

**Small and Medium Enterprise (SME) “Good Regulation”  
Project  
Phase One – Understanding the Issues**

**Project Overview and Management Plan**

*"The real difficulty in changing any enterprise lies not in developing new ideas, but in escaping from the old ones." - John Maynard Keynes*

**Labour Market Policy Group  
Department of Labour**

**April 2004**

**Version 3.0 Final  
IDT and external**

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Release Date	Author of version	Version	Changes
January 04	Richard Whatman / Nicole Brown	SME Project Overview Jan 04	Initial Project Overview statement
February 04	Richard Whatman / Nicole Brown	SME Project Overview Feb 04	Refined for team member feedback
16 Feb 04	Sue Taylor / Nicole Brown	SME Project Overview V1.0	Draft including project management perspective
9 March 04	Sue Taylor / Nicole Brown	SME Project Overview V2.4	Incorporates comment from Sue, Nicole and team
15 March 04	Richard Whatman	SME Project Overview V2.5	Richard's review and re-write of regulatory debate
19 March 2004	Sue Taylor	SME Project Overview V2.6	Incorporate feedback from R&E and Research Plan
29 March 04	Sue Taylor and Richard Whatman	SME Project Overview V2.7	Final changes incorporated, incl Julian's comments
26 April 04	Sue Taylor and Richard Whatman	SME Project Overview V2.7Final	Inclusion of V3.0Final of Research Plan. Circ to IDT3
30 April 04	Sue Taylor and Richard Whatman	SME Project Overview V3.0Final	Final changes including updated budget, and V3.0Final of Research Plan – for sign off

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## Executive Summary

The Small Medium Enterprise (SME) “Good Regulation” Project has as its overall purpose:

### **“to enable SMEs to thrive in a regulated world”**

This organising principle is deliberately focussed on both SMEs and the pervasiveness of regulation. This principle is intended to produce an approach to regulation that is centred on the daily practice of SMEs – that is being based on the reality of being ‘the regulated’. It is also focussed on ensuring a thriving environment for SMEs, where regulation is more than just an unnecessary evil.

The Project takes a broad view of what ‘regulation’ is. In this project it is much more than ‘the rules’; it is seen to be a complex social system, where successful change to that system can only occur through a thorough understanding of the regulatory activity as a whole.

The Project concentrates on SMEs and regulation because of the importance of SMEs to New Zealand’s economic and social life, and because SMEs and regulators often report facing their biggest hurdles in dealing with each other. SMEs face difficulties because they lack resources – of skill, time and money and the cost of complying is disproportionately greater. Regulators face problems because SMEs are usually scattered, hard to help and lack resources. The SME “Good Regulation” Project is designed to develop an ‘open space’ so that government and SMEs can come up with better ways of working with each other – to make each others’ jobs easier. It is intended to assist both by reducing unnecessary ‘compliance costs’ and improving SMEs ability to meet the goals of regulation.

SMEs face managing risks in three broad areas: commercial, environmental and social (mostly human resources risks and risks to the general public). These areas of risk are heavily regulated and there are a number of regulatory agencies with responsibility for those regulations. Regulators tend to have responsibility in one of these three areas, but generally not for all risks that SMEs face. This can lead to overlaps in regulation, and unintended consequences from the actions of several regulations or regulators acting on SMEs at once. The debate (internationally and in New Zealand) about what makes ‘good’ regulation has developed over the past two decades, moving from a ‘deregulation’ (more or less) regulation debate to a nuanced one of seeking to understand ‘regulatory regimes’ as a social activity in order to produce better regulatory outcomes.

Applying the lessons from this debate and the organising principle of “enabling SMEs to thrive in a regulated world”, the SME “Good Regulation” Project has the following specific objectives, to:

1. Identify the nature of the problem that regulation poses for SMEs and regulating agencies.
2. Promote and support an understanding of regulation as a *social activity*.
3. Support regulatory agencies and SMEs to develop mutually beneficial solutions to regulatory concerns.
4. Actively disseminate and support improvements in the way that regulation is developed and utilised by SMEs and regulatory agencies.

The intended outcomes for the project are that:

- Agencies and SME have a more sophisticated understanding about regulation as a social activity.
- Means of developing and using regulation are improved in ways that make SMEs and regulator's work easier, i.e:
  - the costs and difficulties for SMEs in complying with regulatory requirements are minimised
  - regulatory compliance processes generate relevant, meaningful information for the management of enterprises
  - the supply of information needed by government from regulatory compliance processes is improved (at a reduced cost).
- Agencies and SMEs use shared processes to collectively develop and apply regulation in an ongoing fashion.

