements a broader package of regulator guidance and support materials, including advice tailored to regulator boards and to departments. This package of guidance is available at: <https://www.vic.gov.au/towards-best-practice-guide-regulators>.

Regulator guidance package



How to use this handbook

This handbook outlines the rationale for the 10 *Towards Best Practice* Principles, summarises the kind of processes or documents you might need to produce to help meet the principles, and considerations for how to best deliver.

These suggestions are based on regulator experience in delivering improvements. They are not mandatory requirements or performance benchmarks.

The suggested documents align with those that might be requested or enquired about by regulator chairs or boards, consistent with the *Supporting Best Practice* paper for chairs and boards. However, they are also applicable to regulators who do not have a governing board.

Relevant definitions, resources or examples are also provided where suitable, to complement those in *Towards Best Practice*.

Whilst each regulator and their context differ, this document provides common approaches and considerations for responding to the principles.

Strategy

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

The sub-elements of principle one guide regulators on how to define their operating context and goals. They focus both on *harms*, or problems in the external environment, and other objectives of regulatory schemes.

Overall, this principle asks regulators to understand and define their context and outcomes, Documents should be understood and made relevant to regulatory staff, to guide their operational practices.

To help meet this principle, consider engaging staff to develop processes or documents outlining:

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

To best deliver these, consider the following approaches as appropriate to your context:

Action area	Rationale and considerations for implementing
Demonstrate a harms focus within key strategy documents	Helps to align organisational culture around harms Considerations: <ul style="list-style-type: none">• Produce vision and role statements that explain your role within the broader regulatory system.• Make commitments for how you will discharge your role.• Publish regulatory strategies, statements of intent, or other frameworks to describe harms, their causes, and their impacts.
Consider research to better understand harms	A regulator can better focus its efforts by using an appropriate mix of house capabilities and third-party expertise Considerations: <ul style="list-style-type: none">• Conduct horizon-scanning or other activities to identify emerging harms.• Establish partnerships with research bodies to understand harms.• Conduct broad based research and industry analysis to inform strategic planning and goals.• Identify and analyse harms and how to tackle them.• Apply techniques such as data analysis and modelling, regulatory experience, case studies and engagement with duty holders and the community.

Action area

Rationale and considerations for implementing

Engage impacted stakeholders to understand harms

Helps to make sure the regulator understands the harms and that stakeholders are engaged with objectives

Considerations:

- Make and meet engagement commitments to understand the impacts of harms on the community.
- As relevant, expressly consider vulnerable cohorts.

Use management systems to respond to harms

A focus on harms needs to be embedded, which requires accountability and tracking of efforts

Considerations:

- Use organisation planning processes to embed responses to harms, such as through programs and initiatives.
- Account for and question where current regulatory activities are focused on non-compliances that do not clearly link to harms.
- Account for your whole organisation as a system in embedding responses, considering how different functions and people work together.

Engage staff in your focus on harms

Strategies and policies are important but alone do not achieve the required focus, practices, and culture to perform

Considerations:

- Work with staff and across levels to generate strategic statements.
- Engage with, and constructively challenge, perspectives that focus narrowly on non-compliance without accounting for harms.

Principle 2 Establish and refine your approach to minimising harms

The sub-elements of principle two support regulators to appropriately design their activities and operations, accounting for theories of regulatory action and duty holder behaviour change, in the context of their broader operations. This will likely be an ongoing area of practice reflection and refinement, as regulators better understand harms and the effects of their actions.

To help meet this principle, consider engaging staff to develop processes or documents outlining:

- Your regulatory approach and how you use your influence and direct duty holder behaviour to minimise harm / deliver your regulatory outcomes.
- Your approach to risk, how you prioritise harms and your regulatory priorities.
- How your regulatory functions (for example, 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.

To best deliver these, consider the following approaches as appropriate to your context:

Action area	Rationale and considerations for implementing
Develop your approaches through internal or external documents	<p>The process of developing these documents, with staff, can help to align practice and culture</p> <p>Considerations:</p> <ul style="list-style-type: none">• Establish long-term plans for the mix of routine, program and problem-solving activities applied to given problems.• Produce documents that explain your role and operating model, and how different tools and approaches are applied to different problems.• Develop positions on the features of regulatory tools and powers, the situations when they can be applied, and criteria for their use.

Action area

Rationale and considerations for implementing

Account for key elements of a regulatory approach

Regulators need to consider risk, duty holder behaviour and focus of effort, and the approach needs to work through all of these to be effective

Considerations:

Consider developing positions and messages about:

- Your approach to different harms.
- The assumed motivation of most duty holders, e.g., that most want to do the right thing and comply.
- Where you will have low tolerance to non-compliances or harmful behaviours, such as deliberate non-compliances.
- The compliance context of specific obligations or topics, e.g., where there are new requirements and you are supporting their introduction.
- Focus areas and what this means for duty holders or issues under focus. Also, what they can expect where an issue is not a focus area.
- Key elements of your regulatory approach, e.g., the approaches applied to problems, and how you choose your priorities

Consider how recognised regulatory frameworks apply to your situation

Regulatory literature and practice points to common frameworks – account for these to be balanced, comprehensive and recognisable

Considerations:

Regulatory concepts and frameworks include risk-based regulation, and responsive regulation approaches. Consider how these apply in your context. You may need to:

- Assess the suite of regulatory tools available to you and understand the gaps in your regulatory toolkit.
- Account for the use of remedial tools alongside sanctioning tools.
- Account for the operating environment of duty holders, and the influences on their behaviour and compliance, such as economic settings, industry changes, and other demands.
- Develop tools to influence outcomes where there are gaps.
- Work with staff to build common understanding of risk factors.
- Compare how frameworks are applied to different problems.

