



**MONASH** University  
Centre for Regulatory Studies

30 June 2011 OECD-Israel Workshop

## Session 2: Improving the implementation and enforcement of regulation

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# Reform of regulators

- **Much of the focus of efforts to reform regulation has been on managing the stock and flow of new regulation**
- **However, what regulators do in administering and enforcing regulation can have at least as much impact on business and the community as the regulation itself**
  - Good regulators can mitigate the effects of bad regulation and bad regulators can turn good regulation into bad regulation

# Some observed weaknesses of regulators

- **Failure to act swiftly and decisively in response to emerging problems in markets; adds pressure for governments to apply further regulatory fixes**
- **Failure to apply risk-based regulation - results in inappropriate priority setting and inefficient allocation of scarce resources**
- **Inefficient practices adds further to costs for business and the community**
- **Regulators frequently suffer from lack of funding, training and capacity to perform important tasks**

# Two approaches to better regulation

- 1. Application of risk-based regulation**
- 2. Application of a systematic regulation process and performance review framework**

# 1. Risk-based regulation

- **Distinguish risk regulation – regulation which aims to reduce risks – from risk-based regulation – action of regulators to target resources to maximise outcomes**
- **“The application of a systematic framework that prioritises regulatory activities and deployment of regulators’ resources on an evidence-based assessment of risk” (Baldwin and Black)**
- **Risk reflects both the probability or likelihood of an event’s occurrence and the impact of the consequences of that event (the detriment involved).**
- **Risk can be quantified; uncertainty cannot be**

# Potential benefits of risk-based regulation

- **Regulatory decisions better informed by economically rational analysis**
- **Maximise the efficiency of the regulator's resources**
- **Prompts greater clarity of regulatory objectives – helps promote more integrated compliance strategies**
- **More pro-active approach to identifying and managing risks**
- **Strong basis for assessing regulators accountability for performance**

# What does it involve?

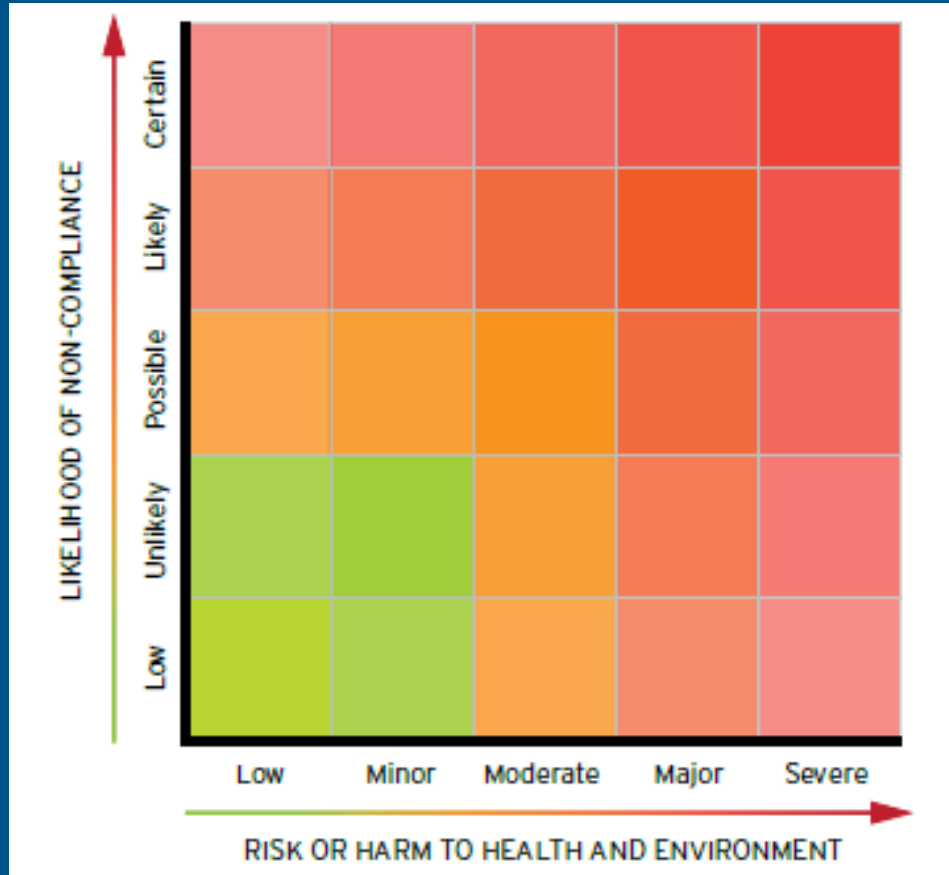
- **Identifying the risks in relation to the achievement of objectives**
  - Distinguish objective and subjective risks; primary and secondary risks
  - Quantifying the risks or ranking them in some way
- **Manage the risks**
  - Determining the risk appetite
  - Focus on the serious risks
  - Allocation of resources
- **Communication of risks and their management**

