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*Better business
regulation*
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Research Paper No. 14 May 2008



“ Preface ”

Consumer Affairs Victoria (CAV) is a significant market place regulator. It administers both economy-wide and industry-specific legislation covering thousands of providers of goods and services. The agency combines both policy and regulation making functions with regulation implementation functions. CAV has been committed to achieving best practice in performing its regulatory roles.

There has been much discussion of the need to improve the processes of making regulation in recent years, but much less focus on improving the practices of regulators in implementing regulation. Experience suggests to me that often the more significant gains can be achieved by improving what regulators do rather than tinkering with what is on the statute books.

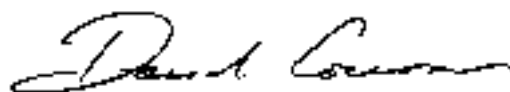
This view prompted CAV to initiate a Better Business Regulation project, the simple aim of which was to improve CAV's regulatory practices. Subsequently, the Victorian Government established a Regulation Burden Reduction initiative, which further emphasised the need to improve regulatory quality. CAV is a portfolio unit of the Department of Justice in Victoria and the Department embraced both the Better Business Regulation and Regulation Burden Reduction initiatives as key priorities in 2006-2008.

This paper describes the Better Business Regulation framework developed by CAV and the Department of Justice. It is hoped that other regulators will be able to benefit from the work we have done by applying the framework to their own circumstances and ultimately effecting improvements to their regulation.

I would like to acknowledge the work done by Rod Overall (Overall Consulting) and the Allen Consulting Group who have greatly assisted CAV in developing the Better Business Regulation framework. The combination of experience of the consultants and staff involved in the project has, I believe, produced a practical and innovative approach to assist in the promotion of regulatory reform.

Consumer Affairs Victoria would welcome any comments on the Better Business Regulation framework. These may be directed to:

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Contents

Preface	i
Introduction	01
Better business regulation	03
Context	03
Project approach	04
The BBR framework	05
The regulatory cycle	05
Practices, processes and performance	09
Good practices	10
Process maturity	17
Performance measurement	18
Making it work	19
Consumer Affairs Victoria research and discussion papers	21

“ Introduction ”

The objective of the Better Business Regulation (BBR) project is to improve the way regulators operate by developing a tool (the BBR Framework) that assists in evaluating performance, identifying opportunities for improvement and developing measures to monitor performance over time.

BBR originated in a search by Consumer Affairs Victoria (CAV) to identify ‘good practice’ in its regulatory activities. An extensive literature search revealed that although there are widely accepted principles of ‘good regulation’, they concentrated on the application of these principles in making regulation (primary and subordinate legislation). There was little information on what constituted good regulatory practice.

The project was initiated by CAV in 2005 and extended across the whole of the Department of Justice (DoJ) to develop and test a conceptual framework to provide guidance on good practice for regulators. Underlying this was a premise that the activities regulators undertake are essentially similar, regardless of the particular object of the regulation, so that it should be possible to formulate standards (termed ‘good practices’) against which regulators’ can assess current practices and identify opportunities for improvement.

A conceptual framework was developed from the accepted principles and the literature, particularly from United Kingdom governmental sources. On the basis of that framework, an Evaluation Guide was developed and piloted for its workability in two regulatory schemes operated by Consumer Affairs Victoria. Modifications were made following a review of the pilot’s outcomes. From mid 2008 and over an 18 month period, the framework will be rolled out across all regulators within the Justice portfolio.

This paper explains the BBR Framework and the broad processes for its application. Readers interested in more detail are referred to the departmental contact noted in the Preface.

“ Better business regulation ”

Context

This project is being undertaken in the context of the Victorian government’s commitment to improving regulation.

The BBR project was initiated by Consumer Affairs Victoria as a way of improving the quality of its regulatory practice. It now also forms part of the Department of Justice’s effort to delivering reductions in regulatory burden and improving the effectiveness of regulation. It has been a DoJ Strategic Priority for the last three years.

DoJ is focusing on regulatory improvement which includes the Government’s broader commitment to Reducing the Regulatory Burden, a whole-of-government approach to reducing the administrative burdens of regulation.

The Victorian Government announced the Reducing the Regulatory Burden initiative in 2006, designed to reduce the administrative burdens of State regulation. The Department of Treasury and Finance (DTF) has estimated that the administrative burden imposed by State regulation is \$1.03 billion per annum.

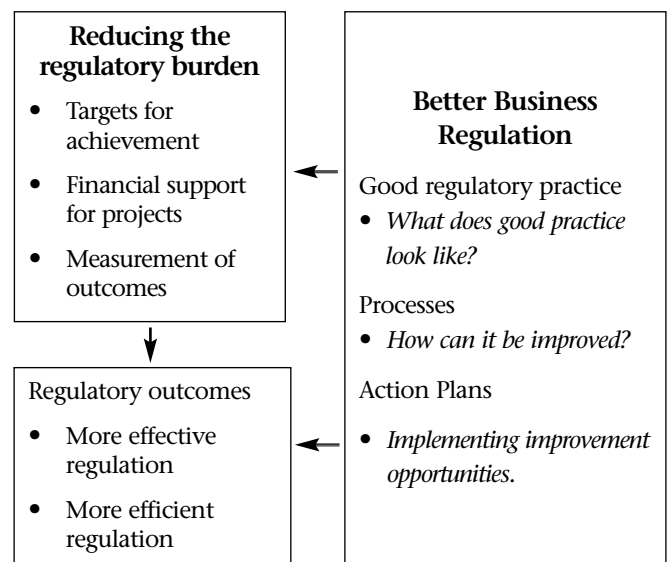
The Victorian Government’s approach is centred on three elements:

1. reducing the existing administrative burden of regulation by 15 per cent (\$154 million) by July 2009 and 25 per cent (\$256 million) by July 2011
2. offsetting the administrative burden of any new regulation by making simplifications in the same or related area, and
3. undertaking reviews to identify actions to reduce compliance burdens, supported by incentive payments.