Action area

Rationale and considerations for implementing

Design your compliance programs in context of other tools

Regulators need to assess whether they can leverage the role of other parties in monitoring and promoting compliance, to maximise effect of their scarce resources.

Considerations:

- Inspections and enforcement cannot be everywhere and address everything, and there can be many other ways to achieve regulatory outcomes.
- Consider whether the actions of industry, community, and those who relate or engage with duty holders could have a role in promoting compliance and detecting non-compliance.
- In designing your approach:
 - Think beyond your regulatory tools, and account for other mechanisms, to maximise your impact on harms and compliance.
 - Account for advances in monitoring and reporting technology, and where these can replace or complement physical inspections.
 - Consider the self-regulating aspects of the regulatory environment, including private incentives and motivations.
 - Consider the parties who have a relationship with duty holders, such as suppliers, customers, agents, advisors, or consultants; their influence on duty holders, and the possible roles in detecting or reporting on risks.
 - Consider how these incentives towards compliance can be used and maximised without the need for compliance monitoring.
 - Consider the role of improved information, visibility and feedback mechanisms between duty holders and other parties, including through use of technology, to influence behaviours.
- Support the role of other parties in monitoring or responding to issues, such as industry responses to community concerns.

Distinguish criminal investigation from your general compliance activities

The ‘mode’ of regulating differs with a different focus on support compared to enforcement, and regulators need to be clear about which scenario they are addressing

Considerations:

- Where relevant, clearly distinguish and articulate:
 - regulatory activities focusing on promoting compliance (including, when needed, by using enforcement powers)
 - law-enforcement activities focusing on fighting crime
- Consider how your general compliance activities can trigger or lead to sanctioning action, how they detect criminal activities, and when dedicated law enforcement approaches (e.g., surveillance, criminal intelligence, strategic investigations) are required

Action area

Rationale and considerations for implementing

Consider your approaches to specific harms

A single, high-level approach to regulating may not be sufficient to manage harms with different characteristics

Considerations:

- Consider the suite of approaches and tools you can apply for specific harms. This includes persuading or influencing behaviour change and using powers to compel action.
- Whether to use approaches separately or in combination, for specific harms.
- Assess how different approaches might translate to external statements of regulatory posture, such as statements of intent, or specific programs under a regulatory strategy.

Consider the audience and purpose of explaining your approach

Whilst regulators may need to articulate a range of matters to ensure consistency, their stakeholders may not be engaged in all of these

Considerations:

In thinking about what you should explain externally, consider:

- The principles that guide your approach and commitments.
- What messages can help to increase voluntary compliance, such as communicating priorities and expectations.
- What is useful to increase predictability and help duty holders and the community to hold you to account.
- How to help duty holders understand what they need to do when engaging with you.
- What is important to explain internally, compared to what is important to prepare for internal communication and change management needs.
- What are appropriate documents to explain your approach, such as corporate or regulatory strategies, compliance and enforcement policies, and statements of regulatory intent.

Translate approaches into practice through your management systems

Formal mechanisms, accountabilities and roles are usually required to embed a regulatory approach

Considerations:

- Define roles and responsibilities to give effect to your approaches.
- Account for the role of leaders to coordinate activities and functions.
- Develop regulatory interventions with clear linkages to your intended contribution to short, intermediate and long-term outcomes.
- Implement mechanisms to implement long-term strategies. Account for leadership, management, operations, and reporting.

Action area

Rationale and considerations for implementing

Ensure regulatory officers are involved and equipped

Staff need to feel invested in, and understanding of, a regulator's approach, and skilled to exercise judgement consistent with it.

Considerations:

- Conduct professional development and change management activities with staff, to help develop these approaches and put them into practice.
 - Establish a work culture that engages staff in the regulatory approach.
 - Consider how to ensure that regulatory delivery is consistent with stated commitments to duty holders and the community.
-

Principle 3 Ensure your regulatory regime is fit for purpose

The sub-elements of principle three outline the many ways in which regulators can optimise the use of their regulatory powers, and influence outcomes where those powers are limited. They promote a mindset from regulator leaders to look at the broader system in which the regulator operates, and how working with peers can help to influence regulatory outcomes. They also help regulators to look at how their operations, and their structure, are optimised to meet regulatory objectives.

This principle is framed in the context of the leading role of departments in ensuring that the regulatory regime, or scheme, is fit for purpose. The *Equipping Best Practice Paper* outlines these accountabilities, and the importance of healthy and productive relationships between departments and regulators.

To help meet this principle, consider engaging staff to develop processes or documents outlining:

- Any significant barriers or legislative limitations that are restricting you from delivering your mission, and priorities for resolution.
- How your operating model is funded and any pressure, now or in the immediate future, on that model.
- Critical capabilities needed to deliver on your 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.

