



December 2016



---

# Regulatory Charter

## Employment relations and employment standards regulatory system

---

## Context: regulatory charters

### Why have a regulatory charter?

Government entities have stewardship obligations under the State Sector Act 1988 to monitor the performance of the regulatory systems they oversee. A charter is a management tool that is designed to support a living regulatory system<sup>1</sup> and which reinforces shared ownership for the system among those with regulatory functions.

By clarifying roles, responsibilities and objectives, the charter is designed to support cooperation between system participants and ensure that any changes made within the regulatory system contribute to the desired outcomes for the system as a whole.

### What is in the regulatory charter?

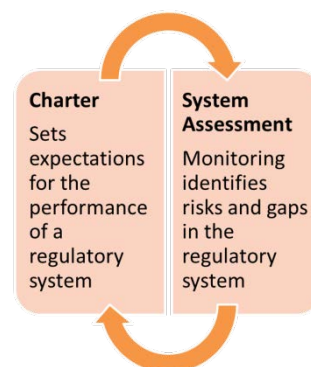
The Employment Relations and Employment Standards (ERES) Charter records an understanding between system participants about respective roles and functions in the ERES regulatory system, and how the system is intended to perform.

The Charter:

- identifies the core actors and relationships in the ERES regulatory system
- states clear expectations for what the ERES regulatory system is intended to achieve
- outlines the key principles and trade-offs underlying the design of the ERES regulatory system
- describes the respective roles and functions in the ERES regulatory system
- describes ERES charter operations.

This enables ERES regulatory system risks and gaps to be identified quickly in system assessments and other system monitoring and accountability processes.

**Figure 1: Charters and System Assessments complement each other**



### Charter ownership

Ownership for the Charter sits with the Deputy Chief Executives of Labour, Science and Enterprise and Market Services, operating through the Employment Relations and Employment Standards (ERES) Governance Group and consisting of the following Ministry of Business, Innovation and Employment (MBIE) general managers:

- General Manager - Labour and Immigration Policy (covering employment relations and employment standards policy)
- General Manager - Service Support and Design (providing information about compliance and general conditions)

<sup>1</sup> A living system is one which is continuously monitored and improved, rather than set and forgotten. A living system incorporates mechanisms to enable the regulators in the system to identify, assess and evaluate the system and make adjustments where appropriate to meet evolving opportunities and risks. In a living system, the system's owners have shared expectations of how the system is supposed to perform and can assess how that system is performing against those expectations.

- General Manager - Resolution Services (covering the provision of dispute resolution services)
- General Manager - Labour Inspectorate.

Other agencies and institutions have roles and functions in the system but these agencies are not parties to the Charter nor are they owners of it.

## Charter functionality

This Charter describes the current state of the ERES system. It sets out the purpose of the system, the roles of its participants and the relationships between the various participants in the sector.

It is intended that the Charter:

- encourages communication within the system by giving participants a framework for
  - thinking through how any changes they are considering are likely to affect others
  - ongoing discussion about the performance of the ERES system
  - contributing to information used in the decision making process
- provides context about how the system works as a whole to participants involved in specific function areas
- informs decision making both within functions and at a governance level
- assists the development of training material and system management documentation
- assists to identify risks and gaps at both a system level and at the individual function level.

This Charter does not set out a framework to address the risks and gaps that may be identified. Instead it provides the foundation from which any further work may be developed to address the issues identified.

Adoption of the Charter by its owners affirms a commitment to work together to improve regulatory system outcomes.

## Charter review and management

Responsibility for keeping and reviewing this Charter document sits with MBIE. The Charter will be reviewed at least once every five years (that is, in or before 2021).

The Charter will also be assessed on a regular basis as part of the operation of the ERES Governance Group. This will include assessments of whether:

- system objectives, policy or context have changed over time
- the Charter document should be updated to reflect these changes
- as a result of system assessments, progress has been made in addressing identified risks and closing gaps.

## Table of contents

<b>1. Regulating employment relations and employment standards .....</b>	<b>5</b>
1.1 The employment relations and employment standards regulatory system .....	5
1.2 Why the employment relations and standards regulatory system is important.....	5
1.3 Why employment relationships are regulated .....	5
<b>2. Scope and objectives of the ERES regulatory system.....</b>	<b>7</b>
2.1 Scope of the ERES regulatory system .....	7
2.2 Core actors in the ERES regulatory system .....	8
<b>3. Approach to New Zealand’s regulation of employment relations .....</b>	<b>11</b>
3.1 Objectives for the employment relations and standards regulatory system .....	11
3.2 Regulatory principles .....	14
<b>4. Roles and responsibilities .....</b>	<b>16</b>
<b>5. Operating the ERES Charter .....</b>	<b>18</b>
5.1 Operating the Charter .....	18
5.2 ERES Governance Group .....	18
5.3 Charter review .....	18
<b>Appendix 1: Legislative context</b>	
<b>Appendix 2: ERES Governance Group Terms of Reference</b>	
<b>Appendix 3: Summary of good practice principles</b>	

# Regulating employment relations and employment standards

## 1. Regulating employment relations and employment standards

### 1.1 The employment relations and employment standards regulatory system

The Employment Relations and Employment Standards (ERES) regulatory system aims to promote employment relationships that are productive, flexible and to the benefit of employers and employees.

The ERES regulatory system includes:

- a contracting regime for employers and employees that emphasises a duty of good faith
- interventions (in particular, collective bargaining and minimum standards requirements) that acknowledge that conditions can arise in labour markets, where asymmetries of power and information can exist between employers and employees
- a number of minimum work related conditions or rights (for example, entitlements to leave, pay and employment protection) that New Zealanders expect to be part of an employment relationship
- services to support the resulting relationships and to resolve disputes
- institutions that enforce regulatory requirements.

