

# GUIDANCE NOTE

## Alternatives to traditional regulation

*The purpose of this guidance note is to encourage agencies to consider a broader range of options, beyond traditional regulation, when developing a policy response to ensure that the option delivering the greatest net benefit is identified.*

### Background

Regulation prescribes rules or processes designed to provide a range of benefits to the community. However, regulation can also impose costs on business, the community and government, and if poorly designed or overused, can lead to unintended or perverse outcomes and stifle Queensland's competitiveness, investment and economic growth.

Traditional regulatory interventions (through the introduction of primary or subordinate legislation) are more likely to be beneficial when a high level of certainty is required, and the risks and consequences of non-compliance are high, such as measures to address serious safety concerns. However, there are drawbacks to traditional, highly prescriptive regulation:

- It can 'lock in' inefficient practices and inhibit productivity by impeding flexibility and the take-up of new technologies, business models and processes.
- It can result in considerable compliance costs to business and the community.
- It can result in higher costs to government agencies (regulators) to administer and enforce.

Non-regulatory approaches should be considered at the very start of the policy development process (including when reviewing existing regulation) – they may provide an opportunity to address a policy problem in a lower cost way or better address a policy problem compared to traditional regulation.

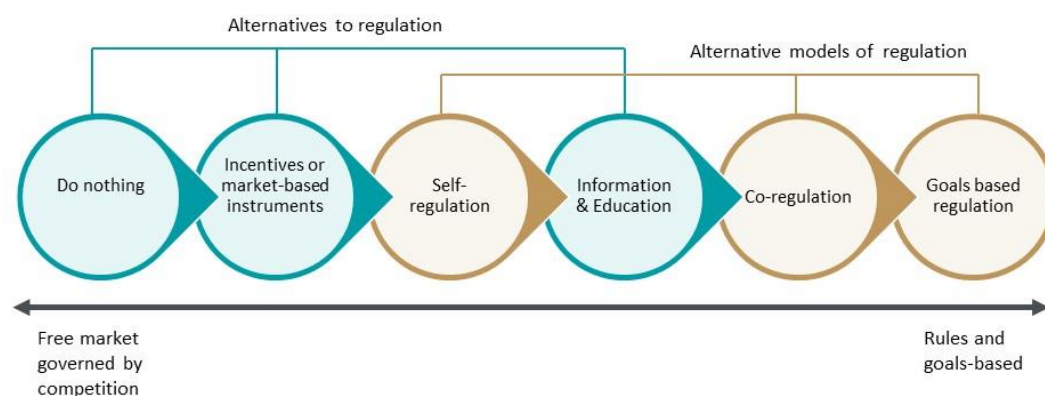
Notwithstanding this, it is important to note alternatives to regulation are never costless – both regulation and its alternatives will come at a cost as well as generate benefits. Alternatives to traditional regulation will have some limitations and may not be appropriate in all circumstances.

All options should be rigorously assessed to identify the policy response that generates the greatest net benefit, rather than adopting one approach as a default.

### Alternative approaches to address a policy problem

Best practice regulatory principles require an assessment of a range of feasible options to address a policy problem, including self-regulatory, co-regulatory and non-regulatory options. Figure 1 illustrates both non-regulatory options and alternative models of regulation. The level of government intervention generally increases from left to right.

**Figure 1 Alternatives to regulation available to policymakers**



## Alternatives to Regulation

Non-regulatory approaches are designed to deal with a policy problem without the need to introduce regulation (in the form of new or amended primary or subordinate legislation) to direct the actions of people or organisations.