# Sources of information for quantifying risks

- **Licensing, inspections, audits**
  - Note these are often particularly associated with industry-specific regulation
- **General competition/consumer law regulators are more reactive in their monitoring of compliance**
  - Quantification may be more difficult but benefits still from more rigorous qualitative risk-based approaches



# An environmental regulation risk matrix



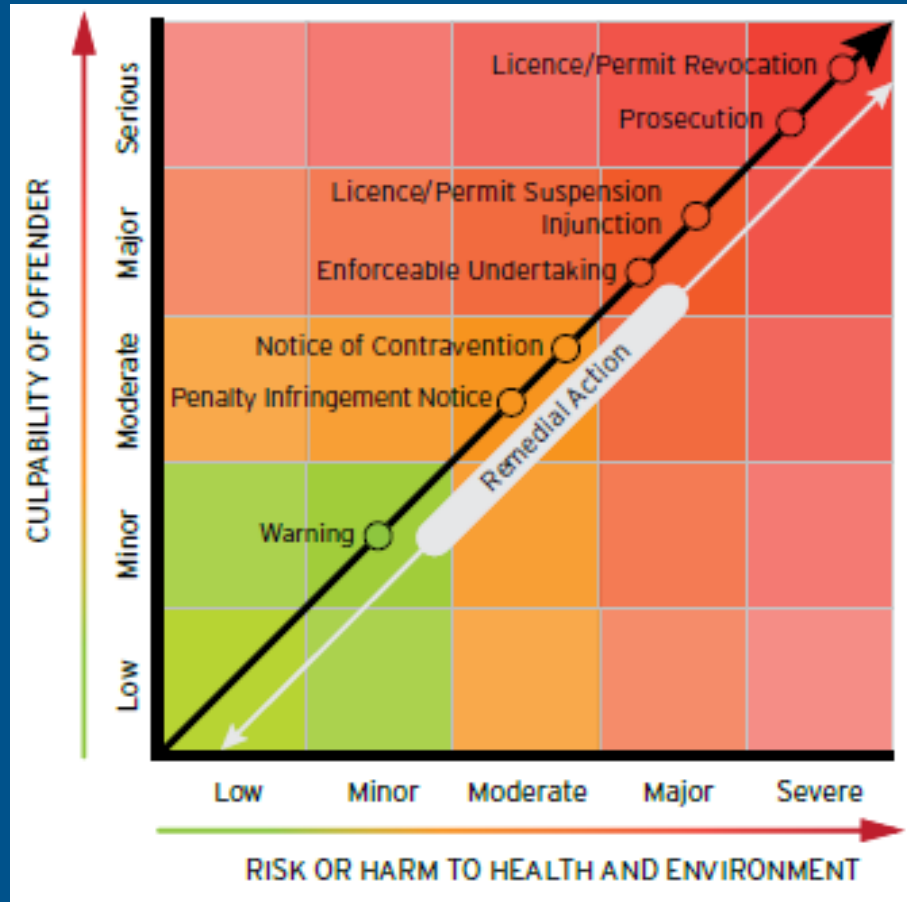
# Applying risk-based regulation to liquor outlets in Victoria

- **Annual fees for licensed premises take account of the risk of alcohol-related harm associated with particular premises**
- **Two risk factors are considered:**
  - Operating hours - higher fees apply to late-night trading
  - Compliance history – higher fees are determined according to the number of paid infringements or successful prosecutions for particular offences in the previous year
- **In addition, where a risk-based fee applies, a multiplier based on the capacity of the venue involved is also applied to reflect the greater risk larger venues impose on the community**