This is a research project, developmental in nature. The objectives and intended outcomes will change as the project grows, and the understanding of the problems and possible solutions grows with it. The project is attempting to use a method, designed to understand and change activities, to address the regulatory 'knots' that are frequently found between SMEs and regulation. The method is called Development Work Research; it is an approach that has not been applied in this way to regulation and SMEs in New Zealand or overseas. It has, however, been successfully applied in New Zealand in the development of private sector organisations (Formway Furniture and EDS).

Because the approach examines the system of regulatory activity, there are a wide range of stakeholders that need to be involved for the project to be successful. These include Ministers, public servants from all parts of regulatory agencies, SMEs, their employees and advisers, and the media. The SME "Good Regulation" Project has been structured to progressively develop the network of stakeholders needed for it to be successful.

To do this, the SME "Good Regulation" Project has been divided into three Phases:

- Phase One – Understanding Issues (June 2003 to June 2004)
- Phase Two – Developing solutions (July 2004 to December 2005)
- Phase Three – Implementing solutions (from January 2006)

This Overview and Management Plan describes in detail Phase One of the project, and outlines the purpose of Phases Two and Three. Because the project is developmental, these subsequent Phases will be planned as the project unfolds and issues and solutions become apparent.

The project was initiated by the Department of Labour (DoL) using funding from a successful application for the Ministry of Science, Research and Technology's Cross-Departmental Research Pool (CDRP). The funding from this source for these Phases is \$127,000, 403,000 and \$120,000 respectively. The funding is granted on the expectation that agencies involved will contribute further resources to the project.

The project application was supported by the IRD, Ministry of Economic Development, and Ministry for the Environment and Statistics New Zealand. Currently the project involves the Department of Labour, IRD, Ministry for Economic Development and New Zealand Trade and Enterprise, Statistics New Zealand and the Accident Compensation Corporation (ACC). SME representatives are also in the Project.

Phase One of the project involves agencies and SMEs gathering and exchanging information on the activity of regulation of SMEs. This is done through 'exploration groups'; these are selected people from the agencies or from amongst SMEs or their advisers, who can reflect on the experiences of the agency or SMEs in a focussed way. From these groups 'visitors' are selected, the visitors attend other exploration groups and gather further information and reflections on the process of regulating SMEs – both the problem areas and good practices. The visitors and researchers meet as an Interim Design Team (IDT) to further their understanding of the issues, develop a proposed research process for Phase Two the project and management structures needed for that phase.

The findings of Phase One and the proposed way forward for the Project will be presented to a broad group of stakeholders at a 'launch' on 23 June 2004. This will be a venue for testing the ideas that have been developed, and ensuring that the networks needed for the success of Phase Two have been established.

This Overview and Management Plan provides detail on:

- The background to the project
- Project goals and stakeholders
- Method of delivery
- The project plan for Phase One
- The research methodology (Appendix One)
- Funding from the CDRP (Appendix Two)
- The 'regulatory debate' (Appendix Three).

It is the main document for understanding the work streams of the project for Phase One, why it is conceived in the way that it has been, and the goals of the project and the roles of those involved in it.

# 1 Background

"The real difficulty in changing any enterprise lies not in developing new ideas, but in escaping from the old ones." - **John Maynard Keynes**

## 1.1 Introduction

This Project Overview Document explains the purpose of the Small and Medium Enterprises (SME) "Good Regulation" Project and the reasons for undertaking it, as well as detailing the scope and content of the Projects' deliverables for Phase One – Understanding Issues. There are two further phases planned for 2004/05 and 2005/06: Developing Solutions and Delivering Solutions, which are also outlined.

The overall purpose of the project is:

**"to enable SMEs to thrive in a regulated world"**

This organising principle is deliberately focussed on both SMEs and the reality of there being a lot of regulation. Regulation is pervasive across enterprise activities, but is often unnoticed unless there is a breach identified. The purpose/principle is intended to produce an approach to regulation that is centred on the daily practice of SMEs – that is being based on the reality of being 'the regulated'. It is also focussed on ensuring a thriving environment for SMEs, where regulation is more than just an unnecessary evil.