Source: *The Victorian Government 2006, Reducing the Regulatory Burden — The Victorian Government’s Plan to Reduce Red Tape*, <http://www.dtf.vic.gov.au>, accessed 11 December 2006.

The BBR project will encourage better regulatory practice and ultimately lead to better regulatory outcomes. In this regard, the BBR project will support the Reducing the Regulatory Burden initiative and improve the way regulators operate by highlighting areas for regulatory improvement.

BBR and reducing the regulatory burden



Principles of good regulation

Any exercise in evaluating regulatory practice and processes requires consideration of the principles of good regulation. These include:

- accountability
- transparency
- effectiveness
- efficiency
- proportionality
- flexibility, and
- consistency¹.

For Victorian regulators the Department of Treasury and Finance *Victorian Guide to Regulation* provides a useful introduction to these principles. Many of the principles in the *Victorian Guide to Regulation* are also relevant for the day-to-day business of regulators when operating regulation. However, developing specific good practices, particularly those related to operating regulation are not explicitly stated and need to be derived or inferred from the relevant literature. The interpretation of 'core' principles can then be used to test the appropriateness of the standards.

Project approach

The BBR project has been undertaken in five stages with Stage 1 designed to answer two key questions:

1. is it possible to develop a common framework for assessing regulatory performance across the diverse business regulators in DoJ, and if so
2. what would a set of workable indicators of good practice look like?

Stage 1 of the project focused on:

- consideration of approaches to benchmarking regulatory functions in Australia and overseas with a view to drawing upon existing performance indicators and the experience of other regulators, and

- developing a framework for benchmarking regulators and a recommended set of observable/measurable indicators of regulatory performance that:
 - is readily applicable to all business-related regulatory functions undertaken within DoJ
 - assists the subsequent task of identifying areas for improvement in DoJ regulators
 - provides guidance on the application of the framework and indicators, and
 - facilitates a pilot of the methodology in two regulatory schemes.

Stage 1, which was completed in early 2007, resulted in the development of a preliminary BBR framework. The framework focused on the similar regulatory activities performed by the diverse schemes within the Justice Portfolio rather than on the very different regulatory outcomes being pursued by the various regulators.

The framework established in Stage 1 was subsequently trialled and modified during Stage 2, the purpose of which was to:

- assess the BBR evaluation framework as a diagnostic tool to assess regulatory performance
- assess the associated approaches and processes involved in applying the BBR evaluation framework, and
- identify areas that need to be taken into account for wider application of the BBR evaluation framework across CAV and other DoJ regulators.

Stage 2 concluded that it was possible to apply a common framework for evaluation and assessment across the diverse regulators in DoJ. Importantly, this conceptual framework was translated into a comprehensive set of good practices allowing regulators to self-evaluate their regulatory processes.

Stage 3 utilised the findings of the Stage 2 pilots and translated these into strategic action plans articulating the regulators response to the findings of the pilots. These action plans clearly outlined specific improvement opportunities, assigned responsibilities and specified timeframes for implementation. Finally, a regular reporting mechanism was established to review progress towards regulatory process improvements.

¹ This list includes those principles most applicable to all stages of the regulatory cycle. Efficiency has been included as it is important for the operate stage, perhaps less so for the make and review stages, even though it does not form part of the *Victorian Guide to Regulation*. Flexibility refers to a regulator being adaptive (eg enforcement strategies, promoting compliance, risk assessments) to changing circumstances. Cooperation has not been included as this is an over-arching activity in the regulatory cycle and covered elsewhere.

“The BBR framework”

The following sections provide an overview of this framework starting with a discussion, at a conceptual level, of the regulatory cycle.

The regulatory cycle

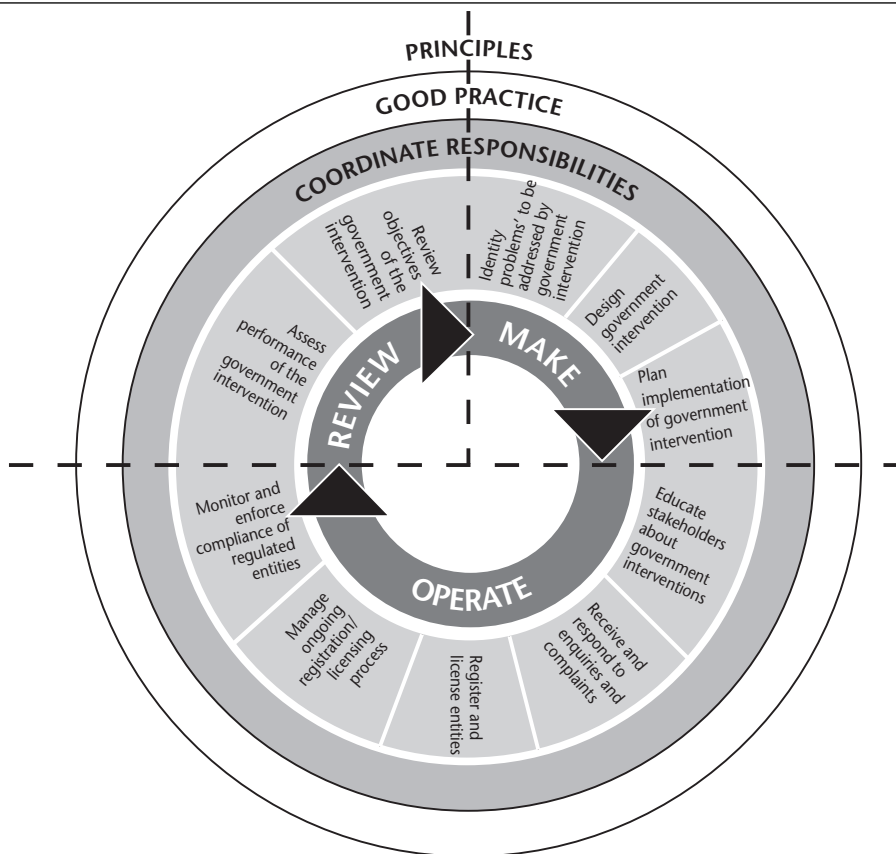
The framework maps generic regulatory activities across the life cycle of a regulatory scheme. It is broken into three stages—make, operate and review—and shows the activities that are required at each of these stages. Although not represented in the diagram, each of the 10 activities around the three stages is further broken down into specific tasks with good practices that should ideally be in place for each of the tasks.

