

## NRCoP and ANZSOG present: Navigating Regulatory Landscapes Four Sights to advance regulatory practice and governance

### Q&A Session

#### Question 1

This is really interesting, thanks. I'm wondering how a regulator can balance making timely decisions with having sufficient hindsight, insight, foresight, and oversight. As there's a danger of paralysis by analysis or the regulator being too slow to act?

#### Answer

I would suggest that these things are not mutually exclusive, and Regulators benefit from lived-experience at balancing the urge to react with intentional decision-making and action-taking.

Furthermore, the decision context will always shape how the 4Sights:

- are best integrated, and sequenced; and
- to what extent, and depth (versus breadth) of how each sight is best applied – for example within, tactical, operational, and strategic settings.

Often danger (i.e. unanticipated risk and threat) emerges through neglect of one or more of the sights rather than taking too much time for more complete and balanced consideration.

#### Question 2

What tools can we use to explore foresight in a regulatory agency?

#### Answer

There are a range of ways to engage in regulatory foresight with some common ones being:

- horizon scanning;
- futures wheels; and
- scenario planning.

The UK Government Office for Science has provided a useful online guide for Futures thinking more generally which can usefully apply to policy, regulatory and strategy settings and which cover a range of foresight tools. See: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/674209/futures-toolkit-edition-1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674209/futures-toolkit-edition-1.pdf)

For example, there are tools for gathering intelligence about the future; exploring the dynamics of change; and describing what the future(s) might be.

#### Question 3

A lot of foresight methodologies seem to start with imagining an idealised future state - is this possible in a regulatory context? Is it really such an open space - aren't we more constricted in what we can imagine?

#### Online answer by participant

It's about imagining all future states (the good, bad and ugly) - not just an idealised one. I've heard it grouped into possible future states, the most probable and then there is room to imagine the more extreme versions of the future. This includes the 'default' future (what is likely to happen if we do nothing) and imagining the pathway to get to both desired and undesired futures

#### If more to add to above online answer

No, futures thinking and foresight methodologies are not always about idealised futures states (i.e. Utopian). For example, more useful applied foresight practice covers ways to:

- explore weak signal detection;
- consider the implication of trends on decision making;
- mitigate against or reduce emergent strategic uncertainties; and
- intentionally advance the exploration of various plausible futures.

Working with the spectrum of plausible futures can involve Growth, Collapse, Discipline and Transformative futures archetypes.

Finally, and as always, it is about picking the right tool for the right context!

#### Question 4

Do you think that hindsight can sometimes be counter-intuitive and cause too much risk-aversion due to previous experience or even cause barriers to regulators making future changes due to industry or societal views being formed from past experiences with fear of change?

#### Answer

Hindsight is most powerful when it helps inform Insight about what is happening now, and shapes thinking about what may emerge at a near and next horizon.

For this reason, things always seem to make sense when looking backwards (which is referred to as 'retrospective coherence') as more data leads to pattern recognition.

Regulators do have to be careful about being overly and inappropriately influenced by the 'weight of past', which might unduly colour ideas around what 'might' work best or create an assumption that the future will look largely like the past (i.e. linear extrapolation). This is especially true when novel situations or wild card events are encountered or when facing a range of unquantifiable strategic uncertainties (rather than demonstrable risk).

#### Question 5

This is really interesting. In my agency we have tried to shift to a problem focussed approach - identifying regulatory problems and focussing on them. We use existing data (mostly hindsight but sometimes forecasting) but wouldn't know where to start on "foresight". How do you get started?

#### Online answer by participant

The concept of a 'pre-mortem' analysis may be useful

#### Online answer by participant

Gary Klein has done a lot of work on expertise and includes the use of per-mortems as a strong indicator of a type of behaviour experts often engage in.

#### Online answer by participant

I'd argue that imagination is the most important tool (also consider the idea of risk imagination as critical to getting people to understand risk - it's a tool used in High Performing Organisation (HPO) type concepts)

#### If more to add to above online answer

In addition to the inputs provided by others, during the webinar, and posted in the online chat. There are plenty of ways for a regulator to lean into the foresight space.

Often, the most useful way is for regulators to anticipate ways in which their regulatory system (i.e. operating context (i.e. 'authorising environment'), regulated parties, social licence/mandate, technology etc.) may evolve and/or change over time and then purposively consider downstream impacts on issues including but not limited to:

- regulatory capability;
- regulatory posture;
- regulatory practice;
- regulatory delivery; and
- regulatory stewardship.

Engaging with trained foresight practitioners to help support internal project work will help kick start things. I would agree that 'pre-mortem' is a very useful tool subject to the context it is applied in.

#### Question 6

What do your experiences tell us are the most critical capabilities and enablers of best practice oversight, as you describe it in this model, that we as regulatory agencies should be focused on building up?