# Enforcement and risk-based regulation

- **Slow and ineffective enforcement is a general weakness in regulation**
- **Penalties are often linked to the seriousness of the offence**
- **Regulators can focus their enforcement on areas where greatest detriment**
- **Respond to non-compliance according to the degree of detriment involved**
- **Link the use of enforcement tools to the level of detriment**
- **Speed of action is crucial**

# Enforcement related to risk



# Some dangers to avoid with risk-based regulation to avoid

- **Quantification may result in undue rigidity in regulator decision-making**
- **Regulator may be distracted from taking full account of emerging issues**
- **Ensuring consideration of micro and macro risks**
- **Risk-based regulation may be seen more as a way to reduce business burdens (for example Hampton fewer inspections and more education) rather than enhancing enforcement**

# Enablers of risk-based regulation

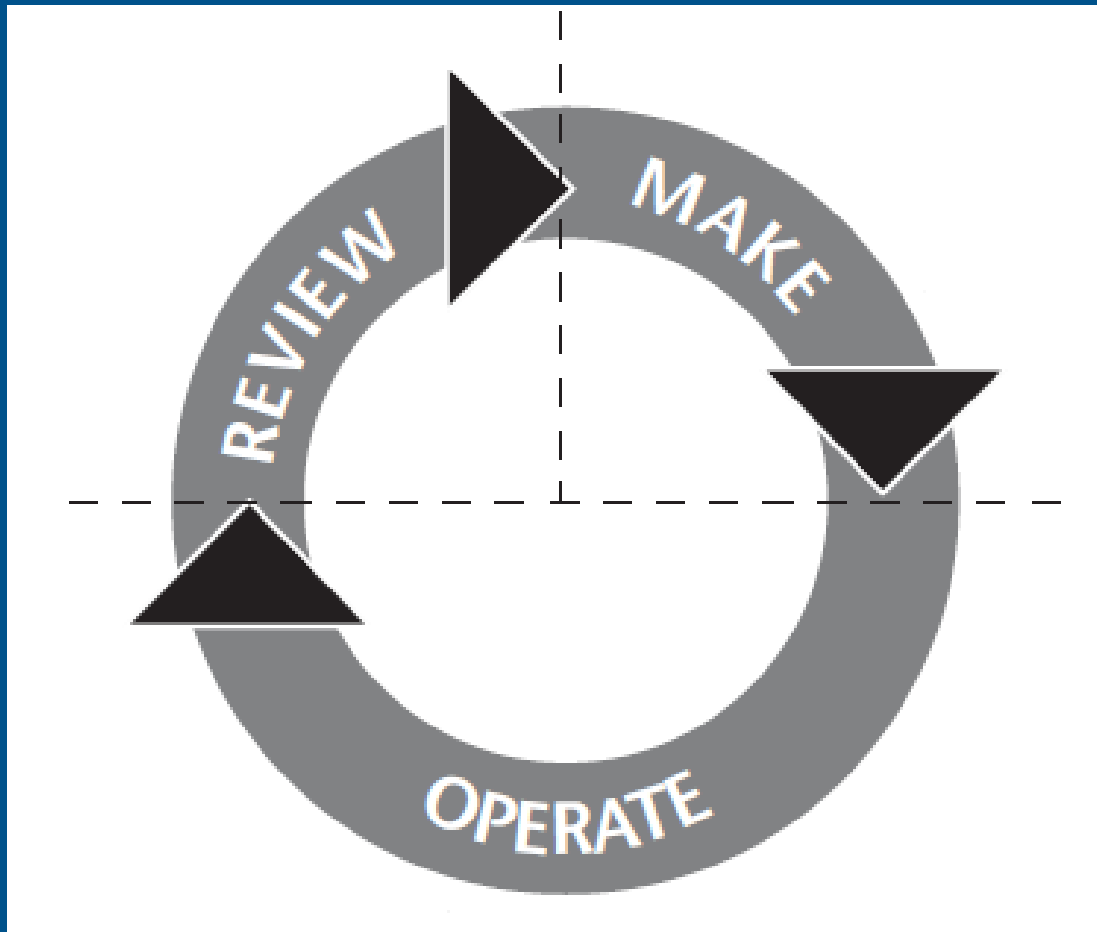
- **Good institutional design of regulators**
  - Clarity of regulatory objectives
  - Operational independence and flexibility
  - Transparency and accountability
  - Scale, capacity and capability
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- **Coordination with other regulators**
- **Evaluation culture**