With many activities in the cycle performed by different branches or agencies, coordination of responsibilities becomes a large component throughout the regulatory cycle. Accordingly, it is represented in the diagram as a continuum around the cycle.

While in concept the regulatory cycle is not new, the good practices developed for each of the activities within the regulatory cycle have not been brought together in this way in the extensive literature reviewed. By drawing on the *Victorian Guide to Regulation*, other principles of good regulation, and experience from other jurisdictions, the BBR project derived or inferred the practices to which regulators should adhere. In all, the BBR framework proposes 74 good practices for the 10 regulatory activities around the make, operate and review stages and the coordination responsibilities.

To assist with the identification of those ‘similar’ regulatory activities, the concept of a regulatory cycle was developed as set out below.

Life cycle of a regulatory scheme

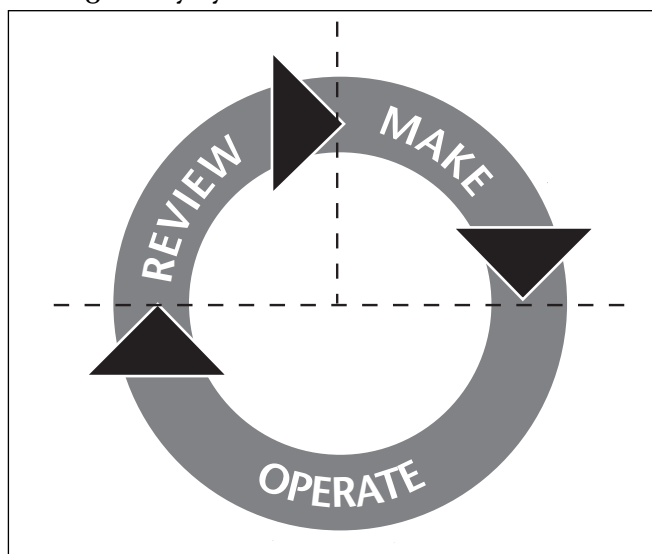


How governments go about their core business of making and administering regulation² is the key determinant of regulatory outcomes.³ While regulators may differ in role, structure and objectives, the regulatory cycle is common to all.

At its most simplified, the regulatory process typically involves:

- making or passage of government regulation (make regulation), followed by
- interpreting, administering and enforcing that regulation (operate regulation), and usually sometime later
- reviewing how well that regulation is working, with the potential for refining, amending, or repealing the regulation (review regulation).

The regulatory cycle



For each of these core elements of the regulatory cycle, there is a range of activities that regulators or government must undertake.

However, in many cases an individual regulator will not undertake all three stages or activities of the cycle. For example, legislation may be recommended and drafted (make regulation) by the Department responsible for policy advice in the relevant area, a statutory authority may administer (operate regulation) the regulatory scheme established by the legislation and the same Department may evaluate the effectiveness of the scheme after several years of operation (review regulation).

Make regulation

The *Victorian Guide to Regulation* sets out the required process for making regulation and states that governments should assume that regulation is unnecessary, unless it is clear that:

- a problem exists
- government action is justified, and
- regulation is the best alternative open to the government.⁴

In answering these questions, the *Victorian Guide to Regulation* provides detailed guidance on the activities that regulators must undertake when making or remaking regulations. Summarising the key elements of the Guide, the process to make regulation comprises the following:

- *identify objectives*—identifying the purposes of regulatory intervention and establishing the case for government action
- *consider alternatives*—framing options for meeting the identified objectives
- *assess impacts*—estimating the impacts of each alternative scenario, and
- *consult stakeholders*—engaging with interested and affected stakeholders to fully understand the regulatory environment.⁵

These form the basis for the three activities that are required in the make stage.

² The discussion in this report is designed to be inclusive and therefore the term 'regulation' should be interpreted in its wider sense to include all government regulatory instruments including primary legislation and sub-ordinate legislation (called 'Regulation') rather than sub-ordinate legislation only.

³ Regulation Task Force 2006, *Rethinking Regulation: Report of the Task Force on Reducing Regulatory Burdens on Business*, Report to the Prime Minister and the Treasurer, Canberra, January, p. 145.

⁴ Department of Treasury and Finance 2005, *The Victorian Guide to Regulation*, [http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/VictorianGuidetoRegulation/\\$File/Victorian%20Guide%20to%20Regulation.pdf](http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/VictorianGuidetoRegulation/$File/Victorian%20Guide%20to%20Regulation.pdf), accessed 6 December 2006, pp. 3–1.