### 1.2 Why the employment relations and standards regulatory system is important

The effective use of knowledge, skills and capital in firms is a key driver of innovation and growth. This increases wages, lifts firms' competitiveness and profitability, and leads to better social and economic outcomes.

The ERES regulatory system sets the parameters for the operation of a market for labour hire and reward. The operation of this market is not simply an exchange of goods and services; it is based on human relationships where mutual trust, confidence and fair dealing are important.

The ERES system is also important for households as employment is a primary source of income that is then used to purchase goods and services, and is a source of investment and insurance. As with other services or goods where these characteristics are important, there is an emphasis on these relationships being conducted in good faith, and on effective dispute resolution.

### 1.3 Why employment relationships are regulated

Employment relationships are regulated for a number of reasons:

- to establish the conditions for a market for hire and reward to operate, and for this market to be able to adjust quickly and effectively (labour market flexibility)
- to provide a minimum set of employment rights and conditions based on prevailing societal views about just treatment
- to foster the benefits to society that relate to the special nature of work (including cohesion, stability, and well-being)

- to address power and information asymmetries that can occur in labour markets (market failure<sup>2</sup>)
- to reduce transaction costs associated with bargaining and dispute resolution<sup>3</sup>.

---

<sup>2</sup>Information asymmetries arise where employers are unable to directly observe the productive capacity of individuals. Employers may use observable characteristics (such as age, race or gender) as proxies for labour productivity which may be based on deeply held prejudices or unconscious biases. This, in turn, leads to the contribution made by certain groups being either undervalued or overvalued. Economic efficiency is lost because the right people for the job are not selected or are not promoted, earning gaps persist between different groups that are not based on labour productivity, and discouraged workers leave the labour market or migrate elsewhere.

Labour markets also fail where monopsony situations exist. Monopsony situations arise where a dominant employer in an industry or a geographical area is able to use their buying power to pay wages at a level lower than what they would have been in a competitive market. As well as inefficiencies arising from workers being paid below their real value (that is, below their marginal rate of labour productivity), these workers often face weakened incentives to work and can experience increased relative poverty.

<sup>3</sup>For example, by providing access to specialist employment institutions to resolve disputes, and by establishing and operating institutions that enforce employment obligations and requirements (e.g. labour inspectors, Mediation Services, the Employment Relations Authority and the Employment Court).

## 2. Scope and objectives of the ERES regulatory system

### 2.1 Scope of the ERES regulatory system

The ERES regulatory system consists of any legislation, entity, activity or policy objective<sup>4</sup> that is used to prescribe or proscribe conduct, calibrate incentives or change preferences<sup>5</sup> in relation to employment relationships.

Employment relations statutes that are identified within the ERES regulatory system are identified below. The area of regulation and its purpose are described in more detail in Appendix 1.

The core statutory requirements that govern employment relationships are:

- the Employment Relations Act 2000 (the ER Act)
- the Minimum Wage Act 1983
- the Holidays Act 2003
- the Parental Leave and Employment Protection Act 1987
- the Equal Pay Act 1972
- the Wages Protection Act 1983
- the Volunteers Employment Protection Act 1973<sup>6</sup>.

There are also:

- codes of practice that are established under the ER Act including:
  - Schedule 1B of the ER Act - the code of good faith for the public health sector
  - Schedule 1C of the ER Act - the code of good faith for employment relationships in relation to provision of services by Police
  - Code of employment practice on infant feeding
  - Code of good faith in collective bargaining.

An important role of the ERES regulatory system is to resolve problems in employment relationships promptly. Specialised employment relationship procedures and institutions have been established to achieve this. They provide expert problem-solving support, information and assistance.

The employment relations institutions established under employment relations statute are:

- Mediation Services (established in Part 10 of ER Act)
- the Employment Relations Authority (established in Part 10 of the ER Act)
- the Employment Court (established in Part 10 of the ER Act)
- Labour Inspectors (established in Part 11 of the ER Act)
- the Registrar of Unions (appointed as per section 27 of the ER Act).

Interacting with this legislative and institutional framework, MBIE is supporting the quality of ERES regulation through:

- evidence based<sup>7</sup> policy and advice on:
  - employment relations and standards policy
  - ERES system service design

---

<sup>4</sup> The Treasury, *Best Practice Regulation: Principles and Assessments* (February 2015). (Online) <http://www.treasury.govt.nz/regulation/bpr>.

<sup>5</sup> Orbach, B. (2012) *What Is Regulation?* 30 Yale Journal on Regulation Online 1.

<sup>6</sup> Other legislation that contains employment related provisions includes the Human Rights Act 1993, Industry Training and Apprenticeships Act 1992, Privacy Act 1993, State Sector Act 1988, Home and Community Support (Payment for Travel between Clients) Settlement Act 2016, Fisheries Act 1996, and Public Health and Disability Act 2000.

<sup>7</sup> Based on research, evaluation and monitoring information.

- general labour market strategy
- information and education on employment relations matters, including MBIE’s Market Services (which provides mediation services and information on ERES)
- enforcement of ERES regulation and minimum standards.

## 2.2 Core actors in the ERES regulatory system

The focus of the ERES regulatory system is on the relationship between employers and firms, and employees as these parties are the key drivers of labour market outcomes. How these parties and those associated with the construction and operation of these relationships interact, are influenced by the actions of core ERES regulators. Employers and employees are also influenced by other regulatory systems, as is the ERES regulatory system itself.

The Charter does not alter the primacy of the employer-employee relationship in the ERES regulatory system, nor does it alter this focus in any strategic documents<sup>8</sup>. The Charter is a tool for improving the actions of ERES core regulators in influencing the relationship between employers and employees and in working in conjunction with other systems. This requires the Charter to focus on the role and functioning of the ERES regulators in order to address any gaps, overlaps or other issues that may either enhance the ERES regulatory systems’ effectiveness or respond to its failings.