## 2. A systematic approach to evaluating and improving regulator practices and performance

**The Better Business Regulation Framework was developed by Consumer Affairs Victoria as a generic framework to apply to a wide diversity of regulatory schemes administered in whole or in part by the agency as a way to drive continuous improvement**



# The regulatory cycle

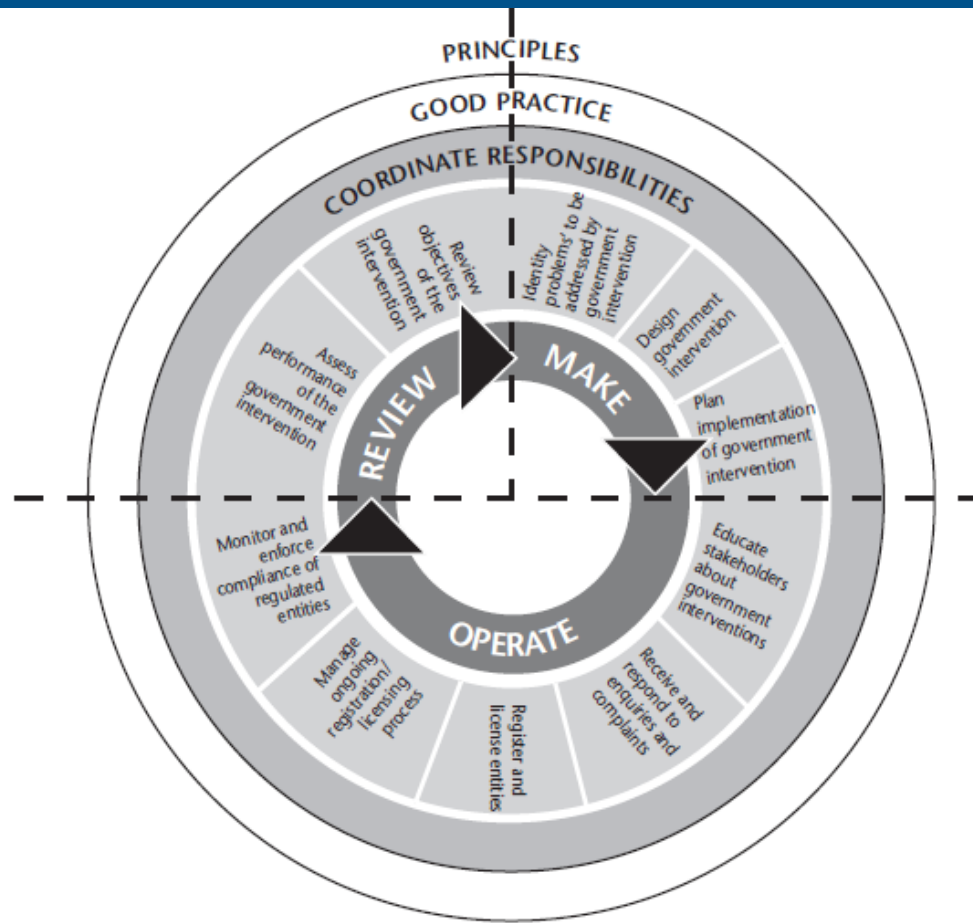




# The Better Business Regulation Framework

- The framework is based on recognised principles of good regulation – accountability, transparency, effectiveness, efficiency, proportionality, flexibility and consistency - but extends these to identify standards of good practice
- For each of the three *phases* of the regulatory cycle the range of *activities* undertaken is identified - 12 in total; 2 related to co-ordination between and within regulators
- *Tasks* relating to these activities are then identified – 29 in total and *good practices* relating to these tasks are also identified – 74 in total
- The level of *process maturity* relating to the activities and tasks is assessed
- *Performance measures*– efficiency and effectiveness indicators developed for the activities

# Better Business Regulation Framework



# Activities identified for the operate phase of the regulatory cycle

- **Educate stakeholders about the government interventions**
- **Receive and respond to enquiries and complaints**
- **Register and licence entities**
- **Manage on-going registration/licensing processes**
- **Monitor and enforce compliance of registered**

# Tasks identified for the 'monitor compliance and enforce compliance' activity

- Plan monitoring and enforcement activities
- Implement monitoring plans
- Remediate compliance breaches
- Review compliance and enforcement data