There are some core themes that have led to the development of the SME "Good Regulation" Project, these are:

- it is very hard to successfully undertake 'whole-of-government' work with SMEs around regulation, both because there are so many interactions between agencies and various regulations, and because there are many different SMEs and interactions between them and the agencies
- SMEs often conceive of 'the Government' as being a single entity, but do not experience agencies behaving in that way
- 'regulation' is both *pervasive* but usually *unobserved* in its operation
- 'regulation' is *fundamentally not* a set of written rules, but a dynamic social system, with elements that include mental models, behaviours, practices and tools (eg operational policies)
- society is becoming more complex, and the layering of complexity in regulation is increasing (for instance, the increasing complexity in the international dimensions of regulation) – this is particularly problematic for SMEs because they lack resources to manage this complexity, and for the agencies that deal with them.

The SME "Good Regulation" Project is designed to address those core themes, through a government-initiated project to bring together agencies in a process that:

- will take those agencies outside of the usual inter-agency approaches to problem solving, to allow for 'thinking outside the square'
- brings together staff in agencies who deal with regulation and/or with SMEs, to consider what are the issues their regulations create for them and SMEs
- brings together the various agencies that have the biggest regulatory impact on SMEs to understand the overall impacts of regulation
- and brings together these people from agencies with others who understand SMEs (owners or SME advisers) to harness all perspectives, and then redesign how and what regulation does.

The method being used to do this is a system of work redesign which originated in Finland called 'Development Work Research'<sup>1</sup>. This system has been used successfully in New Zealand by private companies (Formway Furniture and EDS are two) and overseas by both private and public institutions, to redesign complex activities. It has been successful in overcoming some very knotty problems<sup>2</sup>.

The SME "Good Regulation" Project seeks to overcome some of the tensions that government and SMEs face in dealing with each other. It is designed to develop an 'open space' so that government and SMEs can come up with better ways of working with each other – to make each others' jobs easier. It should assist both by reducing unnecessary 'compliance costs' and improving SMEs ability to meet the goals of regulation.

## **1.2 What does regulation mean in the SME "Good Regulation" Project?**

Generally there is confusion about what regulation means. The Oxford Concise Dictionary says it is a: "prescribed rule, authoritative direction; fulfilling what is laid down, correct pattern, ordinary, usual, formal...". This project takes a different starting point: regulation is considered to be a complex system of social interactions, with 'the rules' playing a relatively minor role in that system. Regulation we argue is better described as something like:

*"...the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes, which may involve mechanisms of standard-setting, information gathering and behaviour-modification."*<sup>3</sup>

Indeed, we argue that some of the confusion and difficulty that exists arises because of a clash in understandings, between the dictionary definition of regulation, and the broader social context within which regulation is played out. In this Overview 'regulator' means the responsible body or person for regulating an activity; 'regulated' means the body or person at whom the regulation is directed, and 'regulation' has a broad meaning, as described above. The debate about what is 'regulation' is developed further in section 1.5 below, and in Appendix 3.

## **1.3 Why concentrate on SMEs?**

SMEs are vital to the economic and social life of NZ. Firms with fewer than 20 Full-Time Employee Equivalents (FTEs) make up 97% of all firms, and account for around 40% of both GDP and employment. NZ has a large number of both 'micro' enterprises and self-employed, and the numbers are growing. These enterprises often come into existence and disappear quickly. SME owners and operators have to be Jacks and Jills of all trades; they often lack time, sufficient finance and sometimes have too few management skills. Frequently whole families are deeply involved in SMEs. In addition, SMEs value their independence and often want to be left alone to 'get on with the job'.

Small and Medium enterprises regularly report in surveys and through other means that government regulation is one of their biggest problems, and a key factor in restraining enterprise growth. They also report much greater problems with regulation than large enterprises. Regulations repeatedly apply to many important

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<sup>1</sup> See: <http://www.edu.helsinki.fi/activity> The Center for Activity Theory and Development Work Research, Helsinki University.

<sup>2</sup> In New Zealand, Formway Furniture attribute about a quarter of their success with the design of the award-winning "Life Chair" to the use of this method. For information on Formway, see: <http://www.formway.co.nz/hmflash.html> .