The parties that are core to the ERES regulatory system, its regulatory stewards, are found in government and are currently located in MBIE<sup>9</sup>. That is:

- the policy advisors on the ERES regulatory system (employment relations and employment standards)
- MBIE services that provide information to parties to employment relationships on what compliance means and how to comply
- the labour inspectorate who enforce ERES regulation
- MBIE market services who provide dispute resolution services.

Figure 2 summarises where different actors are placed within an ERES regulatory system for the purposes of the Charter.

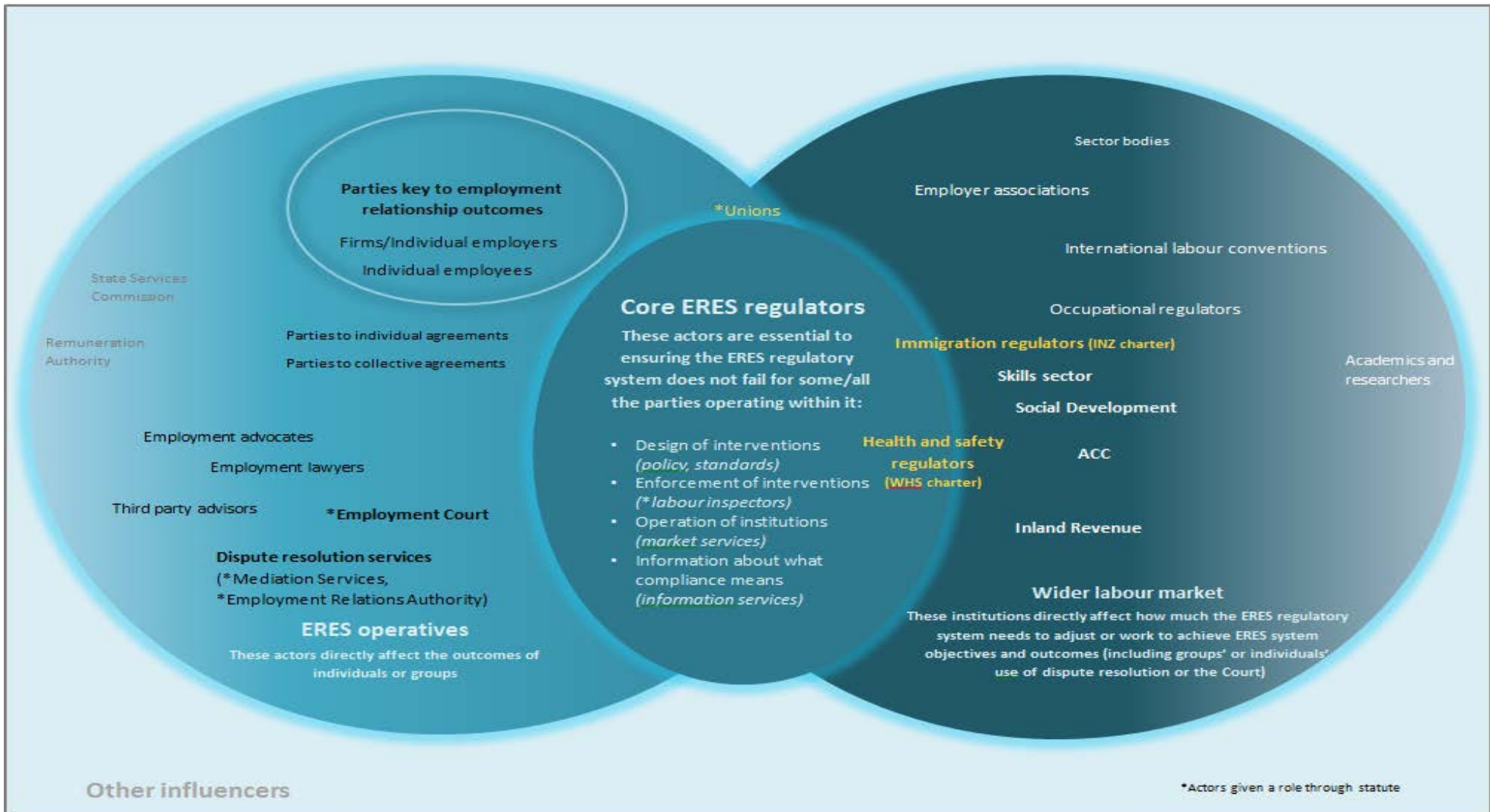
---

<sup>8</sup> See <http://www.mbie.govt.nz/about/our-work/roles-and-responsibilities/regulatory-systems-performance/?searchterm=regulatory%20charter>.

<sup>9</sup> Unions appear on the boundary between the core ERES regulatory system given their functions and powers under the ER Act, albeit limited to union members, and being an operative within the system with respect to employees who are union members.



Figure 2: ERES regulatory system participants



For the purposes of the Charter, the employment regulatory system:

- **Includes** the ER Act, the codes of employment practice and good faith, the Minimum Wage Act, the Holidays Act, the Parental Leave and Employment Protection Act, the Equal Pay Act, the Wages Protection Act and the Volunteers Employment Protection Act.
- **Includes** regulations made under the Acts listed above.
- **Includes** as its stewards and owners the MBIE General Managers of Labour and Immigration Policy, Service Support and Design, Resolution Services, and the Labour Inspectorate (currently coordinating as the ERES Governance Group).
- **Excludes:**
  - regulation that is to be covered by other MBIE regulatory system charters such as:
    - work health and safety regulation
    - immigration regulation
  - individual or collective employment agreements, occupational regulation, specific State sector employment arrangements, Remuneration Authority determinations
  - wider labour market systems including the skills framework, and social welfare and tax arrangements.

### 3. Approach to New Zealand’s regulation of employment relations

#### 3.1 Objectives for the employment relations and standards regulatory system

Well-functioning labour markets support sustainable business growth and job creation and, in turn, a more competitive and productive economy.