To best deliver, consider the following approaches as appropriate to your context:

Action area	Rationale and considerations for implementing
Think broadly about how to achieve your regulatory outcomes	<p>Regulators may play a role within a larger system, in which government, industry and community stakeholders can affect change</p> <p>Considerations:</p> <p>Account for:</p> <ul style="list-style-type: none">• The most effective set of available approaches and tools to effectively regulate, and better practice approaches used in other jurisdictions.• The entirety of your regulatory powers and tools, their current application, and how they can be used or developed for different problems or harms.• The role of other parties in influencing duty holder behaviour, and how to engage with these parties. This includes those who duty holders commonly engage with including industry groups, peer regulators, or other government bodies.• Options to innovate where possible, to fill gaps in your toolkit to persuade or influence compliance behaviours, such as through non-statutory guidance, warnings, or other communications.

Action area

Rationale and considerations for implementing

Critically engage with your legislative limitations

Whilst regulators often face legislative impediments, there is also a risk of culture and beliefs amplifying these limitations

Considerations:

- Consider limitations of your regulatory tools and powers, whether these are actual or perceived, and when and how advice was asked for and given on these limitations.
- Review these limitations in the context of your enabling legislation, including its objectives, and your functions and powers.
- Consider the role of culture and mindset and risk aversion in establishing views about legislative limitations.
- Express your tolerance to risk in relation to these limitations, accounting for the likelihood of provisions being tested or challenged, and the possible and probable consequences.
- Assess how to appropriately test limitations in different circumstances, to maximise the use of available powers or to make the case for change.

Engage with your fee and funding arrangements

Regulators need to understand the interaction between fee models and efforts to change behaviour, and form and explain their view on any issues with funding

Considerations:

- Form a view on what is the appropriate funding and fee approach and structure to equip you to discharge your functions and meet expectations.
- Form a view on how fee setting relates to behaviour change and other regulatory objectives including access, equity, and market neutrality

Proactively improve use of your current framework

There may be a range of opportunities to test legislation or work on areas of interaction with other regulators

Considerations:

- Address areas of overlap or inconsistency between your requirements and those of other regulators, service delivery areas or funding bodies.
- Test key provisions through strategic enforcement.

Advocate for your needs

Regulators need to be proactive in explaining barriers to ministers and departments

Considerations:

- Diagnose and report on the state of your legislation, to ministers and departments as relevant.
- When addressing potential policy or legislative changes, engage ministers and departments on potential benefits, risks and implementation and operational requirements.

Action area**Rationale and considerations for implementing**

Influence policy and legislation reforms

Regulators may need to build relationships at appropriate levels, to demonstrate how they are maximising effectiveness and where they are impeded

Considerations:

- Engage with policy-making processes and the development of legislation and regulations.
- Provide insights to policy makers on the nature of harms and non-compliances, and operational experience.

Build the case for reform

Regulators may need to proactively prepare case studies, data and legal advice and findings, to be able to influence change

Considerations:

- Collect evidence on constraints where feasible.
- Use case studies to help establish a case for change.
- Demonstrate how you have made the most of existing powers, and where this has been limited or constrained.
- Educate staff on regulation-making processes and frameworks

Operations

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

The sub-elements of principle four address communications that might be delivered broadly, such as through advertising campaigns, general communications, and media releases, or directly, such as in the context of inspections, remedial tools, or material provided to peer regulators who might act as 'proxy' inspectors, where this is appropriate.

Regulators will need to decide what is the appropriate mixture of communication approaches in their context.

To help meet this principle, consider engaging staff to develop processes or documents outlining:

- Your role and the value you provide (this should be available publicly).
- Activity seeking to understand duty holder motivations, behaviour, and attitude towards harms of concern.
- Duty holder and community awareness you as the regulator, support your role, the regulatory regime and appreciation of the value you bring.

To best deliver, consider the following approaches as appropriate to your context:

Action area	Rationale and considerations for implementing
Use general communications to explain harms	<p>Where appropriate, broad-based communications about harms and impacts can help to motivate people to comply</p> <p>Considerations:</p> <ul style="list-style-type: none">• Explain the relationships between harms and non-compliances in compliance strategies or compliance policies.• Deliver education and guidance campaigns focused on the harms and the reason for your role in addressing them.• Explain who benefits from reducing harms and improving regulatory outcomes, including individuals.
Assess why duty holders might not consider harms	<p>To effectively engage, regulators need to understand what else is occupying duty holders' attention and priorities</p> <p>Considerations:</p> <p>Use communications and interactions to tackle the reasons why duty holders might not be accounting for harms. Consider factors such as:</p> <ul style="list-style-type: none">• other priorities• financial or economic pressures• lack of understanding or capability• changed work practices giving rise to changed harms• low appreciation of the impacts of their actions• lack of feedback mechanisms• processes that focus on technical compliance over harm reduction.

Action area

Rationale and considerations for implementing

Help staff to understand and communicate harm

Frontline interactions can be the ideal way to help duty holders to understand and value compliance, as it relates to harm

Considerations:

- Train regulatory officers on harm and non-compliance relationships and how to explain them in routine interactions with duty holders.
 - Develop materials to support regulatory officers to explain non-compliance and harm relationships. This can include messages in templates and forms.
-

Principle 5 Support duty holders to comply

The sub-elements of principle five help regulators to account for duty holder needs in a range of contexts. The principle recognises that whilst regulators should make compliance straightforward and provide guidance that reflects capabilities of different duty holder groups, the regulator should not act in the role of duty holders (i.e., be responsible for the duty holder's operations).