<sup>3</sup> Julia Black – *Critical Reflections on Regulation* London School of Economics, Centre for Analysis of Risk and Regulation, 2002 [www.lse/carr/](http://www.lse/carr/). See also Hood et al, *The Government of Risk – Understanding Risk Regulation Regimes*, Oxford University Press, 2001 p 21. These ideas have their origins in cybernetics and ecology.

activities that enterprises need to undertake, for instance, driving a vehicle. They are both pervasive and usually unobserved, unless there is a breach of a regulation. Regulators and SMEs often find themselves to be at odds with one another – agencies pursuing regulations’ ‘public goods’ through the application of rules; SMEs struggling to understand what is impossible for them to fully comprehend because of the complexity and scope of what they need to manage.

Both regulators and SMEs face gaps and overlaps between regulations and regulators. Regulation is scattered amongst many agencies that manage an even greater number of rules. Regulator’s interest in SMEs is generally limited to the aspect of the SME which they are responsible for regulating. These gaps and overlaps and specific interests lead to confusion and waste of resources.

The current government in New Zealand and many overseas governments have recently concentrated a lot of effort on SMEs and the larger ‘compliance burdens’ that they bear in dealing with regulation<sup>4</sup>. SMEs are acknowledged as a particularly difficult issue.

#### **1.4 Regulation and management of risk are closely connected**

Regulation is ultimately designed to support and protect enterprises from risks that they produce or face<sup>5</sup>. Enterprises generally have three main areas of risk that have to manage:

- Commercial
- Environmental
- Social (in particular employment, health and safety, and risks to the public).

Diagram 1. over the page depicts common types of risk and some of the agencies involved in their regulation. Most regulation of enterprises establishes regimes to protect against, or distribute the costs of, risks. For instance, taxation provides a defence force and police, and public education, health or social systems. Accident Compensation is a scheme whose purposes are to prevent injury, and rehabilitate and compensate victims of injury<sup>6</sup>. Rules and regulators do not actually manage risk for enterprises on a day-to-day basis; the societal ‘regimes’ that exist to manage risk encompass both rules and regulators but are far broader than either, taken together or alone.

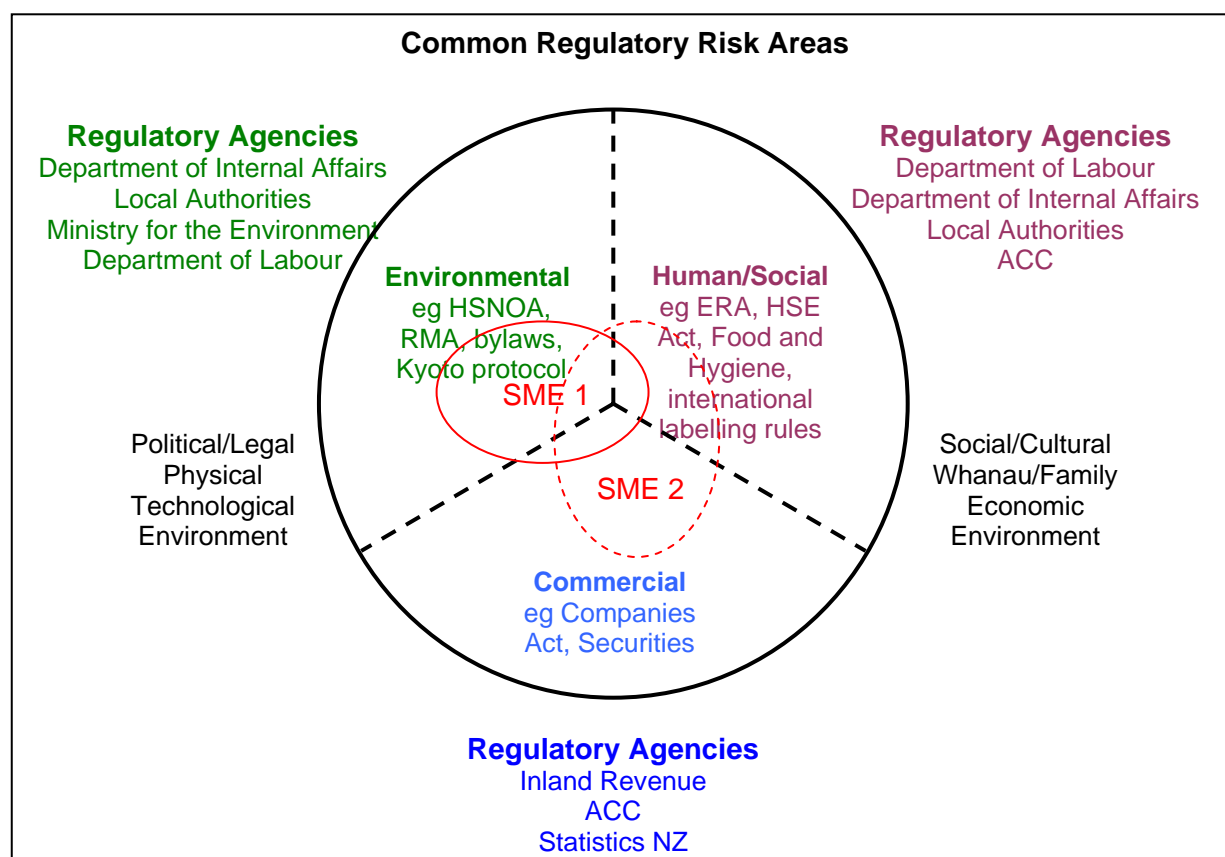
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<sup>4</sup> See appendix 3 for further discussion.