The current ERES regulation system is characterised by:

- a duty of good faith, established in the ER Act, that is relevant to all employment relationships and the foundation for all employment negotiations. This duty is intended to encourage constructive employment relationships (i.e. with fewer disputes, better employment outcomes and improved workplace productivity)<sup>10</sup>
- the provision for collective bargaining between employers and registered unions
- the provision for individual employment agreements with terms and conditions of employment negotiated directly between employees and employers
- government involvement in wage setting limited to setting minimum wage levels
- a spectrum of legislative and regulatory interventions that establish minimum entitlements and rights including:
  - minimum wage levels
  - minimum entitlements to holidays, leave (for sickness, bereavement, parenting, volunteering, serving on a jury), rest and meal breaks
- employment standards including:
  - expectations on entering and exiting employment relationships, and resolving disputes
  - equal pay between men and women
- a multi-tiered system of resolving disputes and conflict (including strikes and lockouts) and enforcing minimum employment rights including:
  - bargaining between parties with escalation of issues through mediation to the courts, if required
  - MBIE (including labour inspectors) who work with employers and employees, to make sure that employment laws are understood and applied properly in workplaces
  - escalation of disputed issues by labour inspectors through to the Employment Relations Authority and subsequently to the Employment Court if parties do not agree with the findings at any stage.

The objectives that underpin these areas of ERES activity could be interpreted as:

- **Employment rights and standards** that:
  - provide minimum requirements and obligations in employment relationships. These minimum requirements would satisfy expectations that New Zealanders have about the conduct of employment relationships

---

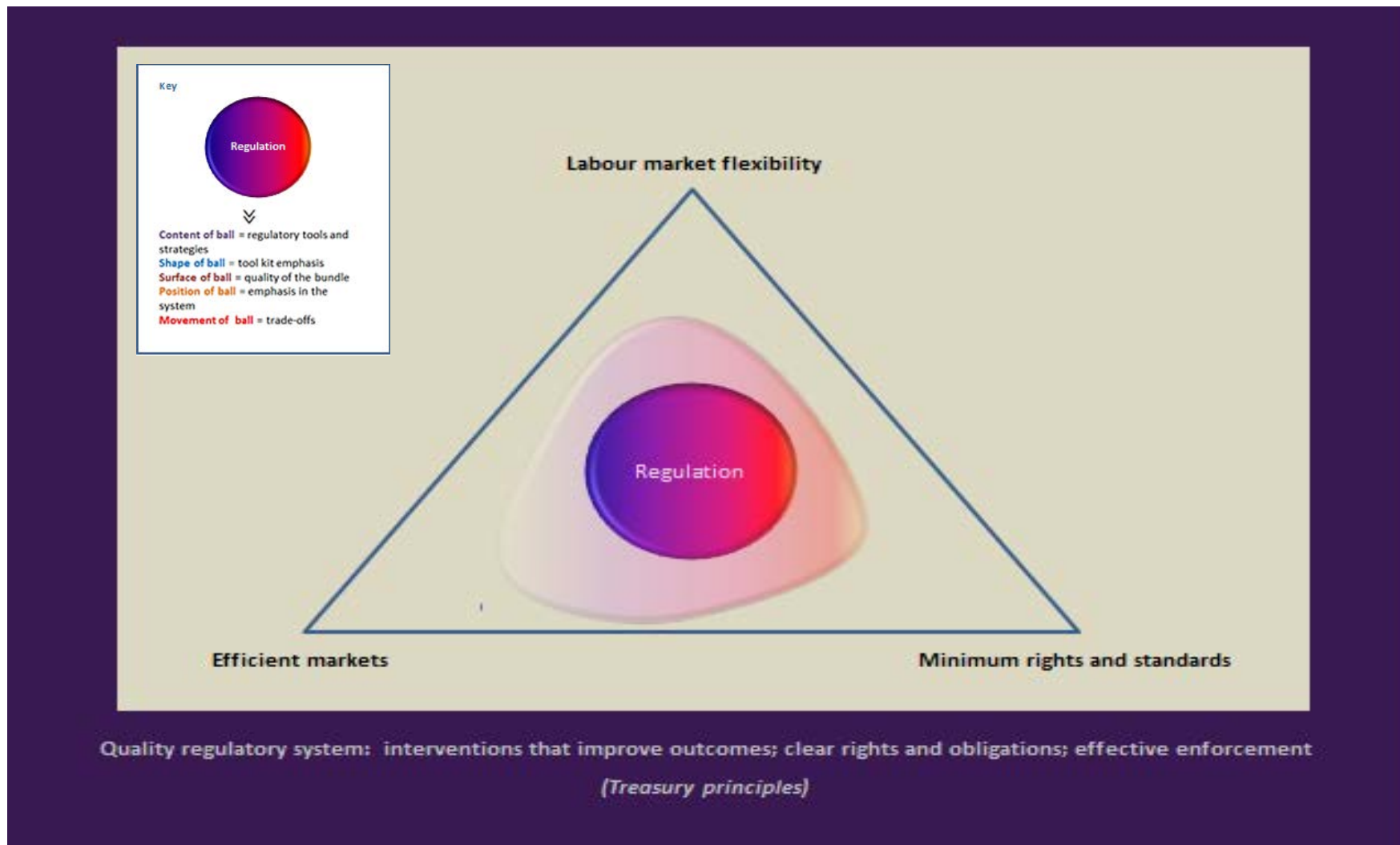
<sup>10</sup> Good faith means that parties in an employment relationship must deal with each other in good faith and must not do anything to mislead or deceive the other party. This requires the parties in an employment relationship to be active, constructive, responsive, communicative and for information between parties to be accessible.

The duty of good faith is applicable to all employment relationships including relationships between employers and employees, unions and employers, unions and union members, and between unions. The duty of good faith currently underpins negotiations in all collective bargaining, individual bargaining, consultation between employers and employees, employers’ business proposals that might impact employees (such as restructuring), and any other matters that might affect the employment relationship. If a party is found to have not acted in good faith, they may be liable for penalties.