To help meet this principle, consider engaging staff to develop processes or documents outlining:

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

To best deliver, consider the following approaches as appropriate to your context:

Action area	Rationale and considerations for implementing
Prepare clear, complete, and understandable guidance	<p>Guidance should ideally be comprehensive, and as simple as possible, to reduce barriers to compliance</p> <p>Considerations:</p> <ul style="list-style-type: none">• Clarify the legal status of guidance within your legal framework. For example, whether it forms part of the accepted state of knowledge, is suggested good practice, or is incorporated into licence requirements.• Ensure that guidance is clear and concise, uses plain language and concepts where possible, is correct and complete, authoritative, responsive to the questions or issues to hand, and timely.• Write guidance and information so that it incorporates technical standards and puts them into context and does not require duty holders to access and interpret external sources or standards.
Engage duty holders to improve your guidance and communication approach	<p>Engagement, especially co-design, of guidance can help to ensure it makes sense and is relevant to industry operations</p> <p>Considerations:</p> <ul style="list-style-type: none">• Co-design guidance with industry, to take account of their operational context.• Partner with industry groups to communicate expectations and compliance requirements in a way that is relevant and understandable to businesses.• Evaluate duty holder experience in the guidance making, and their access, interpretation, and application of guidance.
Provide guidance when taking regulatory action	<p>By explaining what compliance can look like, duty holders are better equipped to comply</p> <p>Considerations:</p> <ul style="list-style-type: none">• Provide examples of compliance in remedial notices and directions, that help explain a possible approach to meeting compliance requirements.

Action area	Rationale and considerations for implementing
Aim to provide authoritative information	<p>Duty holders should not have to deal with competing sources of expertise</p> <p>Considerations:</p> <ul style="list-style-type: none"> • Establish mechanisms to provide (or direct persons to) authoritative information, where appropriate.
Adopt a behaviour change approach	<p>Duty holders may need to progressively improve understanding and capability to best perform</p> <p>Considerations:</p> <ul style="list-style-type: none"> • Recognise the stages of understanding and practice a duty holder may have to progress through to improve their performance. • When designing regulatory approaches, consider the appropriate mix of education, compliance monitoring and enforcement activities, to aid duty holders to improve performance over time. • When engaging with duty holders, and where appropriate to the risk and duty holder attitude and behaviour, apply a staged approach to building compliance.
Integrate compliance into broader duty holder systems	<p>By understanding the context and broader system in which duty holders operate, you can naturally increase compliance.</p> <p>Considerations:</p> <ul style="list-style-type: none"> • Aim to link with existing or potential duty holder systems for their own performance monitoring, to make compliance reporting automated and seamless. • Seek to understand the impediments to duty holder adoption of available compliance guidance, tools, and systems (including industry provided resources), and account the role of the regulator in acting to help increase capability and engagement with these. • Account for where and how duty holders receive information or interact with other parties that influence their compliance. • Aim to work with and through these parties to elevate compliance and build it in to routine operations
Consider duty holder experience in process design	<p>Taking a ‘user centric’ perspective to design of requirements helps to ensure compliance is straightforward to achieve</p> <p>Considerations:</p> <ul style="list-style-type: none"> • Apply user-centric design principles to the design of regulatory functions, to help streamline interactions, understand duty holder expectations, uncover what they need to support compliance, and encourage and require them to comply. • Reform and digitise where current approaches are inefficient, or unnecessarily difficult or complicated for duty holders.

Action area

Rationale and considerations for implementing

Account for costs and burdens in process design

There can be a myriad of costs in achieving compliance, and regulators should not needlessly shift costs to duty holders

Considerations:

- Account for the costs to duty holders involved in servicing requirements, to the extent that you have discretion over these.
- Consider all types of costs, including from regulator delays, uncertainty, submitting and revising information and navigating regulatory processes.
- Weigh costs to duty holders, such as to prepare and provide information, against the benefits of that information; and be targeted when setting requirements.
- Consider how to minimise the burdens of regulatory activities, in the context of pursuing harm and risk reduction objectives.

Be flexible, where appropriate

There may be options to allow duty holders to innovate, reduce compliance burdens and raise performance

Considerations:

- Consider creating avenues for duty holders to innovate in how they meet compliance expectations.
- Where duty holders propose alternative approaches to a requirement that meet legal requirements and do not unacceptably compromise objectives, entertain these, and accept them unless there are compelling reasons not to.

Equip your staff to support duty holders to comply

Regulators may need to have workforce programs and strategies to ensure staff understand industry operations

Considerations:

- Develop workforce capability frameworks and plans to establish suitable levels of industry knowledge.
- Account for training, recruitment, and access to external experts.
- Establish knowledge transfer programs or secondment programs with industry.
- Ensure that industry feedback informs continuous improvement.
- Establish a workforce that is appropriately representative of the parties you regulate and protect.

Work with peers on compliance support

Often, regulators or other peers may have more opportunities to support compliance

Considerations:

- Communicate compliance expectations in partnership with peer regulators, such as through consolidated guidelines that account for all relevant standards.

Principle 6 Target regulatory effort based on risk of harm

The sub-elements of principle six address the many approaches that can be taken to embed a risk-based approach to directing regulator resources and activities towards the most serious risks facing them. It relates to external risks (of harm, or impacts on the regulatory scheme), not internal operational or reputational risks.