# Good practices associated with the ‘plan monitoring and enforcement’ task

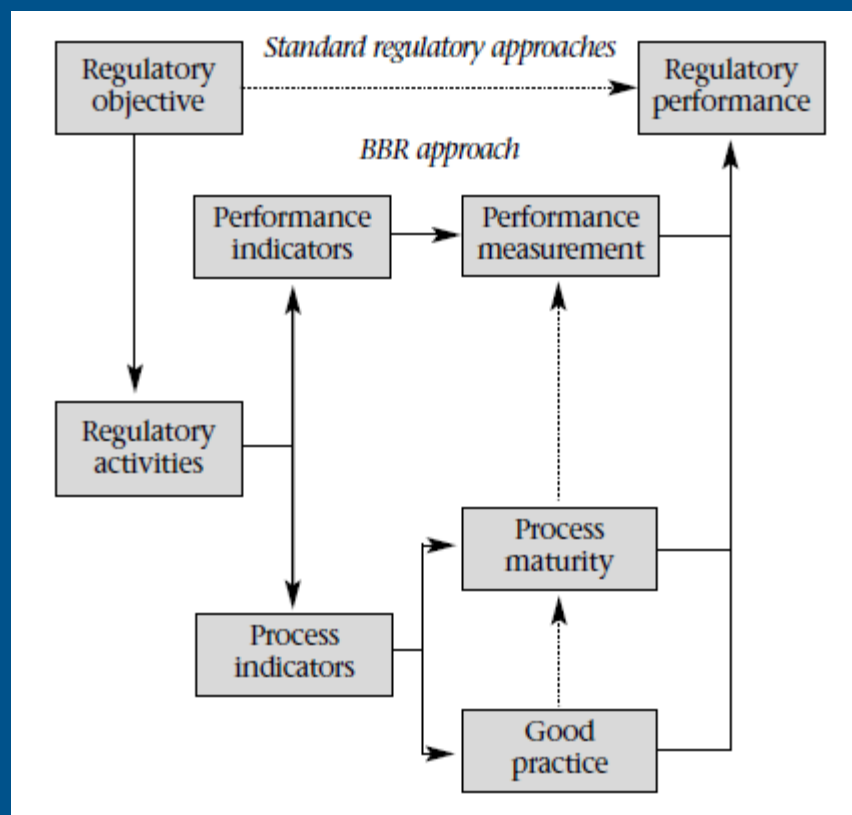
- **Identify monitoring and enforcement activity priorities and objectives using risk-based approach**
- **Use complaints data to inform development of monitoring and enforcement plan and assign resources accordingly**

# Process maturity

- Process maturity refers to the level of development and formalisation of the processes that support the regulatory activities.
- Five levels identified:
  - Level 1 Informal and person dependent
  - Level 2 Partially documented processes
  - Level 3 Fully documented processes
  - Level 4 Level 3 plus measured processes
  - Level 5 Level 4 plus continuous improvement
- Regulators can improve their performance by consciously increasing the level of process maturity.

# Performance assessment

**The BBR framework combines consideration of process indicators relating to the quality of good practice and the level process maturity with performance indicators relating to activities to provide a broader perspective on regulatory performance**



# Performance indicators relating to the ‘educate the community about the government intervention’ activity

- **Aim to ascertain whether the activity generated stakeholder awareness or rights, obligations and responsibilities and at what cost**
- **Indicators**
  - % of stakeholders who are aware of their rights, obligations and responsibilities
  - Cost incurred per awareness level achieved



# Use of the Better Practice Regulation Framework

- **The framework was piloted successfully using regulatory schemes run by Consumer Affairs Victoria and other agencies associated with the Department of Justice in Victoria**
- **It helped to identify gaps in good practices, including co-ordination, and in process maturity and in performance measurement**
- **The Department of Primary Industries in Victoria has also used the framework and other departments are being encouraged to use it**
- **It has been used as a self-assessment framework but could form the basis for external assessment**
- **It could be used for one-off assessments or for continuous scheme monitoring**

# Conclusion

- **As governments continue to strive to enhance the effectiveness and efficiency of their regulation the focus of attention will increasingly be on how regulators administer and enforce regulation**
- **Significant improvements in regulator practices and performance can be achieved by applying a risk-based approach to regulation and by systematically reviewing practices and performance. The Better Business Regulation Framework provides a basis for this systematic review**