- foster benefits to society that relate to the special nature of work (these include cohesion, stability, and well-being).
- **Labour market flexibility** enabling employers and workers to enter and leave employment relationships and to agree the terms and conditions to apply in these relationships (subject to minimum requirements).
- **Efficient markets** by addressing market failures, such as power and information asymmetries in employment relationships which can lead to the exploitation of workers.

A model of the ERES regulatory system, as depicted in Figure 3, can be identified for the purpose of the Charter. The model is based on the main objectives in the ERES regulatory system, set within a backdrop of a quality regulatory system. All of the relationships within this model are to be operated in good faith.

Figure 3: Employment relations and standards regulatory system objectives: an ERES model



Over time, the system may place differing emphases on each of these objectives and is likely to be adjusting to spill-over effects from other regulatory systems (e.g. immigration, skills, welfare, and tax systems). The ERES regulatory system balances between these objectives, making adjustments to the regulatory tools and interventions it has, over time, to manage these adjustments as well as to adapt to new regulatory technology that also develops over time.

### 3.2 Regulatory principles

In addition to assessing ERES regulation against the ERES objectives, it is also important to identify whether the regulation meets quality standards. This enables an assessment to be made as to whether the ERES regulatory system has the required quality of tools, systems, role definitions and structures to be effective on both a business-as-usual basis, and in response to a change or threat.

The Treasury has developed principles and performance indicators for assessing regulatory systems<sup>11</sup>. These principles are designed to provide an initial view of regulation and whether there are areas for improvement. If any issues were found through this assessment, then a further investigation would be warranted.

However, the regulatory principles, on their own:

- do not indicate whether regulation was required in the first instance. Therefore, the approach in the ERES Charter is to use a model that incorporates both principles and objectives
- do not form a regulatory impact assessment
- may not address features that are unique or essential to a regulatory system. For example, the disputes resolution provisions in the ERES system could fit this description.

The regulatory principles are summarised in Appendix 3.

The objectives of the ERES model and the best practice regulatory principles are able to be encapsulated in a table form (see Table 1 below as an example), where assessments can be recorded, tracked and reported over time. The Governance Group is continuing to work on how this will be implemented.

---

<sup>11</sup> See Peter Mumford “*Best Practice Regulation – Setting targets and detecting vulnerabilities*” in Policy Quarterly - Volume 7 - Issue 3 – August 2011

Table 1: Assessment of ERES regulation

Regulation	ERES regulatory system	Employment Relations Act 2000	Minimum Wage Act 1983	Holidays Act 2003	Parental Leave and Employment Protection Act 1987	Equal Pay Act 1972	Wages Protection Act 1983	Volunteers Employment Protection Act 1973	Foreign Fishers (Fisheries Act 1996)
<b>Regulatory objectives and principles</b>									
<b>ERES regulatory system objectives (what)</b>									
Efficient markets									
Labour market flexibility									
Employment rights and standards									
<b>Best practice principles (how)</b>									
<i>Proportionality: the burden of rules and their enforcement should be proportionate to the benefits that are expected to result</i>									
<i>Certainty: the regulatory system should be predictable to provide certainty to regulated entities, and be consistent with other policies</i>									
<i>Flexibility: regulated entities should have scope to adopt least cost and innovative approaches to meeting legal obligations</i>									
<i>Durability: closely associated with flexibility; the regulatory system has the capacity to evolve to respond to new information and changing circumstances</i>									
<i>Transparency and Accountability: rules development and enforcement should be transparent</i>									
<i>Capable Regulators: the regulator has the people and systems necessary to operate an efficient and effective regulatory regime</i>									
<i>Growth Supporting: economic objectives are given an appropriate weighting relative to other specified objectives</i>									
<b>OTHER</b>									

## 4. Roles and responsibilities

By definition, a regulatory system contains a number of different functions, each contributing to the system's desired outcomes. By clearly defining these components and roles, we can provide a basis for cooperation, for resolving issues of role clarity, and for consultation around operational change.

The overlapping nature of the services and the different points of entry provided by the ERES system can be best illustrated with an example. An employee experiencing difficulty at work may visit the MBIE website, they may call the MBIE contact centre and they may, if the issue is not resolved, attend mediation run by Mediation Services. In other situations, a labour inspector may visit a workplace, identify problems with compliance with ERES regulation that may be resolved by interaction with the Inspectorate or through other ERES institutions such as the Employment Relations Authority. In each of these cases, the different services provided by MBIE will have similar but different roles and objectives.

This picture is important to keep in mind when considering potential operational changes. Although the structure of the system is defined by statute, the individual components constantly make decisions about how they can best deliver on promises. When making changes, each area needs to consider how the change will affect the other services the system offers and whether it will alter the balance of objectives as outlined in the ERES model above.

Figure 4 illustrates the key functions in the employment relations regulatory system. The arrows illustrate that it is a 'living' system.

There are numerous regulatory entities and activities involved in each function of the employment relations regulatory system. Table 2 depicts the regulatory system responsibilities (colour coded) of core agencies and key participants.