⁵ It should be noted that the above summary is by no means a substitute for the *Victorian Guide to Regulation*—in fact, the Guide is the endorsed Government policy on developing regulation—nor is the summary intended to provide greater emphasis relative to those requirements not stated. Rather, the above summary ensures that concepts used in the benchmarking framework are kept as simple as possible. Also, while not an explicit intention, simplifying the activities involved in 'making' regulation allows for greater attention to be devoted to those activities involved in 'operating' regulation, which is the focus of most DOJ regulators.

Operate regulation

Even the best regulation will result in inefficiencies and poor outcomes if it is not appropriately administered and enforced.⁶

For most regulators, the majority of their time and resources is dedicated to the operation of regulation. Indeed, for many their role almost exclusively relates to this. While again somewhat simplified for categorisation purposes, the core elements of 'operating regulation' can be distilled into five distinct activities:

- *process development*—devising systems and processes to manage the tasks involved in administering regulation
- *register and license*—receiving, assessing, processing, issuing and maintaining registrations and licences
- *educate and promote*—informing regulated parties, other stakeholders and the general public about relevant issues
- *monitor compliance*—monitoring the compliance of regulated parties, and
- *enforce compliance*—enforcing the compliance of regulated parties with relevant regulations.

These are the basis for the five activities that are required in the operate stage.

Note that not all regulators operate registration or licensing as a function in their regulatory schemes. However, it has been added given that it is a very common regulatory tool.

Review regulation

The *Victorian Guide to Regulation* states that regulation should be evaluated on a regular basis to ensure that it continues to meet its specified objectives. If the objectives are not being met, then consideration should be given to changing the regulation, or relying on alternative measures to achieve the desired outcomes.

Whilst not providing guidance on the detail of such a review, it can be surmised that the review of regulation should:

- *assess performance*—are the regulations achieving their objectives
- *review objectives*—are the objectives for which the regulations were implemented still valid, and
- *consider modifications*—how the regulations could be improved.

As with the make and operate stages, these points are the basis for the two key activities required in the review stage.

Coordinate responsibilities

Regulatory functions for a specific scheme may be split among different branches or agencies. For example, such splits commonly occur between the make and operate stages and between the operate and review stages. Sometimes within the operate stage enforcement may be carried out by a body separate from the body carrying out the licensing or registration function. Separating responsibilities within the regulatory cycle may be based on a number of factors, such as legislative or regulatory requirements, operational agreements, probity or historical factors. Each branch or agency involved undertakes to ensure delivery of the regulatory processes in a manner that is, to the greatest extent possible, consistent and seamless. The framework captures these intersecting responsibilities and depicts it in the life cycle of a regulatory scheme diagram as an over-arching activity throughout the cycle. As such, capturing the reality that branches or agencies regulators are involved in delivering different activities associated with a regulatory scheme is critical to ensuring the framework is robust. For this reason, the concept of coordinate responsibilities is incorporated. The coordination is critical so as to:

- clearly delineate lines of responsibility for regulatory activities, and
- ensure that regulatory activities are performed efficiently and effectively.

These points are the basis for the two activities required in coordinate responsibilities. Although not represented in the regulatory cycle diagram, these are included in the good practices tables commencing on page 11.

From a holistic perspective, the BBR framework focuses on regulatory schemes rather than single regulators. This enables identification of who carries responsibility for the various activities, duplication of activities and where any responsibility gaps may occur.

⁶ Independent Pricing and Regulatory Tribunal 2006, *Investigation into the Burden of Regulation and Improving Regulatory Efficiency*, www.ipart.nsw.gov.au, p. 39.

“Practices, processes and performance”

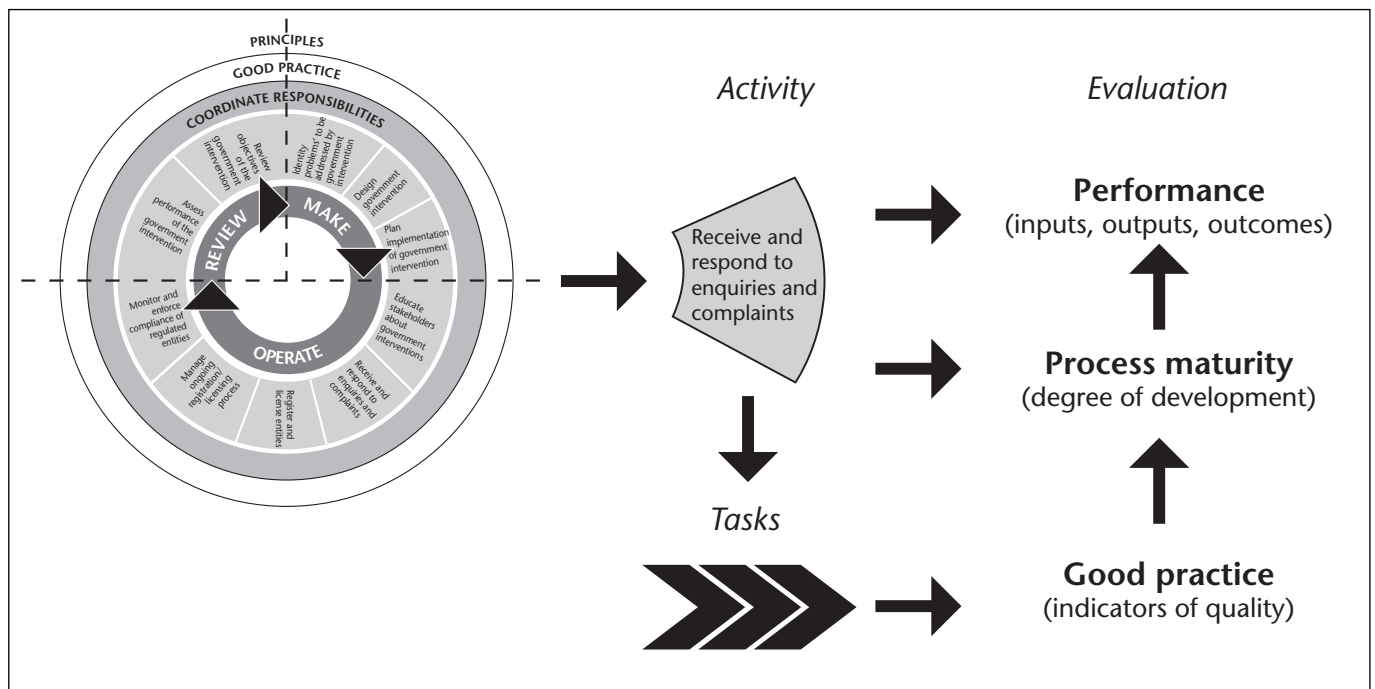
While the activities described above connect the role of regulators with the principles of good regulation, they only provide general guidance on the manner in which regulators should undertake their duties. They do not specify practices and processes that regulators should comply with and they do not specify standards by which performance can be gauged.