The sub-elements of this principle account for the major areas to apply a risk-based approach, recognising that regulators may need to develop their risk capabilities over time, drawing on other resources and sources of expertise.

To help meet this principle, consider engaging staff to develop processes or documents outlining:

- How regulatory effort is being directed towards priority harms (for example, annual / compliance / operational plans).
- A high-level analysis of priority harms including 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.

To best deliver, consider the following approaches as appropriate to your context:

Action area	Rationale and considerations for implementing
Account for risk in strategic planning	<p>Running formal processes to diagnose and prioritise risks is essential to improving effectiveness and justifying focus</p> <p>Considerations:</p> <ul style="list-style-type: none">• Run cyclical processes to scan for, identify, categorise, prioritise, and allocate response to risks, that incorporate data and professional judgement.• Account for the policy context of risks, including interests of stakeholders and, risk attitude of government and the regulator.• Consider your objectives, powers and functions when determining approach to risks and where you can make the biggest impact.• Consider how to effectively manage risk with available resources, considering different regulatory approaches that suit the risk.
Explain risk in your key strategic documents	<p>Explaining what informs risk assessments helps to positively guide duty holder behaviour and attention</p> <p>Considerations:</p> <ul style="list-style-type: none">• Publish policies and guidelines, such as a Compliance and Enforcement Policy, that explain the factors you will consider when evaluating risks, and on risk proportional enforcement.• Publishing guidelines on targeting and, where relevant, earned recognition approaches.

Action area

Rationale and considerations for implementing

Articulate risk approaches internally

Risk models and clear criteria help to promote consistent decision-making and support officers to document choices

Considerations:

- To develop policies, clarify factors that influence likelihood of non-compliance such as duty holder history, capability, or attitude, and factors that are considered when assessing the consequences of non-compliance.
- Develop internal statements on risk and uncertainty tolerance, to guide process design and decision-making.
- Produce internal policies and guidelines on proportionate responses to non-compliances, accounting for severity and how duty holder attitude can drive non-compliances.

Reflect risk in your management systems

Processes to prioritise issues and direct work need to account for risk at appropriate stages

Considerations:

- Consider different options for treating risks, such as through triage, compliance monitoring and enforcement responses.
- Consider what information is necessary to make risk assessments, and what is discretionary but not essential.
- When designing duty holder reporting requirements, balance risk assessment objectives with demands on duty holders to report. This may include making decisions with less information or having greater reliance on contingency plans.
- Have risk-informed resource allocation systems, including for prioritisation of proactive inspections, time spent with duty holders depending on their risk and compliance profile, and triage of incoming reports.

Engage and enable staff to apply your frameworks

Staff need to be empowered to exercise judgement, supported by appropriate protocols and analysis

Considerations:

- Deliver professional development and change management activities with staff, to help develop policies, models and frameworks and put them into practice.
- Assess the available capabilities to manage risk, including in people, technology, processes and data, and the investments required to improve risk management capability over time.
- Invest in data analytics capabilities and applying these to refine risk assessments and risk and data literacy across operational staff.

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

The sub-elements of principle seven address the major dimensions of regulatory evaluation and communication. This principle represents a starting point for developing evaluation approaches and engaging with governing bodies, departments, and ministers on appropriate performance measures.

For regulators to improve evaluation, they may require support from governing bodies, departments, and ministers. These parties should recognise that regulators usually require a balanced set of measures to gain insights into their operations, and to calibrate resource allocation and risk settings. These measures should not generally be applied as targets until the performance system is well understood, because of the negative trade-offs that often occur when 'single perspective' targets (e.g., volume measures) are pursued to the detriment of other objectives, and because of the issues around attributing specific indicators to outcomes.

To help meet this principle, consider engaging staff to develop processes or documents outlining:

- Your regulatory priorities and their link to harms of concern (for example, 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 the conversation from detection to remedy and sanctioning.
- A track record of completed tailor-made interventions to tackle specific harms.

To best deliver, consider the following approaches as appropriate to your context:

Action area	Rationale and considerations for implementing
Communicate your activities and focus	<p>By setting clear priorities, alongside enduring issues of concern, duty holders know where to improve their performance</p> <p>Considerations:</p> <ul style="list-style-type: none"> • Communicate your priorities and focus areas to duty holders to help increase compliance and duty holder readiness. • Use appropriate methods such as compliance strategies, annual compliance plans, newsletters, industry and peer regulator partnerships, direct communications, or social media.
Account for all your activities to influence duty holder behaviour	<p>Regulators can apply a range of approaches to behaviour change, and plans should engage all of these</p> <p>Considerations:</p> <ul style="list-style-type: none"> • Communicate the full range of activities undertaken to address harms, including education, compliance, monitoring and collaboration. • Communicate both remedial and enforcement activities, recognising that for behaviour change and deterrence, perception of likelihood of detection and consequence (of any kind) is usually more important than perception of the severity of punishment.

Action area**Rationale and considerations for implementing**

Develop an evaluation framework

An end-to-end model that relates regulatory activity, to impacts and outcomes, helps to align focus and report on effectiveness**Considerations:**

- Establish an approach to measuring and reporting on the contribution of regulatory efforts to the reduction of harms.
- In this reporting, account for:
 - outcomes logics to help align focus and attention around objectives
 - the full set of approaches used, including education, outreach, communication, partnerships, and other behaviour change activities
 - how risk frameworks have been applied to prioritise and focus effort
 - the impact of compliance monitoring activities (e.g., inspections, desktop assessments and audits) on the detection of non-compliance
 - risk based actions taken as a result of non-compliance
 - impacts on awareness, attitudes, compliance behaviours, and long-term outcomes and objectives
 - timeliness, accuracy, clarity, fairness, and other quality measures
 - other variables that impact on outcomes, including changes in the external environment.

