



Model guides transport regulation design

Researchers at the University of Waikato have developed a best-practice model for designing transport regulations. The New Zealand Transport Agency commissioned the model, in order to guide the design of smarter, fit-for-purpose legislation.

At present, New Zealand adopts a very process-intensive approach to regulation design, with little substantive guidance available for regulators on how to choose the best interventions to achieve the goals of their enabling statute.

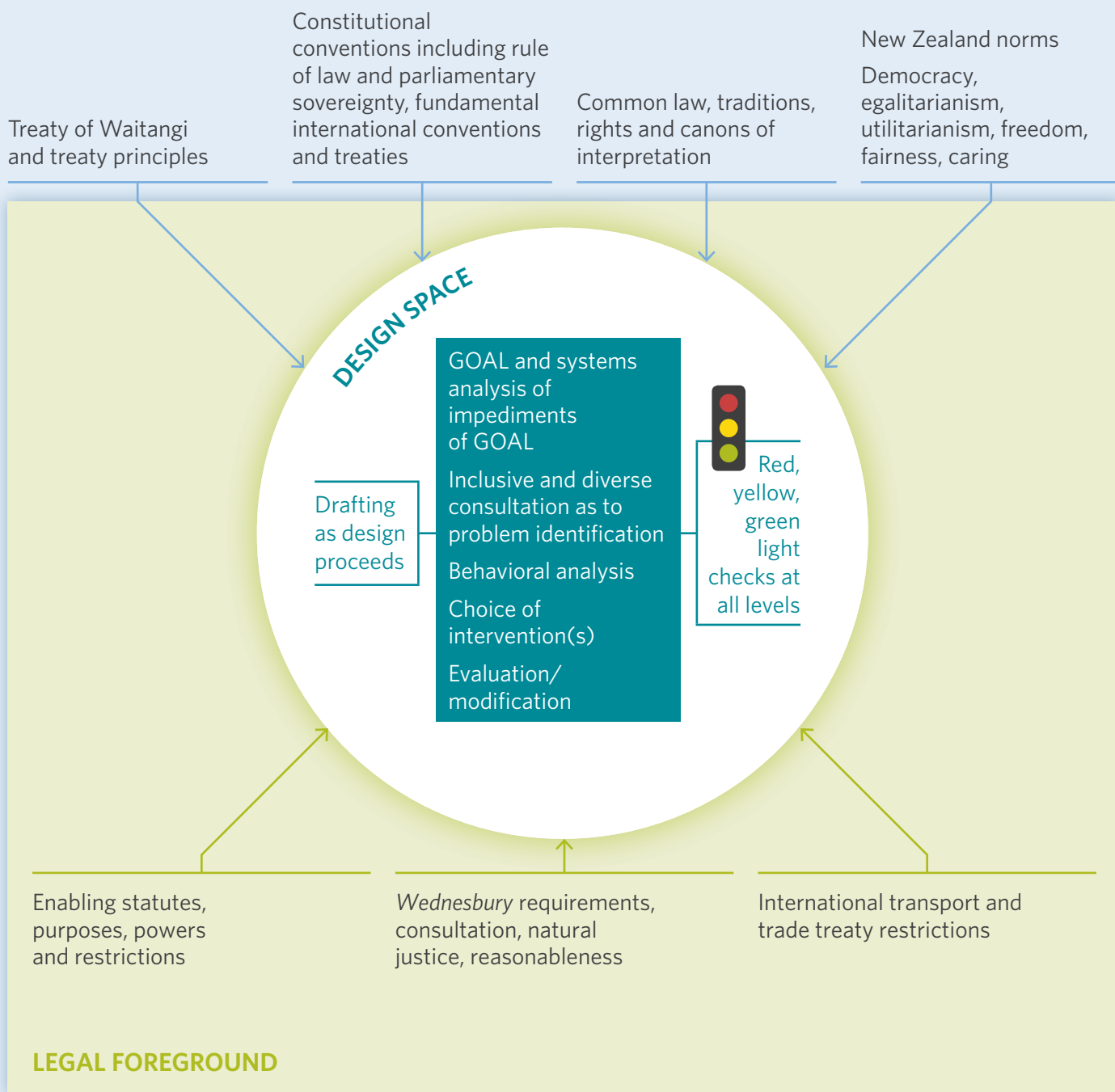
The researchers used Hansard Society's Good Law Project methodology to analyse existing local and international regulatory management and legislative design, along with historical context of New Zealand's legal system and to apply this analysis to the design of a new model.

A SYSTEMS-BASED APPROACH TO REGULATION DESIGN

The model adopts a systems-based approach to regulation design.

Both systems and behavioural analysis were shown in the research to be essential when making decisions about and designing regulations. It is crucial that regulators are able to define the relevant system and its interacting factors, situate the various decision makers in that system, and identify and assess which intervention would affect them and to what extent. The difference between corporate and human motivating factors must also be taken into account and monitoring and adjustment mechanisms incorporated.

CONSTITUTIONAL AND CULTURAL BACKGROUND



Against this background, the model is divided into three levels. These levels reflect the legal contexts in which transport regulation must function, and are:

- New Zealand's 'constitutional, cultural and common law background' that all government agencies operate within
- the 'legal foreground', with the statutes that empower and constrain the regulator's authority
- the 'design space', which is a four-step process for designing the regulation.

It also incorporates red, yellow and green light checking mechanisms:

- red highlights 'no go' areas
- yellow denotes areas where precautionary measures are needed to avert regulatory failure
- green is for areas where the regulator is on stable ground to proceed, but with an eye to the unexpected.

An example of how the model might work in practice is provided in the full research report.

MORE ABOUT THE MODEL

The first two levels of the model (constitutional background and legal foreground) ensure that a regulation is situated within the larger legal context it must operate in. This helps prevent any subsequent actors (from legal drafters through to the courts) from 're-designing' the regulation to make it 'fit' within the appropriate legal constraints.

The model's third level – the design space – is a four-step approach to guide regulators towards the most fit-for-purpose regulation. The approach prevents regulators from automatically going down previously used routes and following approaches that are likely to lead to regulatory failure.

STEP ONE

Defines the goal, the system and any impediments. It promotes the use of systems analysis tools, earlier and broader consultation and greater integration of design teams into intra-agency, cross-agency, cross-department, cross-ministry 'design hubs'.

STEP TWO

Involves behavioural analysis of the actors and decision-makers within the system to identify who can influence impediments, and the drivers motivating driving them.

STEP THREE

Considers what interventions will most efficiently and effectively influence the targeted decision-makers, so impediments to the goal are minimised.

STEP FOUR

Integrates review and adjustment mechanisms into legislative or 'soft' interventions.

The last step helps ensure that regulations and other interventions are effective and efficient, acknowledges the experimental nature of law, and provides a means responding to unforeseen effects or rapidly changing conditions.

The design space is an iterative process, and any subsequent re-evaluation of an existing intervention will re-activate the process at step 1. Many overseas jurisdictions already automatically incorporate monitoring and adjustment mechanisms within regulations. In New Zealand to date the approach has been rather more ad-hoc; an approach which the model seeks to correct.



RR 662 – *Best practice model for developing legislation*,
Waka Kotahi NZ Transport Agency research report
Available at www.nzta.govt.nz/resources/research/reports/662