By focusing on areas of commonality across the regulators and the regulatory schemes and in particular the regulatory functions, the framework allows for the evaluation of:

- good practice—the quality aspects of regulatory activities
- process maturity—the degree of development of regulatory activities, and
- performance—the translation of inputs to outputs to outcomes of regulatory activities.

Therefore, the framework links the practices to the conceptual model and also allows process quality, efficiency and effectiveness performance measurements to be linked back to regulatory activities and acknowledges the specific roles of individual business units within a regulatory scheme.

Levels of evaluation in BBR



Good practices

As noted above, the good practices operationalise the principles of good regulation and provide a set of standards against which current activities can be assessed (gap analysis) and opportunities for improvements identified.

Regulatory performance—or as some call it ‘regulatory quality’—is a complex notion. It links the effects of a regulatory process with the principles of good regulation. As a result it comprises notions of efficiency, effectiveness and good governance.

In this way, as Jacobs notes:

[...] principles of better regulation provide a focus on quality that goes beyond efficiency. In fact, the experience of governments and international organizations indicates that quality is anchored to the notion of good governance. As such, regulatory quality has a normative dimension, sets goals in terms of governance, and is neutral to the scope and size of public intervention. Quality is intimately different from quantity. High quality regulation does not mean ‘low levels of regulation’, but regulation that is proportionate, targeted, efficient, accessible and transparent.⁷

Where the conditions of good regulatory quality are met—namely, those articulated in the *Victorian Guide to Regulation*—regulation will become embedded in policy decision-making by regulators, ministers and stakeholders. Good quality regulation, then, can ‘change the way organised interests, firms and citizens engage in the policy-making process, understand and accept the regulatory framework’ and promote regulatory legitimacy.⁸

Due to the normative dimension of the principles espoused in the *Victorian Guide to Regulation* and similar documents, it is difficult to measure the extent to which a regulatory regime conforms to the principles. In addition, the practices against which quality and performance are measured might be emphasised or de-emphasised according to the lens through which they are viewed.

The approach to develop the good practices was to draw on the literature relating to principles of good regulation, best practice governance, and best practice administration to derive or infer good practices for regulatory activity.

The good practices provide the bridge between the principles of good regulation – accountability, transparency, effectiveness, efficiency, proportionality, flexibility and consistency – and regulatory activities. They describe how regulators should perform the tasks they have been allocated.

While essentially qualitative in nature, they are able to be supported by evidence of conformance to or application of good practice, and thereby enable regulatory schemes to identify over time levels of performance improvement.

Consideration of good practices also forms an important point for more detailed assessment of regulatory scheme performance, and ultimately provide guidance as to how schemes should be improving regulatory tasks and activities. Where good practices are not in place, regulators can improve performance by embedding the good practices into their operations. Together with the maturity and quantitative performance of regulatory activities as described below, the BBR framework will enable regulatory schemes to identify those good practices that have the most crucial or significant impact on scheme performance.

The following table sets out the good practices developed for each of the activities and tasks within the regulatory cycle.

⁷ Centre for European Studies 2004, *Project on Indicators of Regulatory Quality: Final Report*, Bradford University/Commission for European Communities, <http://www.bradford.ac.uk/irq>, accessed 23 November 2006, p. 4.

⁸ *Ibid*, p. 4.

Activity	Task	Good practice that relates to the task
MAKE REGULATION		
Identify 'problems' to be addressed by Government intervention	Ascertain policy priorities	Policy staff receive regular updates on policy objectives/priorities
		Policy staff receive regular updates on developments at COAG, in other Australian and overseas jurisdictions
	Conduct market scanning	External scanning activities are conducted to identify emerging issues
		Consider consolidated data from education activities/enquiries/complaints/audit outcomes/enforcement and cross-scheme analyses
	Select issue to be addressed	Clearly articulate the issue/problem and the need for government intervention
		Assess whether government intervention is justified using the framework set out in the <i>Victorian Guide to Regulation</i>
Clearly state objectives for government intervention prior to options being determined		
Design government intervention	Develop alternatives	Consider all reasonable regulatory and non-regulatory options (as per the <i>Victorian Guide to Regulation</i>)
		Encourage stakeholders to contribute their views during development of alternatives
		Consult with government agencies that have a role in administering/operating the proposed government intervention regarding the alternatives
	Evaluate alternatives	Demonstrate that stakeholder views have been considered when recommending a preferred alternative
		Quantify the impact of the alternatives (incl. cost-benefit analysis)
		Assess the alternatives in terms of their consistency with government policy and their effects across the community
		Assess the alternatives from a cost recovery perspective
		Assess risks to regulatory outcomes for each alternative and analyse the targeting of resource needs accordingly
	Recommend preferred alternative	Adopt (or recommend the adoption of) the alternative that was estimated to generate the highest net benefit
	Plan the implementation of government intervention	Communicate objectives of intervention to relevant agencies
Develop an education campaign aimed at informing regulated entities implementing the intervention of the desired compliance outcomes		

