

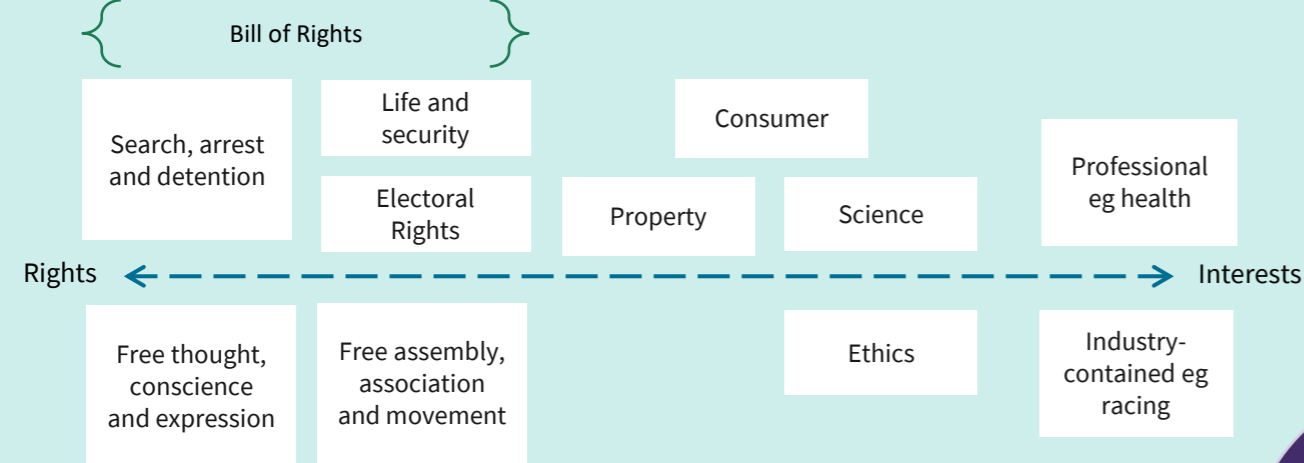
Principles to inform decisions on form and location of regulatory functions

A regulatory system is a set of formal and informal rules, norms and sanctions that work together to shape people's behaviour to achieve a goal or outcome. This slide outlines how 4 principles affect decisions around form and location of regulatory functions. Consider where the functions you are looking at sit on the spectrum for each principle. Within each box, departments and other public service agencies are better suited to the circumstances described on the left and 'arm's-length' forms to those circumstances on the right.

Most regulatory systems involve more than one government regulatory agency or body – usually a policy agency and a delivery entity (some of those in local government). The Public Service Act 2020 encourages a collaborative approach to reduce fragmentation and support agencies to discharge their stewardship responsibilities.

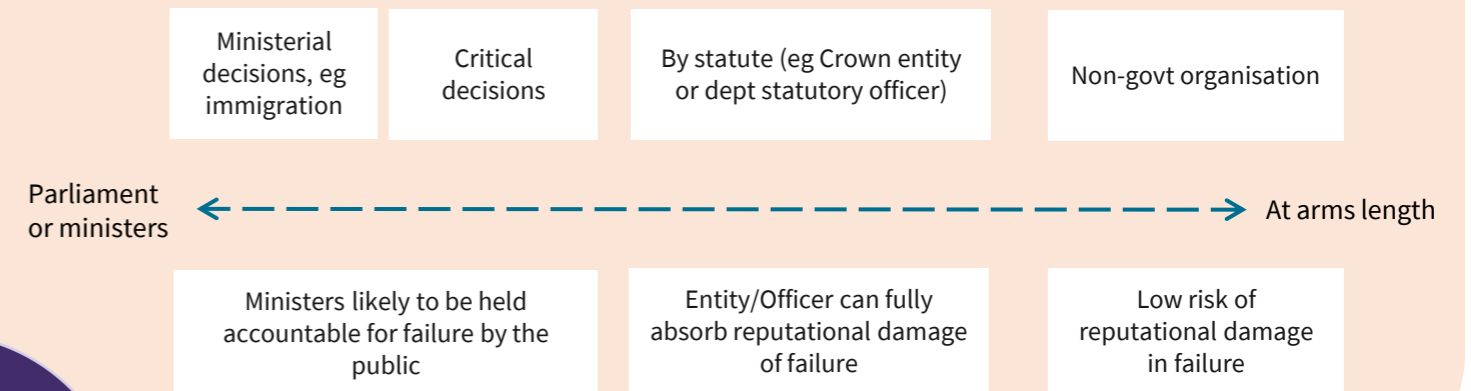
Government must protect rights, interests are more negotiable