<sup>5</sup> One definition of risk is: “A situation or event in which something of human value (including human beings themselves) has been put at stake and where the outcome is uncertain.” *Risk, Uncertainty, and Rational Action*, C Jaeger et al, Earthscan Publications, London, p 17. See also NZPA note.

<sup>6</sup> Section 3 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 begins: **Purpose** “The purpose of this Act is to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has, as its overriding goals, minimising both the overall incidence of injury in the community, and the impact of injury on the community (including economic, social, and personal costs)...”

**Diagram 1. Common areas of risk regulated by government**



The significance of these areas of risk to individual SMEs will vary depending on the goals the enterprise has and the type of industry it is part of. For instance, an eco-tourism business will likely see environmental issues as relatively more important to it than, say, a plumber.

### **1.5 Changes to the understanding of what leads to good regulation outcomes**

This project builds upon changes in thinking about regulatory issues that have developed over the last two decade as a result of an ongoing international debate; these changes are discussed briefly below.

The debate in New Zealand and elsewhere has largely been about whether rules should be removed (deregulation) or reformed (re-regulation). Much less time in debate has been spent considering the combination of social institutions and interactions as they relate to rules. Regulation is now frequently discussed as being a system, or a regulatory regime<sup>7</sup>. This has been because changing rules alone has time-and-again been shown to be ineffective<sup>8</sup>. The *process* of regulation has been picked up by academic writers and some regulators<sup>8</sup> themselves as a vital or even principal part of understanding and changing regulatory outcomes.

Through different routes, and using different language, writers have developed some common understandings, grounded in examination of the practice of regulation. Essentially regulation needs to be understood as a: social system or process; complex adaptive system; regime; or craft.

<sup>7</sup> The idea of regulation regimes is explored in Hood et al, *The Government of Risk – Understanding Risk Regulation Regimes*.

<sup>8</sup> The best example in NZ has been the IRD, which has successfully adopted a culture across the organisation of reducing barriers to voluntary compliance for taxpayers.

Writers have emphasised the interconnections, networks and dynamics of regulation. They advocate consideration of regulation from this perspective, and argue that to change outcomes of regulation requires understanding the social system that it operates in and attempts to direct that system.

The SME “Good Regulation” Project starts on the basis that the social system that exists between regulators and SMEs is more complex than any one stakeholder in that system can manage or understand on their own. Also that the interactions between actors have unintended effects, as the individual parts of the system are not intentionally designed to be aware of those effects or to manage their consequences. It also begins with the premise that SMEs and regulators are together part of this system, with effective change best achieved through addressing all parts of the system.

The purpose of the project is to “enable SMEs to thrive in a regulated world”. This focus will engage agencies and SMEs in the collective task of managing risk and regulation. Appendix 3 outlines the development of the international and New Zealand debates on regulation, and therefore the rationale for the form that the SME “Good Regulation” Project has taken.

## 2 Project Goals and Stakeholders

### 2.1 Overall Goal

The overall goal of the SME “Good Regulation” project (as stated in the funding request to the Ministry of Science Research and Technology - MoRST) is **to enhance the economic and social productivity of New Zealand SMEs**. The organising principle “to enable SMEs to thrive in a regulated world” has been developed during Phase One of the project.

To achieve this goal, the specific objectives of the overall project are to:

1. Identify the nature of the problem that regulation poses for SMEs and regulating agencies.
2. Promote and support an understanding of regulation as a *social activity*.
3. Support regulatory agencies and SMEs to develop mutually beneficial solutions to regulatory concerns.
4. Actively disseminate and support improvements in the way that regulation is developed and utilised by SMEs and regulatory agencies.

