**Regulatory Stewardship: responses to unanswered questions on sli.do**

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| **Professor Jeroen van der Heijden** |
| Question: Is there a problem that ‘stewardship’ is such a vague and broad concept that it gives too much wriggle room to people wanting to hijack it? |
| *Yes, there is that risk. After all, we see the Australian Morrison government defining regulatory stewardship as "The stewardship approach [of the Australian Morrison Government] replicates best practice in business management by ensuring line accountabilities and performance expectations are clear and are attributed to driving improved outcomes" (PMC press release, 19 October 2020). In my reading, that is little more than “new” New Public Management thinking. Just slapping a fancy term such as ‘stewardship’ onto some form of regulatory reform or some piece of regulatory policy is not going to do much good. Then again, ‘stewardship’ may be a broad concept, it is not all-encompassing. It is about taking care of something that belongs to others, looking after it for future generations, returning it to a better state, operating in service rather than in control, and a willingness to be accountable for all that.* |
| Question: Is regulation becoming an extra-legal way of imposing public policy without parliamentary scrutiny and debate? |
| *This question moves beyond the regulatory stewardship debate—but it can be answered in the context of it. Yes, regulation can be used for imposing public policy by stealth (i.e., without parliamentary scrutiny and debate). Of course, this may happen unintentionally, for example when it’s not clear where the mandate of regulators end, because of a lack of parliamentary oversight/checking of regulators, etc. The idea of regulatory stewardship may provide a (partial) remedy here as it places a greater responsibility on regulators to involve their stakeholders (targets of regulation and beneficiaries, but also other regulators) in the process of regulatory design and implementation. Such increased openness/transparency would, in principle, also make it easier for these stakeholders to notice when regulators seek to introduce regulation by stealth.* |
| Question: So is the swinging of the regulatory pendulum inevitable, but it swings between all four cells of the regulatory governance map you presented? |
| *The swinging of the pendulum (Prof. Sparrow’s metaphor) is normally used to indicate that we tend to go back and forward between periods of more government involvement in regulation (command-and-control, top-down, intrusive government-led interventions) and those with less government involvement in regulation (liberalization, deregulation, industry self-regulation). The swinging of the pendulum is very much linked with a shifting between different political philosophies and our normative thinking about the role of government (and regulation) in society. I like to think that the idea of regulatory stewardship is decoupling processes of regulatory design, implementation, assessment, and reform from such political philosophies. The core principles/values of stewardship (seeing regulation as an asset, taking care of it, passing it on in a better state, etc.) will not change with swings of the pendulum. The only thing that changes is how much emphasis is given to them. So to continue the metaphor of the regulatory pendulum, regulatory stewardship can be seen as a counter-balance that helps to ensure that the pendulum is not swinging out of control and/or too much to either of its extremes. Keep in mind, the legislating of Stewardship through the State Sector Act happened under the previous National Government (in power from 2008 to 2017), but its implementation is continued under the current Labour Government (in power since 2017).* |
| Question: What kind of leadership is required to take a holistic, multi-dimensional, systemic view of regulation instead of sticking in your lane? |
| *A lot. But at least leadership that (1) acknowledges it does not need to have the answer to all the questions that come to its plate but rather pursues a transparent, accountable, inclusive, and systematic approach or process to seeking answers; and, (2) understands that because of competing values in regulation (e.g., between effectiveness, efficiency, equity, accountability, inclusiveness, and transparency) the “best” (or optimal) regulatory system is necessarily a configuration of sub-optimal parts (meaning, leadership should focus more on optimizing trade-offs than on optimizing parts).* |
| Question: How important do you think legislating Stewardship through the State Sector Act was to getting Executive buy-in to the concept? |