Activity	Task	Good practice that relates to the task
MAKE REGULATION		
	Develop administrative processes to enable implementation	<p>Develop or amend administrative processes to enable practical implementation of intervention including:</p> <ul style="list-style-type: none"> a) enquiries process b) complaint handling process c) dispute resolution process d) licensing process e) compliance and enforcement process <p>Consider agency resources/capabilities in design of administrative processes</p> <p>Consider probity and governance requirements when allocating responsibility for regulatory activities to agencies</p> <p>Ensure that the processes developed are consistent with the government's commitment to reducing regulatory burden</p>

Activity	Task	Good practice that relates to the task	
OPERATE REGULATION			
Educate stakeholders about the government interventions	Plan educational initiatives	Articulate the objectives of each education/information initiative	
		Design education/information initiatives having considered and evaluated alternatives	
	Deliver educational initiatives	Deliver education/information initiative(s) to plan	
	Review education initiatives	Regularly review the information provided in education campaigns to ensure currency and assess the impact of the education campaigns	Assess whether compliance obligations are conveyed simply/directly/repeatedly to relevant parties in a manner to ensure they understand their regulatory responsibilities and rights
			Report trends in education data to all branches/agencies involved in the government intervention
Receive and respond to enquiries and complaints	Respond to enquiries	Provide the public with convenient mechanisms for making enquiries	
		Provide accurate information in response to enquiries within agreed timeframes	
	Resolve complaints	Provide the public with convenient mechanisms for making complaints	
		Provide accurate information in response to complaints within agreed timeframes	
		Explain complaints procedures to complainant including estimated timeframes	
		Resolve complaint or refer complaint to appropriate party for resolution/escalation using established protocols	
	Review enquiries and complaints data	Report trends in enquiries to all branches/agencies involved in the government intervention	
		Report trends in complaints to all branches/agencies involved in the government intervention	
Register and license entities	Process registration and licensing applications	Provide convenient mechanism(s) for licence applicants/licensees to contact regulator and lodge licensing and registration applications	
		Capture application and payment details promptly and accurately into relevant systems	
		Assess applications for registrations and licences against the requirements of the scheme	
		Consider impact of licensing decisions on third parties and informed them of decision to grant licence (where relevant)	
		Communicate registration/licensing decisions within agreed timeframes stating reasons for decision	

Activity	Task	Good practice that relates to the task
OPERATE REGULATION		
	Manage complaints regarding registration/licensing decisions	Resolve disputes or complaints regarding the granting, denial, or revocation of a licence and communicate reasons for those decisions to relevant stakeholders
Manage ongoing registration/licensing process	Process annual returns and renewals	Provide convenient processes for annual reporting/licence renewals
		Maintain register of licences and registrations in line with government policies
	Review registration and licensing data	Report trends in licensing/registration applications data to all branches/agencies involved in the government intervention
		Report trends in complaints regarding registration and licensing processes to agencies involved in the government intervention
		Analyse the costs and benefits of data requests made to regulated entities
Monitor and enforce compliance of regulated entities	Plan monitoring and enforcement activities	Identify monitoring and enforcement activity priorities and objectives using risk based approach
		Use complaints data to inform development of monitoring and enforcement plan and assign resources accordingly
	Implement monitoring plans	Implement plans to monitor compliance of regulated entities
	Remediate compliance breaches	Remediate non-compliant behaviour and compliance breaches in proportionate manner (compliance effort commensurate with breach)
		Sanctions and penalties are designed to achieve the regulatory outcome
		Reasons are given in writing at the earliest opportunity to the regulated entity
	Review compliance and enforcement data	Assess enforcement activity to test whether enforcement effort is commensurate with the compliance breach or potential breaches
		Report trends in compliance data to all branches/agencies involved in the government intervention
		Reported trends in complaints and the outcomes of monitoring activities to all branches/agencies involved in the government intervention

Activity	Task	Good practice that relates to the task
REVIEW REGULATION		
Assess the performance of the government intervention	Assess outcomes of the intervention	Assess the extent to which the government intervention addressed the original problem and achieved the stated objectives
		Consult stakeholders on their perceptions of the performance of the government intervention against stated objectives
		Consider compliance breaches when assessing effectiveness of regulatory government intervention
	Assess administrative performance associated with action undertaken	Review processes and systems against the stated objectives of the intervention
		Assess administrative and other burdens borne by regulated entities in line with the government's commitment to reducing regulatory burden
		Recover cost of licensing/registration scheme from applicants as stated in objectives of the intervention
Review the objectives of the government intervention	Recommend modifications to intervention	Assess the ongoing appropriateness of the identified regulatory objectives in light of actual performance
		Recommend the need for changes to policy or to regulatory intervention in light of actual performance and identify possible improvements