#### 2.1.1 Purpose

Aligned with the goals outlined above, the unifying purpose of the SME “Good Regulation” Project is to **enable small and medium enterprises to thrive in a regulated world**, that is: to create an environment where it is easier for Government and SMEs to interact, in ways that bring the greatest possible benefits to individual businesses and to New Zealand as a whole.

### 2.2 Research rationale

In order to meet these stated project objectives, the SME “Good Regulation” project has been designed to construct a ‘research laboratory’<sup>9</sup>. This means that selected SME owners, management and workers, and selected management, policy and operational staff from government regulatory agencies, will work together outside of the normal policy or operational environment and within a separate space created to explore each others’ perspectives and change policy and practice. The project deliberately seeks to merge the usual ‘silos’ that apply in the development and application of regulation by:

- involving government agencies that administer regulation that has a general impact on SMEs relating to social, commercial and environmental risk<sup>10</sup>
- understanding and changing the relationship between regulatory agencies and SMEs by engaging them in shared decision-making processes. The project seeks to achieve regulatory changes by ‘doing with’ rather than ‘doing to’ SMEs to improve regulation.

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<sup>9</sup> See Appendix 1.

<sup>10</sup> The agencies were those identified as having the largest role in the Business Compliance Cost Panel work and in surveys. There are, however, many agencies that have a regulatory role for particular sectors, for instance the Ministries of Health and Education for health and education providers. The project may need to evolve to include ‘specialist’ regulators; this is a matter for the design of Phase Two of the project.

### **2.2.1 Research Objectives**

The overall **research objectives** of the SME “Good Regulation” Project are to:

1. Engender a shift in thinking about the way regulations are formed and utilised
2. Understand the relationship between regulator and regulated
3. Understand what helps and hinders obtaining the objectives of the regulation
4. Generate and support *collective responsibility* amongst agencies and SMEs for obtaining regulatory objectives and reducing unwanted compliance costs by enabling SMEs to thrive<sup>11</sup>.

The research methods employed by the project are necessarily developmental and iterative in nature to accommodate the complex dynamics of the relationships between (and within) regulatory agencies and SMEs and SME networks. Appendix One provides detail about the specific Developmental Work Research (DWR) methodology used. This is the first time that this method has been used in a government setting in New Zealand.

### **2.3 Outcomes**

The intended outcomes of the SME “Good Regulation” Project are that:

- Agencies and SME have a more sophisticated understanding about regulation as a social system.
- Means of developing and using regulation are improved in ways that make SMEs and regulator’s work easier, i.e.:
  - the costs and difficulties for SMEs in complying with regulatory requirements are minimised
  - regulatory compliance processes generate relevant, meaningful information for the management of enterprises
  - the supply of information needed by government from regulatory compliance processes is improved (at a reduced cost).
- Agencies and SMEs use shared processes to collectively develop and apply regulation in an ongoing fashion.

