

A review of methods for analysis of regulatory effectiveness

Full report: www.nzta.govt.nz/resources/research/reports/604

Revisiting regulation to ensure its ongoing effectiveness

New Zealand has a bias towards government regulation, including within the land transport sector. It is less strong, however, on ensuring that regulations, once set, continue to be effective and necessary.

A Transport Agency research project undertaken by Covec has developed a framework for assessing how effective regulatory interventions in the road transport sector are, and hence whether they are still required.

The five-step evaluation looked at the problem behind the regulation in question and why it was considered necessary in the first place; how effective the regulation has been at addressing that problem; what other options are available and whether regulation remains the best one; how the costs and benefits of regulation and other potential approaches stacked up; and, if the regulation was retained, how it could be improved.

Not all regulatory interventions aiming to mitigate land transport risks were included in the study. Instead, the analysis was limited to risks associated with:

- road construction impacts on the environment
- road use, including safety and environmental impact risks.

Other major risks, for which regulatory measures exist, but that were excluded from the study, included financial risks and anti-competitive behaviour risks.

The regulatory environment in New Zealand

The regulation of New Zealand's land transport system has developed over time and includes measures to address the safety of drivers and other road users, and measures to reduce the system's environmental impacts, among other things. Regulation is itself a broad concept, encompassing a range of government actions and initiatives that are designed to influence people's behaviour. Legislation, rules, education and other means of establishing social norms are all forms of regulation.

In 2013, the New Zealand Government agreed to a set of expectations for regulatory stewardship; that is, 'how departments should be designing and implementing regulatory regimes and their stewardship responsibilities in administering those regimes, such as undertaking monitoring and review'. These include expectations that government departments and agencies will:

- regularly check if regulations remain fit for purpose
- clearly articulate the objectives of regulations

- clearly articulate the factors that impose the greatest risk to regulatory performance
- have processes to improve their regulatory regimes
- only propose regulatory change where this is supported by a robust case built on impact analysis.

Despite this clear statement of expectations, New Zealand has yet to establish a systematic approach for how regulations are reviewed. This contrasts with the situation in a number of other countries that have established systems and approaches in place. Such systems might include:

- sunset clauses requiring deliberate re-regulation after a specified time, with the default option being that a regulation will discontinue if not specifically readopted
- scheduled reviews after a specified period
- unscheduled reviews, for example in response to monitoring or public comment.

While New Zealand requires some of these approaches to occur for some of its primary regulations, they are by no means unanimous across all regulations or sectors.

With regards to transport, previous research has suggested there is a tendency for transport regulations to be introduced and not revisited. The New Zealand Productivity Commission has found this 'set and forget' mentality is common for New Zealand regulatory regimes, yet there appears to be a national bias in favour of more regulation (rather than less) and a greater public demand for regulation, particularly to reduce risks.

Setting a method for evaluating regulations

The research report states, based on the review of the existing regulatory review regime, 'a more periodic and systematic approach to ex-post (after-the-event) analysis to ensure that land transport regulation is fit for purpose' is required.

The report examines the different components that might go into such an analysis and, with reference to international approaches, recommends those components that would provide the best basis for 'a systematic ex-post analysis of transport regulation in New Zealand'.

These components are summarised in the table below.

Component	Question(s)	Analytical tasks
1 Problem definition	Q1 (a) What is the problem, the underlying justification for the regulation? (b) Has it changed? This includes new scientific developments, changed social trends, etc?	A.1 (a) Market failure analysis. Is there a market failure and of what form? (b) Analysis of trends in the physical problem and the underlying causal factors.
2 Effectiveness of current regulation	Q2 (a) How effective is the regulation in addressing the problem(s)? (b) Were expected benefits achieved? (c) Have there been unintended consequences?	A.2 (a) Analysis of outcomes compared with some counterfactual with no regulation (or some alternative) to isolate the effects of regulation. (b) Comparison of expected and actual outcomes.
3 Regulatory options	Q3 (a) Is regulation still the best way to achieve objectives? (b) Are there regulatory and non-regulatory options?	A.3 (a) Analysis of regulatory response suggested by market failure identification. (b) Regulatory review – literature review and international comparative review.
4 Regulatory analysis	Q4 (a) Do the benefits still exceed the costs? (b) Do alternatives exist with lower costs for the same objective? Can greater cost-effectiveness be achieved?	A.4 (a) Cost-benefit analysis (or review of existing cost-benefit analysis) of current regulation and alternatives (initial high-level analysis).
5 Regulatory improvement	Q5 (a) Can the regulation be modified to better partner with other regulatory areas or levels of government? (b) Does it have time-consuming requirements, eg paperwork, that can be reduced? (c) Flexibility: is it highly prescriptive?	A.5 Transaction cost analysis.

The report concludes that adopting the components and evaluation approach outlined in the table would enable the Transport Agency and government to 'have greater confidence that existing regulations were fit for purpose or if there was scope for regulatory change or regulatory improvement to increase the net benefits of regulation'.

The research report also contains a detailed discussion on the rationale for regulating the land transport sector in the first place. This includes regulation in response market failures that are creating risks within the sector.

These failures might be due to imperfect information (people using roads with information gaps relating to the safety risks they face and the performance expectations of their vehicle etc) or externalities (the risks or impacts created by a person who causes a safety or environmental issue within the sector, are not just borne by that person, but also by others who might, for example, be involved in a crash or affected by emissions).