## Answer

Building a clearer picture and the ‘mapping’ of your regulatory system is one of those critical enablers. ‘Mapping’ to a sufficient level of fidelity\* helps regulators with internal and external discussions about why, where, and how to act within that system as a regulator – all of which lies at the heart of what is good regulatory stewardship.

Developing stronger regulatory strategy capabilities (i.e. both development and execution) and drawing on and leveraging HIFO is also important.

\* Noting that more conceptual tube/subway/underground maps – have different information to street level/road maps – which in turn are different to detailed topographical maps).

## Question 7

Do you think that foresight should include an ongoing communication with the regulated population, or should it rely more on data from past-experience or elsewhere in the world? In other words, how independent does it have to be?

## Answer

Done well, engagement and consultation with regulated parties, stakeholders, and the wider community can only strengthen and enrich regulatory foresight efforts.

Effective engagement and consultation helps to counter cognitive biases and blind spots that might exist inside of the regulator, and can help with the establishment of early warning measures to detect change inside/across the regulatory system.

All regulatory foresight work is context dependent and, ultimately, will be shaped by ‘user and use’. Considerations of independence (say the extent to which it is informed by stakeholder input outside the evidence base held by the regulator) will be driven by factors like time horizon for the work, scope, how speculative it is, reputational risks, audience etc.

## Question 8

New Zealand has been ahead of the game on regulatory stewardship/oversight. What are the lessons for Australia? In what areas?

## Answer

Agreed. New Zealand currently is ahead of the game in terms of actively committing to and practising ‘regulatory stewardship’ when compared to Australia for some time, and is likely to be so for some time.

The primary reason for this is that New Zealand has been thinking about, iterating, and improving its approach/es to regulatory stewardship since around 2014,\* and more purposively since 2018.\*\*

That said, I think it would be fair to say that in the early years and beyond the core elements of regulatory stewardship, that many regulatory agencies struggled to operationalise and nail down what the oversight aspect of regulatory stewardship involved.

For those not aware, the core elements of regulatory stewardship include that:

- regulators adopt and take a whole of system/eco-system view of regulation;
- regulation and regulatory practice is approached proactively and collaboratively; and
- regulation is seen and treated as an asset.

In 2020 the Public Service Commissioner appointed the Secretary for the Treasury as functional lead for regulatory system assurance and stewardship, and in December 2022 published ‘Starting out with regulatory stewardship: A resource’. See <https://www.treasury.govt.nz/publications/resource/starting-out-regulatory-stewardship-resource> and <https://ojs.victoria.ac.nz/pq/article/view/4569/4063> for more background.

- The Ministry of Business Innovation and Employment has a dedicated Regulatory Stewardship Branch, and they recently published guidance on regulatory system governance as a critical element for stewardship. [Regulatory system governance | Ministry of Business, Innovation & Employment \(mbie.govt.nz\)](#)

\* See Ayto, J. (2014) ‘Why departments need to be regulatory stewards’, *Policy Quarterly*, 10 (4), pp 23-7.

\*\* See Winson, S. (2018). ‘Regulatory Stewardship: Voice of the Regulator’, *Policy Quarterly*, 13 (4), pp 3-9.

**Question 9**

Hindsight may start as 20/20 but time will dull the quality of the image what is left (in memory) is the highlights be they positive or negative and that can bias the value provided by how we remember.

More comment for discussion rather than a question

**Answer**

In response to this statement. Yes, history tends to be written and recalled differently as time moves on. Hence the value of using HIFO perspectives to operate as a 360° regulator.

If you are not familiar with the term, a 360° regulator would/might:

- draw on a range of past, present, and future perspectives to determine the space for 'next right moves'- i.e. at an operational, tactical and strategic level
- consider what might happen, what is expected to happen, and what it wants to happen – plausible, probable and preferred futures
- build, strengthen, and demonstrate its capabilities to be anticipatory, agile and adaptive
- put regulatory stewardship at the heart of how it operates.

Essentially, being a 360° regulator is all about having good situational awareness, an all-of-system view, and the ability to coherently respond to a dynamic operating environment.

**Question 10**

Australia's problem is there is no centralised or overarching agency undertaking this work e.g. the Productivity Commission guiding the government on future regulatory risks and policies or laws to meet the challenges/opportunities. How can we create the law/policy agility that is needed in the regulatory space?

**Answer**

Building regulatory stewardship 'bench strength', frameworks and resources centrally, that can then be shared across the Public sector may be a good start.

The Long Term Insight Briefings (LTIBs) recently implemented by the NZ Government are one example of using a different approach to surface these types of risks and uncertainties at a national level. See:

<https://www.publicservice.govt.nz/publications/long-term-insights-briefings/>.

Noting also that the Productivity Commission (and similar types of independent) inquiries can be good way of shining a light on issues. However, it is likely Government around the world will need to embrace new approaches to become and remain 'AAA Regulators' (i.e. demonstrating anticipatory, agile, and adaptive characteristics). Noting also that this will become even more difficult as the pace of change increases this century. For example – see: <https://oecd-opsi.org/>