**Figure 4: Regulatory system**





**Table 2: Roles and functions in the ERES regulatory system**

System strategy and policy	<b>Employment Relations Policy, Labour Science and Enterprise, MBIE</b>	The Employment Relations Policy team is responsible for advising the Minister for Workplace Relations and Safety about the statutory framework that underpins the regulatory system. The team is responsible for maintaining the overall framework within which the regulatory system operates, and have a key role in advising on changes to that framework
	<b>Employment Standards Policy, Labour Science and Enterprise, MBIE</b>	The Employment Standards Policy team are responsible for advising the Minister for Workplace Relations and Safety on statutory minimum standards to apply in the regulatory system
System performance	<b>Bridge between policy and operations</b>	This role could include: developing the framework for the operation and coordination of the system, harvesting and managing intelligence to promote feedback loops within the system and initiating work with both policy and delivery teams to resolve vulnerabilities
Operational policy	<b>Service Design Policy, Market Services, MBIE</b>	The Service Design Policy team oversees the implementation of legislative change, provides the secretariat to the ERES Governance Group, and serves as a 'connecting point' between policy and delivery teams
Registration	<b>Registrar of Unions</b>	Registration of unions as required under the ER Act

Education and information	<b>Information and Education, Market Services, MBIE</b>	<p>Providing accurate and relevant information is critical to the functioning of the ERES regulatory system. This includes general information about the operation of the system, the underpinning statutory framework, and specific campaigns around changes to the system</p> <p>MBIE undertakes this role in a number of different ways, with third parties also playing an important role</p> <p>The Information and Education team is responsible for developing web content and communication strategies, utilising a range of media</p> <p>MBIE provides a contact centre to provide more specific information in response to queries from the public</p> <p>The Labour Inspectorate also works with third parties to improve understanding of the system</p>
Monitor and evaluate	<b>Evidence, Monitoring and Governance, Corporate, Governance and Information, MBIE</b>	The Evidence, Monitoring and Governance Branch provides evidence-based research, analysis, and evaluation services, and strategic and tactical support for business operations and planning. In relation to the ERES system, they can help identify changes and emerging trends in the employment market; identify the important questions MBIE needs to consider in supporting the design and implementation of ERES regulatory system; and assess whether the ERES system is making an impact
Disputes resolution	<b>Resolution Services, Market Services, MBIE</b>	Mediation Services has a statutory function to provide dispute resolution services to parties in a work-related dispute. These services aim to help build productive employment relationships through the promotion of good faith

Compliance and enforcement	<b>Employment Relations Authority</b>	The Authority is an investigative body that has the role of resolving employment relationship problems by establishing the facts and making a determination according to the substantial merits of the case, without regard to technicalities  The Authority also ensures recorded settlements are complied with
	<b>Employment Court</b>	The Court has exclusive jurisdiction (and corresponding powers) to deal with a range of employment related issues, including hearing a matter previously determined by the Authority
	<b>Labour Inspectorate, Market Services, MBIE</b>	Labour inspectors facilitate and enforce compliance with the employment standards related statutory requirements. Labour inspectors are charged with determining whether the relevant statutory provisions are being complied with; taking all reasonable steps to ensure such compliance and monitoring and enforcing compliance with employment standards
	<b>MBIE Intelligence Unit</b>	The MBIE Intelligence Unit provides intelligence and analysis services to MBIE regulators. Within the ERES regulatory system, its primary role is to work with the Labour Inspectorate to target its operations

## 5. Operating the ERES Charter

### 5.1 Operating the Charter

The Charter involves governance, operation, and ongoing review of both the content of the ERES regulatory system and of the system description itself.

### 5.2 ERES Governance Group

Ownership for the Charter sits with the Deputy Chief Executives of Labour, Science and Enterprise and of Market Services, operating through the Employment Relations and Employment Standards (ERES) Governance Group.

The ERES Governance Group consists of the:

- General Manager - Labour and Immigration Policy
- General Manager - Service Support and Design
- General Manager - Resolution Services
- General Manager - Labour Inspectorate

The ERES Governance Group contributes to the efficiency, effectiveness and quality of ERES regulatory system by operating as a forum that considers and, where required, takes decisions in response to issues and trends affecting the ERES regulatory system. The ERES Governance Group operates under Terms of Reference developed in 2014 (see Appendix 2).

### 5.3 Charter review

One of the key functions of the ERES Governance Group is to ensure the ERES regulatory system is reviewed on a regular basis. This includes review of the efficacy of the Charter itself.

The Charter will be reviewed at least once every five years (that is, in or before 2021).

## Appendix 1 - Regulatory Framework

This appendix outlines the legislative framework applying to New Zealand’s employment relations system.

Key areas of regulation	Purpose
<p><b>Employment Relations Act 2000</b></p>	<p>The purpose of the Employment Relations Act is to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship.</p> <p>To achieve this primary purpose the legislation specifically:</p> <ul style="list-style-type: none"> <li>• recognises that employment relationships must be built on good faith behaviour.</li> <li>• acknowledges and addresses the inherent inequality of bargaining power in employment relationships.</li> <li>• promotes collective bargaining.</li> <li>• protects the integrity of individual choice.</li> <li>• promotes mediation as the primary problem-solving mechanism.</li> <li>• reduces the need for judicial intervention.</li> </ul> <p>The Act also promotes observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively.</p>
<p><b>Minimum Wage Act 1983</b></p>	<p>The objective of the minimum wage is to create ‘a wage floor that balances the protection of the lowest paid with employment impacts, in the context of current and forecast labour market and economic conditions, and social impacts’.</p> <p>The Act also provides for a 40 hour, 5 day working week unless the parties agree otherwise.</p>
<p><b>Holidays Act 2003</b></p>	<p>The purpose of this Act is to promote balance between work and other aspects of employees’ lives and, to that end, to provide employees with minimum entitlements to:</p> <ul style="list-style-type: none"> <li>• annual holidays to provide the opportunity for rest and recreation.</li> <li>• public holidays for the observance of days of national, religious, or cultural significance.</li> <li>• sick leave to assist employees who are unable to attend work because they are sick or injured, or because someone who depends on the employee for care is sick or injured.</li> <li>• bereavement leave to assist employees who are unable to attend work because they have suffered a bereavement.</li> </ul>