**Table 1 Non-regulatory policy responses<sup>1</sup>**

Do nothing - no new intervention	Incentives or market-based instruments	Information and education
No action – that is, relying on the market, in conjunction with existing general tort, liability and insurance laws.	The fundamental goal of a market-based instrument is to reduce any existing market distortions that contribute to the inefficient allocation of goods and services, such as the existence of monopolies, negative externalities (a harmful impact of a product not fully captured in its price) and lack of information. Incentives and market-based instruments can include use of taxes, subsidies, tradeable permits and tradeable property rights.	Informing and educating businesses and individuals will not only improve their knowledge and decision-making but can also influence or shift behaviour.
<p>Examples:</p> <ul style="list-style-type: none"> <li>relying on the consumer protections provided by Australian Consumer Law</li> <li>making legal remedies more accessible or cheaper</li> </ul>	<p>Examples:</p> <ul style="list-style-type: none"> <li>creating a market in tradeable property rights thereby enabling scarce resources to be bought and sold with market forces determining best use of the resource</li> <li>introducing government charges or subsidies</li> <li>creating financial liability to encourage firms to take precautions</li> </ul>	<p>Examples:</p> <ul style="list-style-type: none"> <li>guidelines</li> <li>labelling</li> <li>rating systems</li> <li>workshops and seminars</li> <li>government publications – including one-stop-shops for information</li> </ul>
<p>Benefits:</p> <ul style="list-style-type: none"> <li>no additional compliance costs for business or individuals</li> <li>no additional government administration costs</li> <li>can provide a base line for comparison with other options</li> </ul> <p>Risks:</p> <ul style="list-style-type: none"> <li>a policy problem may remain unaddressed</li> </ul>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>provides flexibility for a government to adjust the use of a resource</li> <li>businesses and individuals are given flexibility to comply and are likely to find the lowest cost option in doing so</li> <li>if appropriate incentives are in place, voluntary compliance can be high</li> <li>avoids enforcement costs and reduces administrative costs</li> <li>can more easily accommodate entry of new firms into, and growth within an industry, without generating an increase in the use of a resource</li> </ul> <p>Risks:</p> <ul style="list-style-type: none"> <li>it may be challenging to determine the size, type and timing of the incentive required to change market behaviour that will result in the desired outcome</li> </ul>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>preserves consumer choice</li> <li>can be combined with other approaches and regulations</li> <li>can increase the likelihood of achieving the intended outcome</li> <li>less compliance required</li> </ul> <p>Risks:</p> <ul style="list-style-type: none"> <li>could take time to make an impact</li> <li>it may not reach all members of a community</li> <li>it may be difficult to determine how people or businesses react to or use the information</li> <li>could increase costs to government to undertake</li> </ul>
When to use		
<ul style="list-style-type: none"> <li>no government intervention should always be the first option considered</li> </ul>	<ul style="list-style-type: none"> <li>useful in dealing with externalities from private activities where there is too little or too much production of a good or service</li> <li>when activities require access to public resources, such as fishing stocks or water</li> <li>when there are more than a 'few' participants</li> </ul>	<ul style="list-style-type: none"> <li>often used in combination with other regulatory and non-regulatory options to improve effectiveness and compliance</li> </ul>

<sup>1</sup> Source: NSW Government 2019, [NSW Government Guide to Better Regulation](#) (adapted)



### Examples – incentives or market-based instruments

***Market-based instruments work by using market signals, such as prices, to provide an incentive to businesses and individuals to act in a way which will achieve the government's policy objective.***

- Water markets encourage more efficient water use throughout the Murray–Darling Basin. Water markets allow many irrigators to top up their water needs, expand production, develop new business models or free up capital to invest elsewhere in their businesses. The ability to trade scarce water ensures it is put to its most productive use.
- In New Zealand, commercial fishers are allocated an Annual Catch Entitlement<sup>2</sup> at the start of each fishing year which determines how much of a fish stock a fisher can catch that year. The entitlement depends on the commercial fisher's quota shares (a property right that represents the quota owner's share of a fishery) and how much of a fish stock the government allows fishers to catch each year. Commercial fishers can buy, sell, or transfer Annual Catch Entitlement to other people at any time in the fishing year, enabling the market to determine the most profitable allocation of fishing effort.
- Many countries, including Australia, impose high tax rates on tobacco products to discourage their consumption.
- Certain vaccines are heavily subsidised by governments to encourage high rates of vaccination and achieve herd immunity, which in turn can reduce the longer-term cost burden of viruses or disease.
- To address expected skills shortages in sectors vital to economic growth, governments incentivise participation in relevant vocational education and training by subsidising fees.

### Examples – information and education

***Information and education can be used to empower industry and consumers to make their own decisions.***

- Waste and litter reduction education campaigns, such as Clean up Australia, have been shown to be more effective at reducing waste in the environment than regulatory policies and bans.<sup>3</sup>
- A new incursion of cattle tick occurred on several properties inside Queensland's cattle tick free zone. Biosecurity Queensland responded to the incursion by using an information campaign, convening a meeting with local graziers to inform them about best practice measures to control the spread of ticks. Regional Biosecurity Officers spoke informally with the local graziers afterwards, creating a local point of contact. Whilst existing regulatory controls for cattle tick management applied (such as mandatory reporting of suspected cattle tick and certification of tick-free status for movement of cattle), no new regulatory controls were introduced.
- The UK Maritime and Coastguard Agency worked with industry to produce a practical guide to human behaviour and error reduction in shipping. Recognising the safety and commercial value of effective risk and error management, the concepts and lessons from the human element guide<sup>4</sup> have been adopted by industry – such as in staff development and training programs.
- In partnership with the food industry, Brisbane City Council introduced a regulatory rating scheme called Eat Safe Brisbane<sup>5</sup>. Under the scheme, licensed food businesses in Brisbane receive an Eat Safe food safety rating based on compliance with the *Food Act 2006*, the Food Safety Standards and good management practices. Businesses that demonstrate high levels of food safety receive three or more stars and can choose to publicly display their star rating. This helps the consumer make a more informed decision, without government intervention in the decision-making process.