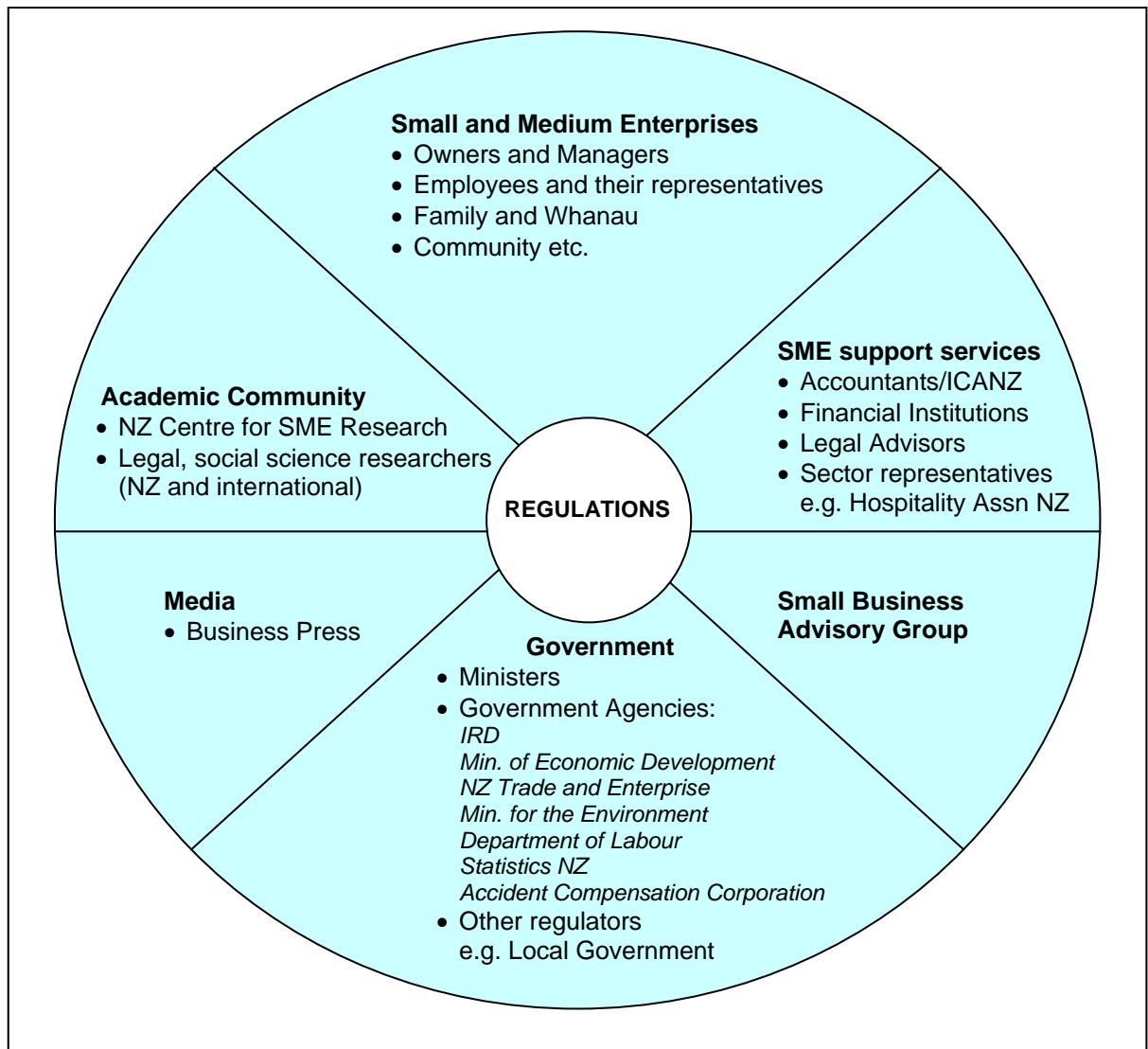
### **2.4 Stakeholders**

Because the Project examines the broad social systems of regulation of SMEs, the stakeholders are many and varied. Diagram 2. below illustrates at the highest level whom key stakeholders are for the overall project.

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<sup>11</sup> For specific information on the objectives of Phase One, see Appendix 1., Research Management Plan.

**Diagram 2. SME “Good Regulation” Project Key Stakeholder Groups**



### **2.5 The reasons for key stakeholder involvement**

The stakeholders broadly represent the elements that make up the ‘regulatory system’ for SMEs. No list can be complete, and almost certainly the diagram above will change as information is gathered on the system(s) that actually apply. The task is to approximately model the system and therefore those who are to be part of the project. Where there are gaps, they can be filled, or if they are too large to fill, at least identified for further work.

## **2.6 Related Projects**

There are many agency projects that are progressing separately to this project that seek to reduce compliance issues for SMEs. Some of these may have unintended effects, for instance the work of MED to allow Company registration online has increased direct registration but the office is not aware if this is reducing the advice that companies receive before they set up in business, and therefore might lead to increased failures. Examples of projects in development are:

- IRD are engaged in a project to make taxation easier for small business, <http://www.taxpolicy.ird.govt.nz/publications/files/html/makingtaxeasier/index.html>.
- MED has the SME Directorate and the Small Business Advisory Panel, also is looking to reduce reporting requirements for small companies. The Compliance Cost Unit in MED is working on a programme of better regulation, concentrating on.
- MfE have been actively engaging with enterprises to promote sustainable industry concepts, there is a group promoting triple bottom line management to enterprises. This group has only just made contact with the Department about the social dimensions of triple bottom line.
- DoL has been pursuing funding to roll out lessons learned from the “Active Pilot” project finished last year for employment relations, immigration and health and safety issues to be dealt with by the Department in a more holistic fashion.
- Stats NZ has been seeking to reduce compliance costs for SMEs. As a result of their participation in the SME “Good Regulation” Project the Company’s Office in Auckland (MED) and Stats NZ are meeting regularly to better integrate their activities when dealing with enterprises.