Develop evaluations for specific interventions

When designing tailor-made interventions, it is essential to define success, and measures of success, from the outset**Considerations:**

- When developing tailor-made interventions, account for the specific measures of success for those projects
- Consider what indicators will help to demonstrate goals have been sufficiently met, to justify project closure
- Report on project successes, such as in annual reports, to demonstrate a track record of impact on specific harms and problems.

Evaluate your performance and management systems

Regulators often need to make concerted efforts to generate baselines and develop measures, to improve performance over time**Considerations:**

- Establish baselines and/or benchmarks to monitor changes in measures over time.
- Report on inspection activities, and targeting and on enforcement decisions, and analyse trends in these activities.
- Account for qualitative measures of inspection activities, including staff observations and experiences.
- Review the performance of resource allocation systems, to ensure they are being applied consistently and produce intended results.

Action area

Rationale and considerations for implementing

Account for feedback in performance evaluation

Duty holder and community feedback is often needed to complement the regulator's own insights

Considerations:

- Use feedback from duty holders and the community within your performance evaluations.
 - Develop timely measures of impact including duty holder feedback and attitude during regulatory activities.
 - In using this feedback, distinguish who is giving feedback and the context of that feedback, recognising that results may not be generalisable, and duty holder satisfaction is not always a goal.
-

Enabling practices

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

The sub-elements of principle eight cover the various reasons and approaches for regulator collaboration.

Principle eight recognises that peer regulators and other agencies often have shared interests in harm reduction or other positive outcomes and helps regulators to consider how to collaborate in pursuit of these interests, irrespective of the compliance requirements, standards or regulations managed by each agency.

Overall, collaboration needs to be driven through leadership behaviours and prioritisation, and appropriate cultural practices.

To help meet this principle, consider engaging staff to develop processes or 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.

To best deliver, consider the following approaches as appropriate to your context:

Action area	Rationale and considerations for implementing
Clarify respective roles	<p>Regulators and other government bodies often have overlapping or intersecting accountabilities, risking confused delivery</p> <p>Considerations:</p> <ul style="list-style-type: none">• Establish agreements with peer regulators and agencies about shared objectives and complementary roles, recognising that a regulatory response will not always necessarily be the best approach.
Scope potential collaboration around clear objectives	<p>Whilst general agreements can be beneficial, collaboration projects may be best suited to solving a specific problem</p> <p>Considerations:</p> <p>When scoping collaboration with peers and partners you should:</p> <ul style="list-style-type: none">• develop a clear problem statement, based on current intelligence• map the tools available, their coverage, gaps, and overlaps• define success and end points for the project.• When working together, peer and partner you should aim to ensure:• Alignment of regulatory approach (to inspections, use of powers, communications to industry, etc.)• Clear use of inspections as part of a broader assessment process, so time spent in field is efficient and productive• Oversight that builds learning within each agency.

Action area

Rationale and considerations for implementing

Consider the best methods to collaborate

There can be a variety of ways to share intelligence, improve monitoring, or deliver enforcement

Considerations:

It is important to consider a range of approaches, depending on the issue, such as:

- Desktop intelligence sharing or discussions to understand the problem
- Agreements to share industry compliance reports or records, for streamlined industry experience
- Agencies as 'proxy inspectorates' – picking up on the other agency's interests as part of their normal field work, and sharing information
- Joint inspections, to develop mutual understanding of an issue, coordinate approaches and assess the compliance tools available
- Joint inspections, to demonstrate increased regulator focus on an issue
- Joint activities under a problem-solving approach.

Actively work to improve integration

Regulator leaders may need to set up specific and visible projects to better understand and work with partners

Considerations:

- Conduct initiatives to consolidate or clarify functions and activities with peers (e.g., regular forums or meetings).
- Agree official policies or memoranda of understanding around collaboration and information sharing. This could include developing agreements under the VPS Data Sharing Framework.
- Consider the different ways to coordinate regulatory effort, including combined projects, referrals and desktop reviews, joint inspections, lead regulator models, and peer regulators monitoring or sharing information on behalf of other regulators.
- Develop protocols with peer regulators and service delivery bodies, to define respective roles, and make referrals of queries straightforward for the person raising them.
- Run strategic planning sessions to coordinate activities for specific issues or in specific areas.

Consider how to best use and share data

There may be a range of external data sources that regulators can leverage

Considerations:

- Look for potential sources of external data, which may include data collected by peer regulators or other government and non-government agencies.
- Assess the appropriate use of this data, recognising its source, assumptions, limitations, and deficiencies.
- Determine how to configure, record, and manage data, including sensitive data, to drive data quality and ability to share information with peers.

Action area

Rationale and considerations for implementing

Critically engage with legislative limitations

Regulator leaders need to be tenacious in testing data sharing limitations and separate out perceptions from reality

Considerations:

- Consider limitations for information sharing, whether these are actual or perceived, and when and how advice was asked for and given on these limitations.
- Review these limitations in the context of your enabling legislation, including its objectives, and your functions and powers.
- Consider the role of culture and mindset and risk aversion in establishing views about legislative limitations.