<b>Parental Leave and Employment Protection Act 1987</b>	<p>This Act provides minimum entitlements for parental leave and employment protection for those parents who take this leave. The Act recognises that parents (particularly mothers) need to take time off work to rest and recover from childbirth, the need for parents (including adoptive parents) to take time to bond with a new baby, for parents to be assured of a level of income stability for the period of time while this occurs and for them to re-enter employment following a period of parental leave.</p> <p>The Act:</p> <ul style="list-style-type: none"> <li>• sets minimum entitlements with respect to parental leave for male and female employees.</li> <li>• protects the rights of employees during pregnancy and parental leave.</li> <li>• entitles certain employees and self-employed persons to up to 18 weeks of paid parental leave.</li> </ul>
<b>Equal Pay Act 1972</b>	<p>This Act provides for the removal and prevention of discrimination, based on the sex of the employees, in the rates of remuneration of males and females in paid employment.</p>
<b>Wages Protection Act 1983</b>	<p>This Act provides minimum obligations for employers to pay wages that workers are entitled to. This Act requires an employer, when any wages become payable to a worker, to pay the entire amount of those wages to that worker without deduction.</p>
<b>Volunteers Protection Act 1973</b>	<p>This Act provides minimum entitlement for workers who are volunteers to Her Majesty's Armed Forces.</p> <p>This Act provides for Territorial Forces personnel to perform their military duties and training without risking the loss of their employment entitlements. Providing an employee meets the applicable criteria and notice obligations, it is assumed that the employee will be able to take leave from, and return to, the same job.</p>
<b>Fisheries Act 1996</b>	<p>As amended in 2014, this Act grants crew on foreign vessels fishing in New Zealand waters entitlement New Zealand's minimum employment rights.</p>

## APPENDIX 2 – ERES Governance Group Terms of Reference

---

### Purpose

1. The purpose of the Employment Relations and Employment Standards Regulatory System (the Regulatory System) Governance Group is to direct and oversee the effective operation of the Regulatory System by providing General Managers from the respective component areas with a mechanism to discuss and make decisions about issues that affect the Regulatory System and by doing so assist MBIE to:
  - a. Meet its statutory obligations under the Employment Relations Act 2000 and other employment-related legislation.
  - b. Deliver services funded under Vote: Labour.
  - c. Deliver on Minister of Labour expectations.
  - d. Deliver on Better Public Services priorities.
  - e. Contribute to the objectives of the Regulatory Systems Priority Programme.
2. The Governance Group will:
  - a. **Ensure** a shared understanding of the individual and shared priorities across the component parts of the Regulatory System.
  - b. **Determine** the strategy and work plan for shared activities in Vote Labour including assessing and evaluating system performance, recognising that there will be other external factors which need to be taken into account in the development of priorities.
  - c. **Ensure** the appropriate resourcing for the delivery of work plans, including the necessary financial arrangements.
  - d. **Make decisions** on system wide issues and approaches, including the regular establishment and assessment of the priorities within the system.
  - e. **Make linkages** across the employment relations and employment standards regulatory system.
  - f. **Monitor and advise** on relevant stakeholder engagement.
  - g. **Escalate issues**, where necessary, by bringing matters to the attention of the DCE, Labour, Science and Enterprise and DCE, Market Services for their decision.
3. The Governance Group **will not** set the individual detail under the high level strategy this will remain the responsibility of the General Managers.
4. By the 2015/16 financial year, the ambition is that the Governance Group will have expanded its governance and leadership role to provide active oversight of the functioning of different parts of the regulatory system and management of funding allocations for the various components of the regulatory system. To ensure it has a sound basis for this role, the Governance Group will initially focus on building a *shared understanding* of the individual and shared priorities across the various branches and teams within MBIE.

## Responsibilities

5. Members will ensure best endeavours to attend all Governance Group meetings and may only send substitutes if substitutes have expressly been given the right to make decisions on behalf of the absent member.
6. Members will participate in the Governance Group in a manner that has as its primary objective the best interests, including the well-being and performance, of the Regulatory System as a whole (and not any particular component part).
7. Members will bring issues with significant implications for their own area's focus or implications for other parts of the system to the Governance Group for presentation, feedback and, where appropriate, decision. These issues are likely to include:
  - a. Identification of priorities for a specified timeframe.
  - b. The development of overarching material (for example, a systems charter).
  - c. Questions of role clarity.
  - d. The strategic use of business intelligence.
  - e. Improvement programmes and change proposals.
  - f. Plans for engaging with stakeholders.
  - g. Changes to overarching compliance strategies and significant changes to individual compliance activities.
  - h. Trade-offs within the system including changes to funding.
8. Making decisions on regulatory system wide issues requires an in-depth understanding of the system. To develop this shared understanding, as part of the annual planning round, each area will report on their priorities and work plans, both to the Governance Group and the Working Group (see below). In addition, the Working Group will present indicators and monitoring of system performance to the Governance Group on a quarterly basis.
9. The Governance Group will also be invited to discuss, and provide feedback on, any major policy proposals, particularly focusing on how the proposals align with the Regulatory System priorities and what operational impacts the proposals are likely to have.

## Meetings and Working Group

10. The Governance Group will meet monthly, with additional meetings arranged as required.
11. Service Design Policy, working closely with the other areas, will coordinate a senior-level *Working Group* to support the Governance Group. The Working Group will:
  - a. **Develop** a shared understanding of priorities across the regulatory system by presenting work plans and discussing the priorities for each area and seeking to align priorities wherever appropriate.
  - b. **Provide** a sounding board when developing material to send to the Governance Group and where possible provide recommendations to the Regulatory System.
  - c. **Develop** systems for regular sharing of information critical to the functioning of the Regulatory System, for example, regarding contact with stakeholders including presenting indicators and monitoring of system performance on a quarterly basis.
12. The Working Group will include senior level representation from:
  - a. Evidence, Monitoring and Governance.
  - b. Employment Relations Policy.
  - c. Employment Standards Policy.