<sup>2</sup> Source: New Zealand Ministry for Primary Industries, [Commercial fishing annual entitlement](#)

<sup>3</sup> Source: Willis, K, Maureaud, C, Wilcox, C, Hardesty, BC, 2018, 'How successful are waste abatement campaigns and government policies at reducing plastic waste into the marine environment?'

<sup>4</sup> Source: UK Maritime and Coastguard Agency 2014, [The Human Element: a guide to human behaviour in the shipping industry](#)

<sup>5</sup> Source: Brisbane City Council, [Eat Safe Brisbane](#)

## Alternative models of regulation

Light touch, or non-prescriptive regulation, is considered more flexible compared with traditional rule-based regulation, as it does not have rules embedded in regulation which take time and effort to develop and amend in response to changes in the environment.

Table 2 identifies three alternatives to prescriptive or rules-based types of regulation. If designed and implemented well, alternative models should lower compliance and administrative costs while still addressing a policy problem.

**Table 2 Alternative models of regulation<sup>6</sup>**

Self-regulation	Co-regulation	Outcomes-based or performance-based regulation
<p>Self-regulation: an industry develops and is solely responsible for the enforcement of rules and codes of conduct.</p> <p>Industry self-regulation: a variant of the self-regulation model. An industry association takes responsibility for identifying and analysing risks common across the industry. They formulate best practice or guidelines for their member companies to follow.</p>	<p>Industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangements to be enforced.</p>	<p>Focus is placed on setting an objective or an outcome, but not the means by which the objective or outcome is to be met.</p>
<p>Examples:</p> <ul style="list-style-type: none"> <li>industry codes of conduct</li> <li>customer charters</li> <li>standards or accreditation</li> </ul>	<p>Examples:</p> <ul style="list-style-type: none"> <li>approved codes, standards and accreditation backed by legislation, i.e. regulation of professions</li> </ul>	<p>Examples:</p> <ul style="list-style-type: none"> <li>market-based implementation – government sets an objective or outcome and industry determines how to meet that objective</li> <li>rules-based solution – government can provide guidance along with the objective</li> </ul>
<p>Benefits:</p> <ul style="list-style-type: none"> <li>the industry or profession has a sense of ownership over the self-regulation</li> <li>can lower administrative costs (for government) and compliance costs (for business)</li> <li>regulation can be better targeted, as businesses/professions have greater understanding of their industry</li> </ul> <p>Risks:</p> <ul style="list-style-type: none"> <li>the regulation can become self-serving</li> <li>rulemaking may not be subject to public scrutiny</li> <li>incumbents may use rules to disadvantage newcomers – reducing competition by raising barriers to entry</li> </ul>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>industry is involved in the investigation and enforcement of the regulations – which can lead to greater compliance as industry becomes a co-monitor</li> <li>encourages industry participants to see good industry-wide performance as a common good (impact of public perceptions)</li> <li>easier to integrate with existing regulation (compared with self-regulation)</li> </ul> <p>Risks:</p> <ul style="list-style-type: none"> <li>co-regulation can introduce the possibility of anti-competitive activities by industry regulators</li> <li>there is a higher risk than normal of regulatory capture</li> </ul>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>responsive to changes in markets, such as rapid technological change</li> <li>permitting flexibility can cater for innovation</li> </ul> <p>Risks:</p> <ul style="list-style-type: none"> <li>the regulations can be difficult to develop as measurement and specification of desired outcomes is required – which is not always apparent</li> <li>given there is flexibility to choose how to comply, there will be a range of compliance strategies</li> <li>performance-based regulation can impose a greater responsibility on small business to develop a compliance strategy, and create uncertainty about what is required to comply</li> </ul>
When to use		
<ul style="list-style-type: none"> <li>can be effective where there is a cohesive industry association which is representative of the industry</li> <li>industry must be committed to making self-regulation work, otherwise there are likely to be costs on the community, without the benefit</li> </ul>	<ul style="list-style-type: none"> <li>can be effective where there is a cohesive industry association which is representative of the industry</li> <li>self-regulation enforcement mechanisms lack the power to change behaviour to a sufficient extent</li> </ul>	<ul style="list-style-type: none"> <li>where there are clear outcomes but regulators do not have full access to information about the industry processes, particularly if the industry has complex and technical processes</li> <li>in areas where there is rapid technological change</li> </ul>