Minimise duplication when designing processes and requirements

By viewing a duty holder as wanting to engage with 'one government' regulators can streamline their experiences

Considerations:

- Design the approach to inspections and other assessments to complement and not duplicate the information from these sources.
- Ensure data security and information privacy in the design of regulatory processes and reporting. This may involve an agreement from duty holders and the community to have their information shared to improve compliance targeting and to streamline interactions.
- Seek proxy indicators of risk from other regulators or datasets, to streamline the information you request.
- Take opportunities to limit duty holder information requests to what is required under law, or is necessary to assess risks, considering what duty holders have already provided to government.
- Consider alternatives to inspections to assess the compliance and risk profile of duty holders, including information from other regulators or other data sets.

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

The sub-elements of principle nine relate to the major areas of decision-making where regulators should ensure they demonstrate procedural fairness, and the broader communication practices to support accountability and provide for feedback.

The appropriate approach will be influenced by the scope, requirements and limitations of the relevant legislation, the type of duty holders and the nature of the regulator's relationships to them. In general, when following this principle, regulators should seek opportunities to increase duty holder certainty and confidence about the regulator acting fairly.

To help meet this principle, consider engaging staff to develop processes or documents outlining:

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

To best deliver, consider the following approaches as appropriate to your context:

Action area	Rationale and considerations for implementing
Make clear commitments about engagement	<p>Publications about what to expect and how to engage with the regulator can help increase accountability and transparency</p> <p>Considerations:</p> <ul style="list-style-type: none">• Identify increase duty holder certainty and confidence, through published policies, statements of regulatory intent, standards, and operational practices.• Develop policies or charters that clarify engagement commitments, the types of decisions where duty holder or community consultation will occur, and the level and approaches to consultation.• Make statements clear and easily accessible through a range of channels.• Have regard to how you will engage vulnerable or disadvantaged groups affected by their regulatory decisions.

Action area**Rationale and considerations for implementing**

Welcome scrutiny through formalised channels

Duty holders should be able to query relevant decisions and feel they can safely enquire as to what is expected of them**Considerations:**

- Help duty holders to feel that they can seek information without fear of triggering disproportionate enforcement action.
- Establish appropriate and valuable feedback mechanisms. This may include experience surveys, industry reference groups, and conduct complaints.
- Make information on complaints and internal reviews easy to access and transparent, such as through prominent web pages, and communications with remedial notices or other regulatory actions.
- Seek opportunities to routinely gather feedback from those involved in regulatory actions or processes, such as reference groups, and use this feedback to improve delivery.

Respect human rights

Regulators must follow the Victorian Charter of Human Rights, which is especially important when exercising powers**Considerations:**

- Ensure policies and practices are consistent with the Victorian Charter of Human Rights Charter, such as when making decisions that are coercive or impose restrictions on movement or expression.

Embed commitments into practice

Training, policies, and accountabilities are usually required to ensure commitments are met**Considerations:**

- Develop the policies, training, quality assurance measures, feedback mechanisms and change management activities required to support procedurally fair conduct and decision-making.
- Assign accountabilities for addressing delivery of consultation commitments, and response to the insights of reference groups and surveys, where this is appropriate.
- Establish protocols and leadership commitments around the management of duty holder complaints and queries about decisions by regulatory officers.
- Have clear policies, processes and roles and responsibilities for review of decisions and complaints, with appropriate timeframes and feedback mechanisms.

Action area**Rationale and considerations for implementing**

Manage risk of capture or undue influence

Regulators need to monitor and manage these risks to ensure independence and integrity**Considerations:**

- Have in place appropriate internal scrutiny, integrity, governance, and cultural practices to detect and mitigate against risk of regulatory capture.
- Ensure that in the instance of complaints or queries about regulatory decisions, officer decision-making is supported by leaders, and any reviews are transparent.

Be fair and transparent about decisions

Procedural fairness is essential to administrative law and building trust**Considerations:**

- Clearly explain the considerations made, the reason for the decision, the alternatives considered, the effects of the decision, and recourse available for those affected.
- Consistently employ the same processes and have regard to the same criteria when deciding how a requirement should be interpreted or applied in a given situation.
- Ensure that all facts and circumstances in an individual situation have been fully and fairly considered on their merits.

Make fee setting transparent

People expect to understand why they pay fees and the activities they support**Considerations:**

- Understand the cost and policy basis for fees.
- Assess how to best communicate these.

Principle 10 Continuously improve your regulatory operations

The sub-elements of principle ten set out important approaches for regulators to become a learning organisation, that uses external insights, and knowledge from operational experience, to review why and how actions are taken, and to optimise their operations.

Overall, this principle asks regulator leaders to attend to internal management and quality systems as a core part of effective delivery, and translation of strategy to execution. A critical part of this is refining how decisions are best distributed and delegated, with the right mixture of supports and quality controls.

To help meet this principle, consider engaging staff to develop processes or documents outlining:

- A performance management framework that accounts for regulatory delivery (quality, quantity, timeliness) across regulatory functions (for example, 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

To best deliver, consider the following approaches as appropriate to your context:

Action area	Rationale and considerations for implementing
Monitor your external environment	<p>The risk landscape is rarely static, and regulators are expected to address emerging issues</p> <p>Considerations:</p> <ul style="list-style-type: none">• Scan, plan for and respond to changes in the regulatory environment that could impact on you or duty holders.• Conduct a horizon scanning program, informed by consultations with duty holders, to seek insights and data and to continuously improve your understanding of harms.• Engage with communities of practice, industry bodies, government entities, and other organisations to learn from peer experiences and share better practice.