- d. The Labour Inspectorate.
  - e. Resolution Services.
  - f. Information and Education.
  - g. The Service Centre.
  - h. Service Design Policy.
13. The Working Group will, from time to time, consider issues that cross over with other policy areas and regulatory systems. Where this is the case, representatives of those areas will be invited to attend the Working Group. These areas are likely to include health and safety policy, skills and employment policy, Immigration New Zealand, Evidence, Monitoring and Governance and the work of WorkSafe.
14. In particular, it will be important to factor in that resources overlap with the health and safety regulatory system in several places.

## Chair and Secretariat Support

15. The Forum will be chaired by the General Manager, Service Support and Design (SDP).
16. Secretariat support will be provided by the SDP team in Market Services. SDP will provide meeting minutes and coordinate the agenda with the working group.

## Membership

17. Membership of the Governance Group consists of:
- General Manager - Labour and Immigration Policy
  - General Manager- Service Support and Design
  - General Manager - Resolution Services
  - General Manager -Labour Inspectorate
18. When decisions are being made, the quorum for the meeting is three of the four General Managers.
19. Decision of the Governance Group shall be made on a unanimous basis.
20. Managers and others within the system will attend from time-to-time depending on the agenda.
21. From time to time, other groups with an interest in ERES issues may also be invited to attend. Such groups include:
- Immigration New Zealand
  - WorkSafe
  - Skills and Employment Policy Team
  - Health and Safety Policy Team
  - Immigration Policy
  - Strategic Policy
  - Evidence, Monitoring and Governance.

## Appendix 3: Summary of the good practice regulatory principles

---

There are seven regulatory principles used to assess the quality of regulation. These principles are described below<sup>12</sup>:

**Growth Supporting:** economic objectives are given an appropriate weighting relative to other specified objectives. Economic objectives include effects on competition, innovation, exports, compliance costs and trade and investment openness. A regime embodies this attribute if the identification and justification of trade-offs between economic and other objectives are explicit parts of decision-making.

**Proportional:** the burden of rules and their enforcement should be proportionate to the benefits that are expected to result. Emphasis is placed on a risk-based, cost-benefit regulatory framework and risk-based decision making by regulators. Penalties should also drive the required behaviour rather than just deter poor practices.

**Flexible:** regulated entities should have scope to adopt least cost and innovative approaches to meeting legal obligations.

**Durable:** the regulatory system has the capacity to evolve and to respond to new information and changing circumstances.

**Certain:** the regulatory system should be predictable to provide certainty to regulated entities, as well as be consistent with other policies.

**Transparent and accountable:** rules development and enforcement should be transparent. Regulators must be able to justify decisions and be subject to public scrutiny. This principle also includes non-discrimination, provision for appeals, and sound legal basis for decisions.

**Capable Regulators:** means that the regulator has the people and systems necessary to operate an efficient and effective regulatory regime. A key indicator is that capability assessments occur at regular intervals, and subject to independent input or review.

The Treasury provides a breakdown of the indicators that can be used to assess ERES regulation. These are shown in the figure below.<sup>13</sup>

---

<sup>12</sup> These are, in the main, from The Treasury (2012) The Best Practice Regulation Model: Principles and Assessments found at <http://www.treasury.govt.nz/regulation/bpr/bpregmodel-jul12.pdf>

<sup>13</sup> *Ibid*



Figure 5: Indicators of best practice regulatory principles

<i>Attribute</i>	<i>Principle</i>	<i>Indicators</i>
<b>Growth Supporting</b>	<b>Economic objectives are given an appropriate weighting relative to other specified objectives</b>	<ol style="list-style-type: none"> <li>1. Identifying and justifying trade-offs between economic and other objectives is an explicit part of decision-making</li> <li>2. The need for firms to make long-term investment decisions is taken into account in regulatory regimes where appropriate</li> <li>3. Open and competitive domestic and international markets including minimising barriers to, and maximising net benefit from, cross-border flows are explicit objectives</li> </ol>
<b>Proportional</b>	<b>The burden of rules and their enforcement should be proportionate to the benefits that are expected to result</b>	<ol style="list-style-type: none"> <li>1. A risk-based, cost-benefit framework is in place for both rule-making and enforcement</li> <li>2. There is an empirical foundation to regulatory judgements</li> </ol>
<b>Flexible</b>	<b>Regulated entities should have scope to adopt least cost and innovative approaches to meeting legal obligations</b>	<ol style="list-style-type: none"> <li>1. The underlying regulatory approach is principles or performance-based, and policies and procedures are in place to ensure that it is administered flexibly</li> <li>2. Non-regulatory measures, including self-regulation, are used wherever possible</li> <li>3. Decisions are reassessed at regular intervals and when new information comes to hand</li> </ol>
<b>Durable</b>	<b>The regulatory system has the capacity to evolve to respond to changing circumstances</b>	<ol style="list-style-type: none"> <li>1. Feedback systems are in place to assess how the law is working in practice including well-developed performance measurement and clear reporting</li> <li>2. The regulatory regime is up-to-date with technological and market change, and evolving societal expectations</li> </ol>
<b>Certain and Predictable</b>	<b>Regulated entities have certainty as to their legal obligations, and the regulatory regime provides predictability over time</b>	<ol style="list-style-type: none"> <li>1. Safe harbours are available and/or regulated entities have access to authoritative advice</li> <li>2. Decision-making criteria are clear and provide certainty of process</li> <li>3. The need for firms to make long term investment decisions is taken into account in regulatory regimes where appropriate</li> <li>4. There is consistency between multiple regulatory regimes that impact on single regulated entities where appropriate</li> </ol>
<b>Transparent and accountable</b>	<b>Rules development, implementation and enforcement should be transparent</b>	<ol style="list-style-type: none"> <li>1. Regulators must be able to justify decisions and be subject to public scrutiny</li> </ol>
<b>Capable Regulators</b>	<b>The regulator has the people and systems necessary to operate an efficient and effective regulatory regime</b>	<ol style="list-style-type: none"> <li>1. Capacity assessments are undertaken at regular intervals and subject to independent input and/or review</li> </ol>