<sup>6</sup> Source: OECD 2002, Regulatory Policies in OECD countries, [Annex II: Regulatory Alternatives](#) (adapted); National Audit Office 2014, [Using alternatives to regulation to achieve policy objectives](#), UK (adapted)

## Examples – Alternative models of regulation

**A range of options other than traditional 'command and control' regulation can be used to address a policy objective, in certain circumstances.**

- **Self-regulation:** The Medical Board of Australia, in consultation with the medical profession and the community, developed *Good medical practice: a code of conduct for doctors in Australia* which sets out the principles that characterise good medical practice and makes explicit the standards of ethical and professional conduct expected of doctors by their professional peers and the community.
- **Co-regulation:** Pig and Poultry Assurance Scheme (the Scheme, UK). The regulator invites high performing farms to join the Scheme. Annual

regulator inspections of those farms are reduced to once every three years, complemented by oversight of third-party Certification Bodies. Farmers save on time and fees, and regulator inspectors are freed up to focus on higher risk sites.<sup>7</sup>

- **Outcomes-based regulation:** The *Biosecurity Act 2014* and *Biosecurity Regulation 2016* take a risk-based approach to biosecurity threats, which is less prescriptive than previous legislation, allowing greater flexibility and more responsive approaches to manage each specific circumstance. Guidance material describes ways in which a person's general biosecurity obligation can be met to prevent or minimise a biosecurity risk.

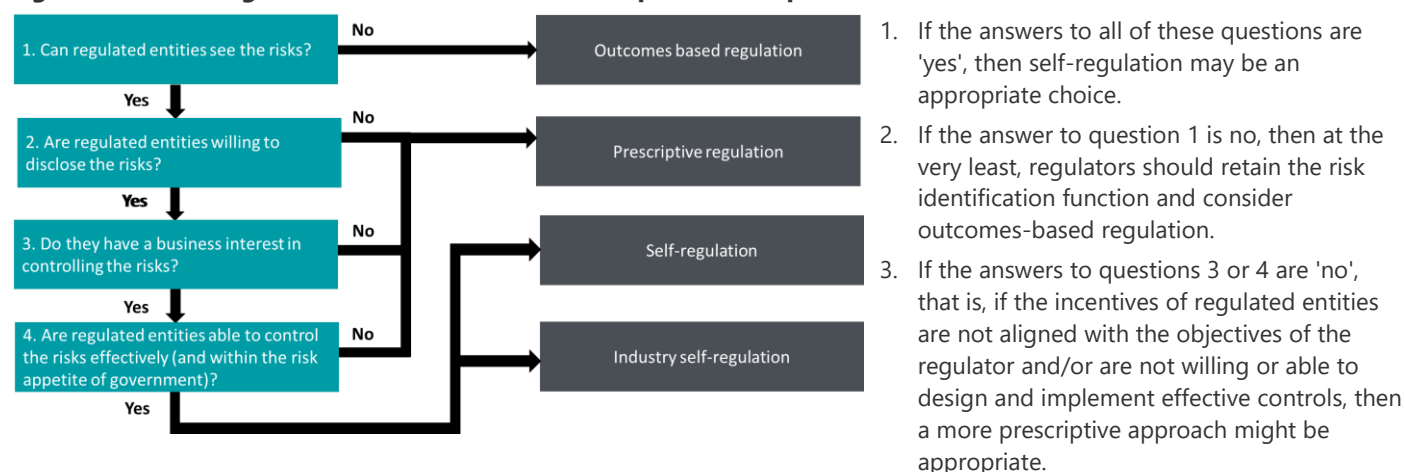
## How to choose?

Both Table 1 and Table 2 include brief descriptions for when a non-regulatory or alternative type of regulation can be used. In choosing the most effective approach, it is important to consider the alignment of risks and incentives, and combinations of responses.

## Regulator model framework

A useful tool – the regulator model framework – can be used to determine an appropriate model of regulation. Follow the four questions to work through the model in Figure 2.