Activity	Task	Good practice that relates to the task
COORDINATE RESPONSIBILITIES		
Coordinate activities between regulatory agencies	Determine and formalise responsibilities and activities of agencies	Agree respective roles and responsibilities of regulators, agencies and departments giving consideration to probity and governance issues
		Formalise the objective, method and staff for managing relationships with other regulators and agencies
		Negotiate the budget allocation for the delivery of tasks including the basis for any cost sharing/reimbursement
	Manage ongoing relationships between agencies	Clearly articulate the issue/problem and the need for government intervention
		Agree information and data to be shared between agencies including mechanisms for enabling data sharing
		Improve coordination of regulatory effort between agencies through: <ul style="list-style-type: none"> a) promotion of efforts to minimise the administrative complexity for individuals or businesses who are subject to regulation from multiple regulators b) inter-agency co-ordination of resourcing on individual cases c) sharing of resources
Coordinate and plan within regulatory agencies	Plan corporate processes and activities	Engage in annual corporate planning processes to integrate activities, priorities and resourcing of agencies involved in regulatory cycle
	Manage capacity, processes and delegations	Demonstrate risk management approach to key aspects of regulatory administration
		Assess delegation of decision making to ensure consistency with legislation and management directives
		Implement mechanisms to minimise risk of corruption, misconduct, conflict of interest, regulatory capture and abuse of power

Good practices generally require their processes to be well documented, measured and regularly reviewed, according to their importance in the overall functions. Thus process maturity applies across many regulatory activities and is presented separately in the BBR framework. Because it does not derive specifically from the nature of regulation, but is an accepted good business practice in general, it is not presented as one of the good regulatory practices. Nevertheless, it is a practice directly related to implementing the principles of accountability, consistency and transparency.

Process maturity is a way to determine the sophistication or level of development of processes across the regulatory scheme on the basis that the quality of regulation is likely to be higher if processes are formalised, documented, adhered to in practice and measured.

Measurement requires a rating to establish the relative development and application consistency of each of the practices followed by the regulators to determine their 'maturity'. It is adapted from the established principles of process maturity typically used when evaluating organisational processes. Accordingly, process maturity is evaluated to:

- focus attention on how processes contribute to regulatory quality as, by definition, the processes being assessed are key to producing regulatory outcomes
- establish a link between conduct of these regulatory activities and improvement opportunities, and
- structure and prioritise implementation of improvements.

A higher rating would be achieved the greater the degree or extent of documentation, measurement, or promotion of continuous improvement. The ratings are:

Level 1—Informal and person dependant

This is for cases where the process being performed is not documented or formalised. In other words, it is not recorded either in outline or in detail. The activity is person-dependent and the sequence, timing and result may vary during repetition, or be sacrificed under pressure. This requires significant supervision and there is no guarantee of either achieving the desired result or adhering to timelines. The activity is ad hoc, with the effectiveness of the activity dependent on individuals.

Level 2—Partially documented processes

At this maturity level, the processes have been reviewed, documented and approved by the supervisor or the approving authority as the standard process. But it may be doubtful that the activity is being performed in all instances according to its documentation. This may be because of process drift or a change since the document was drafted.

Level 3—Fully documented processes

At this level, there is consistency between the documented process and the deployed process. The process documented and deployed is applied at all the intended locations, by all supervisors and staff. There is also a seamless linkage to other processes wherever there needs to be any interaction to ensure a consistent level of service.

Level 4—Level 3 plus measured processes

The process has set measures and goals, such as adherence to timelines, customer satisfaction, cost, and the process is measured against these goals. Process variation is reduced through statistical management with corrective action able to be taken at the point of reference. Outcomes can be predicted with accuracy from organisational capability.

Level 5—Level 4 plus continuous improvement

At this level, the goals set for the process are analysed for achievements and improved regularly. The timelines, cost targets, satisfaction levels are achieved regularly and the targets are stretched using continuous quality improvement techniques. Improvements are evaluated and deployed using systematic methods.

Process maturity therefore refers to the level of development and formalisation of the processes that support the regulatory activities. It plays an important role in managing risk as it encourages regulators to move away from person dependent processes, to ones that are well documented and understood, where documentation reflects practice, and where measurement is routinely reported and acted on. Regulators can improve their performance by consciously increasing the level of process maturity.

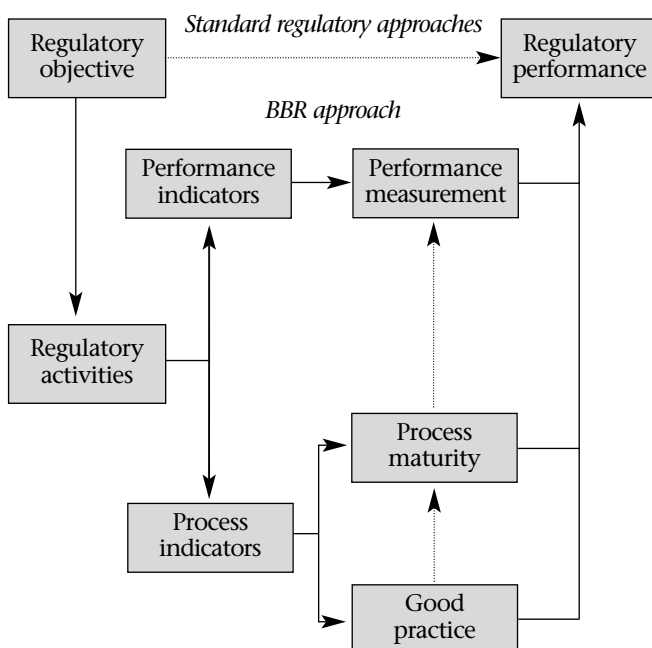
Performance measurement

The BBR Framework also allows for performance of the regulatory scheme to be considered in terms of:

- efficiency—indicators developed by considering the key inputs and outputs that relate to each regulatory activity, and
- effectiveness—indicators developed by considering the overall purpose and outcomes of the regulatory activity.