| *Different people will give you different answers here, and what follows is my personal experience/opinion. I do not think that the Executive (and other) buy-in we are experiencing is the result of legislating Stewardship through the State Sector Act. The idea of ‘regulatory stewardship’ has great normative appeal, and I think that is what has led to buy-in initially (2013-ish). From there it has been difficult, however, to put the normative attractiveness of regulatory stewardship (i.e., stewardship as a ‘virtue’) into practice (i.e., stewardship as a ‘mechanism’). Eight years have passed between legislating stewardship in 2013 and where we are now in 2021. We have moved from a National to a Labour Government since (which by New Zealand standards is a landslide shift in political philosophy). But we still do not see that the idea of regulatory stewardship has crystallized at the level of individual regulatory agencies, let alone at a whole-of-government level (i.e., through collaboration across regulatory agencies). That is (and I stress once more, this is my personal experience/opinion) a very long period without much tangible result. I am happy to see that since 2020 The Treasury has begun to actively bring together regulatory agencies (executive level) and discuss how stewardship can be operationalized.* |
| **Dr Rebecca Foley** |
| Question: Has regulatory stewardship improved the value proposition for being a regulator? Australian regulators often struggle to recruit great people |
| *My experience has been that the operational groups in MBIE have really seen the value of regulatory stewardship and have really taken to it. This might be because they see that it can help do the important engagement with policy to try to get things changed in the system but I think also because many see the harms in the market and want to do everything possible to reduce those harms – and working across agency boundaries, or even with other regulators/investigators, can help with that. Anecdotally I also see more reference to regulatory stewardship in ads for regulatory roles, which seems to indicate some value.*    *Perhaps one of the best pieces of evidence about whether it has improved the value proposition is that New Zealand’s Government Regulatory Practice Initiative (G-REG) has established its own working group on regulatory stewardship. This group has developed things like the peer learning network and the good practice guide for regulatory stewardship, take a look here*: [https://g-reg.govt.nz/stewardship/](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fg-reg.govt.nz%2Fstewardship%2F&data=04%7C01%7CL.Cherney%40anzsog.edu.au%7C487df4ed1f314e0437b908d922293bba%7C321f11951a8d41999b416d1896af4006%7C0%7C0%7C637578383816139292%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=A3uzTj5UU6pGW5uQLJrxEu%2BO6gtfdo1id5SxSyhwcTw%3D&reserved=0) |
| Question: For regulatory stewardship 9 components, how do you see the difference between governance and leadership? How does this relate to culture? |
| *As mentioned in the presentation all elements of the 9 components work together and can self-reinforce. Comments on each of the 3 components are set out below.*    *Governance is a structure that can be used to ensure agreement around what a regulatory system is here to achieve, how it goes about achieving that, and monitoring results. Governance is a particularly visible lever to help drive things like culture.*    *Leadership is both a position and a way of working. Essentially without the leadership things like governance may not actually be put in place. Within a regulatory system it is important to be clear about who leads which parts of the system (roles), that the leaders understand how they contribute to the strategic outcomes of the system, and they know where they must work together to achieve those outcomes. The Regulatory Charters created by some of MBIE’s regulatory systems are a sign of leadership and also set out the leadership roles* [*https://www.mbie.govt.nz/cross-government-functions/regulatory-stewardship/regulatory-charters/*](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.mbie.govt.nz%2Fcross-government-functions%2Fregulatory-stewardship%2Fregulatory-charters%2F&data=04%7C01%7CL.Cherney%40anzsog.edu.au%7C487df4ed1f314e0437b908d922293bba%7C321f11951a8d41999b416d1896af4006%7C0%7C0%7C637578383816139292%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=gNRHHLzXGh2R4V8Hl6%2FuQvAJAoakon8Y514CMvJPAxY%3D&reserved=0)    *Culture is a very hard concept to nail down. What we do know is that to be successful as a system there is a need for a culture (‘how we do things around here’) that encourages working across the system to deliver value, that the Maori-Crown partnership is part of how things are done, and that the behaviours desired in the system are modelled by leaders (eg conflict of interest management, adapting to change, speaking up, safety and wellbeing).*    *The report on the regulatory failure at the New Zealand Transport Agency contains comment on each of the above components, their importance, and how they relate to each other:*[*https://www.transport.govt.nz//assets/Uploads/Report/Review-of-NZTA-Regulatory-Capability-and-Performance.pdf*](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.transport.govt.nz%2Fassets%2FUploads%2FReport%2FReview-of-NZTA-Regulatory-Capability-and-Performance.pdf&data=04%7C01%7CL.Cherney%40anzsog.edu.au%7C487df4ed1f314e0437b908d922293bba%7C321f11951a8d41999b416d1896af4006%7C0%7C0%7C637578383816149286%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=8wWCbNMsqVFsMVy4bm93Aed4%2FgDB54zTYmztlEvCAuo%3D&reserved=0) |
