

The Governance of Regulatory Agencies

- I. What is the governance of regulatory agencies?
- II. Why is the governance of regulatory agencies important?
- III. What are the principles of regulatory governance?
- IV. How are the principles applied?
- V. What is to be done?

I. What is the governance of regulatory agencies?

- The mechanisms or instruments, processes, and relations by which a regulator is controlled and directed, and by whom its decisions and actions are measured and held to account.
- The mechanisms or instruments would include the governing legislation, any regulations made under that legislation, and the rules governing the regulatory agency's relations with government, the legislature and the courts.
- It would also include the regulatory agency's own structures, rules and practices.

II. Why is the governance of regulatory agencies important?

General Principles

OECD:

“How a regulator is set up, directed, controlled, resourced and held to account — including the nature of the relationships between the regulatory decision-maker, political actors, the legislature, the executive administration, judicial processes and regulated entities — builds trust in the regulator and is crucial to the overall effectiveness of regulation.”

II. Why is the governance of regulatory agencies important?

PENN/AER

“In democracies, regulators are also accountable for how they use their discretion. Accountability runs through to other governmental authorities, including the legislature, as well as to the regulated industry, rights holders, community interests, and ultimately the overall public.”

II. Why is the governance of regulatory agencies important?

Particular issues

- The limitations of judicial oversight
 - the principle of judicial deference
- The deficiencies of existing governance mechanisms
- The movement away from quasi-judicial towards administrative decision-making
 - the use of directives
- The limitations of independent advocacy

III. What are the principles of regulatory governance?

- Independence
- Accountability and Transparency
- Role Clarity
 - quasi judicial v. administrative decision-making
- Performance Evaluation
 - who does it and how?

IV. How are the principles applied?

1. Internal processes and controls

- The uses of policy
- Policy development
 - how is it done
 - what are its limits
 - who oversees it
 - regulatory impact analysis

IV. How are the principles applied?

- Policy application
 - decisions based on policy
 - the MAADs example
 - the Sioux Lookout Hydro Inc. example
- Decision-making
 - delegated decision-making
 - decisions by consultation

IV. How are the principles applied?

2. External rules and processes

- The Memorandum of Understanding
 - reports to the legislature
- the limits of legislative oversight

3. The role of independent advocacy

- the adversary process and its limits

V. What is to be done?

- Internal culture/discipline v. external oversight