The project has developed a suite of potential performance indicators for each of the activities in the regulatory framework. These performance indicators are the third set of measures that complete the overall regulatory performance measurement in the BBR framework when combined with the process indicators of good practice and process maturity. In particular they have been designed to link to, and hence provide further evidence for, assessments of good practices and process maturity. When interpreted together, the three sets of indicators provide a broad and more complete picture of regulatory performance that includes assessments of operational activities (efficiency) and of regulatory outcomes (effectiveness). The positioning of the performance indicators within the BBR measurement framework is illustrated below.

Measuring regulatory performance in the BBR Framework



Development of performance indicators

The development of the performance indicators involved the identification of indicator concepts for each activity, where the indicator concept posed the question ‘what do we need to know?’ to gauge performance for each activity. One or more performance indicators for each activity were developed from these indicator concepts. They are most informative when viewed as a suite of indicators and not interpreted as isolated measures. If performance against single indicators is relied upon without the balance that occurs when the indicators are viewed collectively, inaccurate interpretations may be made leading to inappropriate decision-making.

The performance indicators are also designed so that directional changes provide clear and unambiguous interpretations of performance. This means that goals or targets can be assigned to each indicator once sufficient data has been obtained to determine the appropriate level.

Where possible, the performance indicators are expressed in generic language that is applicable across regulatory schemes. Not all of the indicators will apply to all schemes—for example, if a scheme does not include licensing provisions then the licensing related indicators would not apply. For some schemes it may be helpful to tailor the language to reflect that customarily used within that scheme.

Overall, the performance indicators reflect the nature of the activities within each of the make, operate and review stages and coordinate responsibilities. It should also be noted that the performance indicators, as well as the good practices and process maturity measures, can be used for comparing regulatory performance within a specific scheme over a time and also across regulatory schemes.

However, the performance indicators even when combined with the good practices and process maturity measures do not provide all the management information that may be required by those managing regulatory activities and tasks. There are many other pieces of information relating to operational detail that are important for management to access when making decisions. Therefore, it is intended that managers will seek more information than is represented by the performance indicators. For example, those managing a licensing process should be aware of the number of licence applications received. This data may well convey crucial information about the licensing intervention and inform decisions about the resources required to process the applications, even though the number of applications received does not in itself constitute performance data.

“ Making it work ”

The BBR framework can be applied in two modes:

- a) A ‘one-off’ evaluation to assess a regulator’s current practice against the standard of the good practices (gap analysis) to identify improvements. There is the option of repeating this periodically at medium to long term intervals, say every three years. Key steps in this type of application are:
 - gap analysis
 - interpret and understand reasons for gaps
 - identify priority areas for improvement
 - design and plan an improvement strategy
 - implement the improvement strategy
 - monitor results and review outcomes.
- b) Ongoing monitoring of performance using the generic performance measures in terms of efficiency and effectiveness. Key steps in this type of application are:
 - adapt BBR generic performance measures to the specific regulator or scheme
 - determine data needs and availability (eg is current data adequate for purposes?)
 - collect data
 - estimate measures
 - interpret measures and trends
 - identify particular activities for further assessment and improvement (eg measures may indicate problems areas but not the causes, that may require much more detailed and specific analysis).

Both of these modes of application are through a self-evaluation process. Self evaluation can be a useful vehicle for accurate identification of strengths and opportunities for improvement. It is also a learning opportunity supporting managers to better understand and assess the practices and processes within their area of accountability and should be seen as a starting point for continuous improvement. The BBR framework is designed to be implemented using a self evaluation process with facilitated workshops to develop action plans for improving regulatory performance.

The BBR framework was piloted by Consumer Affairs Victoria on two regulatory schemes using this methodology for the purposes of:

- assessing the evaluation framework as a diagnostic tool to measure regulatory performance
- assessing the associated approaches and processes involved in its application, and
- identifying areas that need to be taken into account for wider application of the BBR framework.

The pilot confirmed that the BBR framework has the capacity to identify issues and opportunities for improvement. The challenge will be to tailor and incorporate further improvements and examine opportunities to embed a continuous improvement culture amongst different regulators.

“ *Consumer Affairs Victoria research and discussion papers* ”

- 1 *Consumer Education in Schools: Background Report*, November 2003
- 2 *What do we Mean by ‘Vulnerable’ and ‘Disadvantaged’ Consumers?*, March 2004
- 3 *Information Provision and Education Strategies*, March 2006
- 4 *Social Marketing and Consumer Policy*, March 2006
- 5 *Designing Quality Rating Schemes for Service Providers*, March 2006
- 6 *Regulating the Cost of Credit*, March 2006
- 7 *Consumer Advocacy in Victoria*, March 2006
- 8 *Choosing Between General and Industry-specific Regulation*, November 2006
- 9 *Using Licensing to Protect Consumers’ Interests*, November 2006
- 10 *Consumer Detriment in Victoria: a Survey of its Nature, Costs and Implications*, October 2006
- 11 *Stopping Rogue Traders*, November 2006
- 12 *Unfair Contract Terms in Victoria: Research into their Extent, Nature, Cost and Implications*, October 2007
- 13 *Institutional Arrangements for Consumer Protection Agencies*, April 2008
- 14 *Better Business Regulation*, May 2008

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