| Question: MBIE is the largest NZ regulatory department - what size are the reg. stewardship teams in other departments e.g. Social Development and Education, or Health. |
| *There is a range of stewardship models used by New Zealand’s regulatory agencies. MBIE’s is certainly the largest and other models include:*   * *A tier 3 ‘Chief Advisor/Director’ type position who works much as MBIE’s original one person investment did – to stimulate interest in the practice of stewardship as well as to produce useful tools/services* * *A tier 2 Regulatory System assurance position who works to provide assurance over regulatory systems – supported by 1-2 members of staff* * *A small team (anywhere from 3-5 people) who support things like Regulatory Impact Analysis, broader policy capability, and also can convene regulatory stewardship communities of learning/practice across an agency* * *One person tasked with regulatory stewardship amongst other work components.* |
| Question: *Is there an established program of regulatory capacity assessment and capacity building in NZ to support the stewardship program?* |
| *New Zealand’s Treasury is responsible for the entire Regulatory Management System here in NZ. Treasury convenes regulatory stewardship ‘practitioners’ from across agencies to support information sharing and collaboration, as well as setting the standards for the work. More information can be found here:* [*https://www.treasury.govt.nz/information-and-services/regulation/regulatory-stewardship*](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.treasury.govt.nz%2Finformation-and-services%2Fregulation%2Fregulatory-stewardship&data=04%7C01%7CL.Cherney%40anzsog.edu.au%7C487df4ed1f314e0437b908d922293bba%7C321f11951a8d41999b416d1896af4006%7C0%7C0%7C637578383816149286%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=Op0CW4kVVZH5KmORJmDMpHFlbR2%2BevGDW%2BIPQVDAImk%3D&reserved=0)    *Additionally, G-REG runs continuous education workshops and regulatory stewardship is one of those – intended to help explain the concept and how to put it into practice.* [*https://g-reg.govt.nz/continuing-education/*](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fg-reg.govt.nz%2Fcontinuing-education%2F&data=04%7C01%7CL.Cherney%40anzsog.edu.au%7C487df4ed1f314e0437b908d922293bba%7C321f11951a8d41999b416d1896af4006%7C0%7C0%7C637578383816159278%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=y0WgUPhGzMCRzRoFXJSN8AqszINf80%2F9OjWixYcnfLc%3D&reserved=0)    *Otherwise, each agency undertakes its own assessment and capability building.* |
| Question: How has stewardship approach changed relationships with external stakeholders? |
| *Insights and foresights are one of the key regulatory stewardship practices. Elements of this include: how well the needs of system participants and key stakeholders are understood; how stakeholders are involved in the review and design of regulatory instruments, and the feedback from stakeholders on their involvement.*    *As examples of how thinking about stakeholders (from a stewardship mindset) has changed engagement:*   * *in some systems stakeholders have been engaged with to assess the performance of regulatory systems and to identify risks, which is a result of thinking about how regulatory stewardship is put into practice. Land Information New Zealand has a number of assessments on their website that included substantial engagement with stakeholders.* [*https://www.linz.govt.nz/regulatory/regulatory-stewardship-and-strategy/our-regulatory-systems*](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.linz.govt.nz%2Fregulatory%2Fregulatory-stewardship-and-strategy%2Four-regulatory-systems&data=04%7C01%7CL.Cherney%40anzsog.edu.au%7C487df4ed1f314e0437b908d922293bba%7C321f11951a8d41999b416d1896af4006%7C0%7C0%7C637578383816169275%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=KbTv4lt%2FUK83vX51VwwLZ4YO4V9N2MObLXKXXccW20M%3D&reserved=0) * *In some systems there have been changes made to ensure that stakeholders are engaged more when considering changes to the system, or to coordinate campaigns/information and education to ensure that there is not a burden on stakeholders (making compliance easy). The information on MBIE’s regulatory systems sets out various approaches taken by the different systems:* [*https://www.mbie.govt.nz/cross-government-functions/regulatory-stewardship/regulatory-systems/*](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.mbie.govt.nz%2Fcross-government-functions%2Fregulatory-stewardship%2Fregulatory-systems%2F&data=04%7C01%7CL.Cherney%40anzsog.edu.au%7C487df4ed1f314e0437b908d922293bba%7C321f11951a8d41999b416d1896af4006%7C0%7C0%7C637578383816169275%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=EC7tKee34eeRCpNcBvSs6zh878bshDCUvBj2%2FvcqeF4%3D&reserved=0) |
| Question: Did NZ agencies have input into the Treasury guidelines and requirements? What is the NZ legislation which requires the whole life cycle approach? |
| *Yes agencies did have input the guidelines and continue to engage with Treasury on regulatory stewardship practice. The Public Service Act 2020 section 12 sets out the proactive stewardship duties of the public service including legislation. Given the meaning of stewardship this covers the whole life cycle approach to legislation and regulatory systems.* |