- Where many people's legal rights are impacted, policy making should typically be held closer to government so a broad view can be taken on public consensus.
- Where a subset of people's interests are affected, decision-making should include relevant expertise and/or representation.
- Typically, being towards the right of the spectrum would allow more discretion for the regulator.



Ministers are held accountable for 'life and limb' regulatory settings

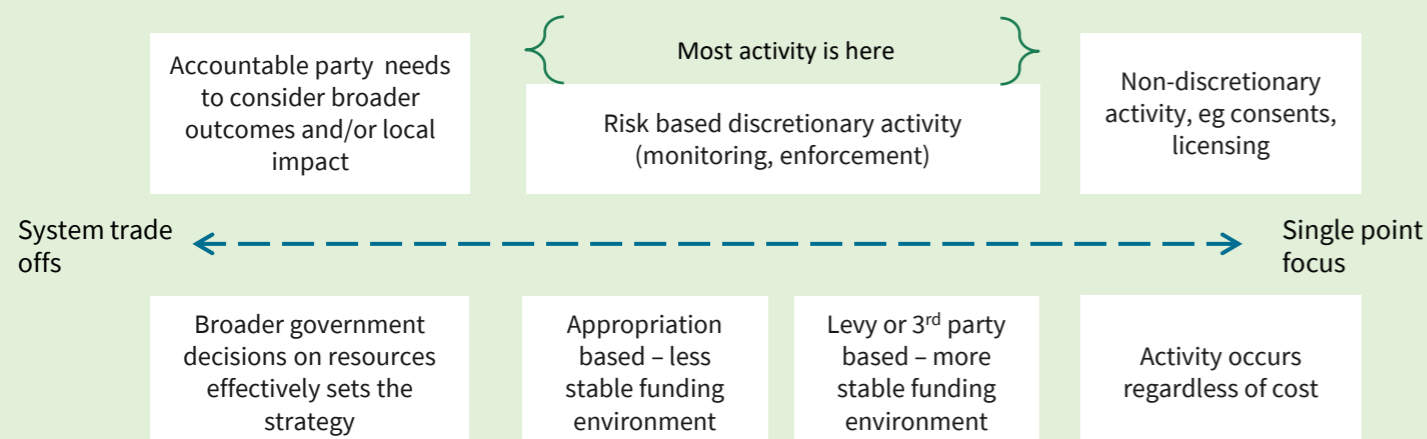
- Democratic accountability can be achieved by placing critical decisions within public service departments. If more arm's-length settings would provide additional benefits, consider whether and how ministers can still meet Parliamentary accountability requirements.
- Independent expert advice can still be achieved through the departmental form and ministers are normally excluded from decisions on individual cases by statute (immigration is a rare exception).



4 Principles

Regulatory regimes involve trade-offs

- Any effective regulator uses an outcome focused strategy to drive a balanced approach to activity.
- Where strategy impacts other government objectives, cross-government advice on those strategic trade-offs should be developed with the relevant departments (including the Treasury).
- 'Single point focus' decisions work best when the functions require fewer strategic trade-offs.
- Contractual, output or performance based arrangements, developed on a cross-agency basis with the trade-offs determined by Cabinet, can enable delivery at arm's length.



Regulatory practice needs to keep up with the social and policy environment

- Social or technological changes such as new gun laws or driverless vehicles increase regulatory risk and the level of stewardship and monitoring of the regulatory functions by government may need to escalate. Agility and political savvy become more important attributes.
- Where purely technical changes are required, a more arm's-length body might provide more expertise and responsiveness than the centre.