Action area**Rationale and considerations for implementing**

Promote a learning culture

Staff should feel empowered to exercise discretion, with constructive feedback and continuous improvement if issues occur

Considerations:

- Empower and support staff to make decisions and exercise judgement.
- Make leadership commitments that staff decisions will be backed and supported, not overturned without cause, and will not be subject to undue interference.
- Support a culture of appropriate tolerance to mistakes, and practices to learn and improve from errors.
- Establish internal processes for learning and review, such as from the outcomes of complaints, internal reviews, or other feedback.
- Develop systems to monitor regulatory actions and decisions, including a set of performance indicators, and establish the flexibility to adjust operational practices in response to these indicators
- Support the development and implementation of new ideas and improvement to the status quo.

Adopt a holistic approach to delegation oversight

Delegations work when supported by training, protocols, quality assurance, and periodic reviews of the level at which decisions are made

Considerations:

- Seek opportunities to refine delegations for decision making to the lowest appropriate level.
- Consider staff capability, the risks inherent in the decision and the systems to monitor decision-making quality.
- Determine the appropriate approach to pre or post review of regulatory decisions, depending on risk, regulatory officer capability, and other objectives such as timeliness.
- Apply a suite of approaches to delegate and manage decision-making, including training, appointments and delegations, procedures and decision-making frameworks, quality control and quality assurance processes, and duty holder feedback processes.
- Establish appropriate mechanisms for periodic review of regulatory activities or functions.

Document, measure and manage

Performance frameworks and documentation requirements help to maintain accountability and delivery

Considerations:

- Consistently and clearly document decisions, including application of risk frameworks, to enable ongoing assessment and review.
- Set targets to drive effective operational delivery, targeting, productivity and efficiency.
- Promote a culture of data quality and integrity, to underpin accurate routine management, and facilitate ongoing improvement in data analytics capabilities.

Action area**Rationale and considerations for implementing**

Adopt a holistic approach to improving staff capability

There can be many means to recruiting, retaining and building staff capability, going beyond routine training

Considerations:

- Have an official training program and curriculum.
 - Account for how training, policies, and peer review can support authorisations, delegations, and professional development of staff
-

Further reading

- Baldwin, R & Black, J 2008, 'Really Responsive Regulation', *The Modern Law Review*, vol. 71, no. 1, pp. 59 – 94, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1468-2230.2008.00681.x>
- Coglianesi, C (ed) 2016, *Achieving Regulatory Excellence*, Brookings Institution Press, Washington.
- Coglianesi, C 2012, 'Measuring Regulatory Performance', *Expert Paper No. 1*, Organisation for Economic Co-operation and Development, https://www.oecd.org/regreform/regulatory-policy/1_coglianesi%20web.pdf
- Drahos, P (ed) 2017, 'Regulatory Theory: Foundations and Applications', Australian National University Press, <https://press.anu.edu.au/publications/regulatory-theory#pdf>
- McKenzie, F 2006, *Administrative Power and the Law: A Succinct Guide to Administrative Law*, Ligare Pty Ltd, Riverwood.
- Organisation for Economic Co-operation and Development (OECD) 2018, *OECD Regulatory Enforcement and Inspections Toolkit*, OECD Publishing, Paris.
- Paddock, L, Markell, D & Bryner, N (eds) 2017, *Compliance and Enforcement of Environmental Law*, Edward Elgar Publishing.
- Parker, C & Lehmann Nielson, V 2017, 'Compliance: 14 Questions', ANU Press, *Regulatory Theory: Foundations and Applications*, ch. 13, <https://press-files.anu.edu.au/downloads/press/n2304/pdf/ch13.pdf>
- Pink, G 2021, *Navigating Regulatory Language: An A to Z Guide*, RECAP Consultants Pty Ltd, Canberra.
- Quarmby, N 2018, *Intelligence in Regulation*, The Federation Press.
- Rooij, B van & Fine, A 2021, *The Behavioural Code: the hidden ways the law makes us better...or worse*, Beacon Press, Boston.
- Sparrow, M 2000, *The Regulatory Craft: Controlling Risks, Solving Problems and Managing Compliance*, Brookings Press, Washington.
- Sparrow, M 2008, *The Character of Harms*, Cambridge University Press, New York.
- Victorian Competition and Efficiency Commission, 2015, 'Smart Regulation: Grappling with Risk', *Guidance Note Version 1*, Melbourne, <https://www.vic.gov.au/sites/default/files/2019-06/Smart-regulation-Grappling-with-risk-Guidance-Note.pdf>.
- Victorian Managed Insurance Authority, 'Risk Maturity Benchmark', <https://www.vmia.vic.gov.au/tools-and-insights/risk-maturity-benchmark#:~:text=Risk%20Maturity%20Benchmark%20will%20help,are%20working%20for%20your%20agency>.
- Wauchop, B & Manch, K 2017, 'Are Regulated Parties Customers?' Victorian University of Wellington, *Policy Quarterly*, vol.13, no. 4, pp. 10 – 12, <https://apo.org.au/node/121546>