**Figure 2 Regulator model framework – adapted from Sparrow<sup>8</sup>**



Selecting the lightest touch option that is feasible should result in the lowest regulatory burden. However, selecting an option that is not appropriate for an industry can compromise the achievement of policy objectives or lead to inefficient outcomes and excessive burdens on business and the community.

<sup>7</sup> National Audit Office 2014, [Using alternatives to regulation to achieve policy objectives](#), UK

<sup>8</sup> Malcolm K. Sparrow 2020, *Fundamentals of Regulatory Design* (adapted)



## Making existing regulation more effective

### Combining responses

A policy problem need not be addressed by just one type of response. For example, providing information and education is often used to increase compliance with traditional regulation.

### Behavioural insights<sup>9</sup>

Behavioural insights (BI) are used by some policymakers to improve their understanding of what drives individual and business decision-making. The approach is evidence-driven and draws on work in the behavioural sciences about how cognitive and behavioural factors influence human action.

Integrating BI into policy-making can help policy-makers anticipate the behavioural consequences of a policy and tailor the policy to those likely behaviours. It can also be used to improve compliance with traditional regulations. For example, BI strategies are used to elicit attention, by providing reminders about tax deadlines or court dates.

The BI approach to policy-making uses different methods (from traditional regulation) to influence behavioural change, most often based on real-world data relating to human behaviour. Concepts that should also be considered include autonomy, privacy and consent.

### Examples – making regulation more effective

- To complement the enforcement of Australia's drink driving laws, many states have conducted campaigns to increase awareness of the risks of driving while under the influence of alcohol and have promoted the advantages of nominating a designated driver who does not consume alcohol.
- A regulation limiting the movement of carriers of white spot disease (prawns, crustaceans) from outside of South-East Queensland is prescribed in the *Biosecurity Regulation 2016*. A communication campaign complements the regulation with a series of posters at fishing spots and retail outlets where fishing equipment is sold and there is a white spot information guide and information on the department's website.
- Queensland Revenue Office used behavioural insights (BI) to run an SMS randomised control trial, designed to encourage first-time land tax clients to claim an exemption where the land was used for their home. The trial results showed that when a BI intervention (SMS) was used as a reminder, there was a fourfold increase in clients claiming the exemption over a two-week period compared to clients that didn't receive the reminder. This resulted in more eligible Queensland landowners applying for an exemption.
- New South Wales authorities used BI to revamp the home building trade licence application process. A subsequent 32 per cent reduction in follow-up enquiries from trade persons equates to around an additional 3,000 tradies receiving their licences more quickly.<sup>10</sup>

<sup>9</sup> OECD 2019, *Tools and Ethics for Applied Behavioural Insights: the BASIC Toolkit*

<sup>10</sup> *Behavioural Insights Unit*, New South Wales Government



## Implementing alternatives

There may be general resistance to the use of non-regulatory options or alternative models of regulation by stakeholders. Figure 1 describes potential barriers and possible ways to overcome them.

**Figure 1 Barriers and ways to overcome them**

### Barriers

- there may be a preference to use traditional regulation as it is often viewed as taking decisive action
- alternative approaches may not be well understood and/or may not have an extensive track record in dealing with the policy issue
- use of non-regulatory options may be considered risky given there is no formal requirement to undertake impact analysis prior to implementation
- the view that failure of a non-traditional approach is likely to have more serious consequences for the regulator than a failure of traditional regulation

### Overcoming barriers

- consider an initial approach which complements traditional regulation, such as information provision, rather than replacing traditional regulation completely
- where there is hesitation or aversion to new policy responses, engagement in the early stages of policy development is required. This will likely reduce the chances that a preferred option is identified before all possible options are identified and evaluated
- early engagement will also lead the way for a quality consultation stage with adequate time provided for stakeholders to meaningfully engage in the process, which can improve the appraisal of alternatives
- undertake analysis of the alternative options, even if not formally required. This includes impacts on competition, compliance costs and determining whether the policy response will result in net benefits to Queenslanders
- follow up with regular reviews and appraisals of the response. The more information on what works (and what doesn't) will pave the way for future use of alternatives

## For further information:

Queensland Treasury's Office of Best Practice Regulation is available to discuss and provide guidance on alternatives to traditional regulation when agencies are considering options to address a policy problem:

- contact the Office of Best Practice Regulation at [obpr@treasury.qld.gov.au](mailto:obpr@treasury.qld.gov.au)
- visit [www.treasury.qld.gov.au](http://www.treasury.qld.gov.au) and search for regulatory review.