## **2.7 Other Agencies with Areas of Interest**

- NZ Customs (exporters and importers)
- Health (providers)
- Education (providers)
- MFAT
- Countries interested in trade agreements with NZ
- International regulators and organisations such as the OECD, APEC
- Centres of academic research into regulation: Harvard, LSE, ANU
- Think tanks, such as DEMOS in the UK.

### **3 Method of Delivery – Overall Project**

#### **3.1 Approach**

The SME “Good Regulation” Project has been divided into three Phases:

- Phase One – Understanding Issues (June 2003 to June 2004)
- Phase Two – Developing solutions (July 2004 to December 2005)
- Phase Three – Implementing solutions (from January 2006).

The project is based on the developmental research methodology of Engestrom and his colleagues at the University of Helsinki (Engestrom et al, 1966). Following Virkkunen, 2003 the approach moves beyond purely empirical and descriptive methods for analysing regulatory behaviour and practice, to an analysis of the inner structures and dynamic relationships that account for the problems associated with Regulation and SMEs.

#### **3.2 Phase One: Understanding Issues (June 2003 - May 2004)**

The information from Phase One is expected to provide a clear indication of exactly where regulatory compliance problems lie and to highlight areas where solutions are most needed. It will also uncover good practice in SMEs and government agencies that could be used to overcome those problems.

Through in-depth discussions and consultation with SME representative groups, SME owners and operators and government agencies, the Project will develop a thorough understanding of:

- how different regulations affect SMEs
- how they are developed and applied
- why collectively, regulations often are seen to impact negatively on SMEs.

In June 2004, the Department of Labour (DoL), as initiator of the Project, will launch the Project to the stakeholder groups, present the plans developed for Phase Two, including for future management of the project, and publicise the findings to date. DoL is contractually the current owner of the Project as the funds are allocated to it by MoRST. Geoff Bascand, Andrew Annakin and Bob White (General Managers of Labour Market Policy Group (LMPG), Employment Relations Service (ERS) and the Occupational Safety and Health Service (OSH) respectively) have been sponsors of the Project.

Detail of the content and delivery of Phase One is outlined below in section 4: Project Plan and Delivery Approach for Phase One.

#### **Phase One Objectives:**

- Establish a network of contacts and support within the regulatory Agencies and SMEs.
- Establish a base of tacit information and data (literature and primary data from agencies and SMEs) on the current regulatory environment.
- Educate and engage participants about the paradigm shift that is being attempted.
- Develop a clear summary of research components for Phase Two of the project.
- Launch the project to stakeholders.

**Intended outcomes of Phase One:**

- Commitment to shared generation and development of solutions to regulatory issues.
- A broad and multi-layered network of those involved in the project that runs through government and SME representative groups.
- Establishment of a shared language and understanding of regulatory terms and issues.
- Contextualised understanding about what is currently happening with regulations and SMEs.
- Definition of the scope and focus of Phase Two of the project as based upon Phase One outcomes.

**3.3 Phase Two: Developing Solutions (June 2004 – June 2005 / December 2005)**

Phase Two of the Project will use information from the previous phase to develop specific solutions to improve regulatory development and regulatory compliance requirements for SMEs. For example, solutions might include a single form to collect common regulatory information requirements, as well as processes and tools to help SMEs identify *when* they may need support to manage risks, so that regulatory compliance procedures are activated in support of businesses rather than at their expense.

This phase will be particularly interested in the development of heuristics; the means to enable SMEs to take the right approaches and have the right orientation, including when it is time to call for help.

The planning and resourcing will be confirmed in a Phase Two management plan at the beginning of this Phase (July-August 2004), once the direction is confirmed by the “Good Regulation” Forum. The owner(s) and sponsor(s) for Phase Two will be decided by the Interim Design Team.

**Phase Two Objectives:**

- Set up research team which will include SMEs, government agencies and researchers.
- Set up a management structure for the remainder of the project (including evaluation of lessons learned, and developing ways of documenting changes as they occur).
- Design a method for investigation of the areas of research interest.
- Develop and trial potential solutions and initiatives for resolving regulatory problems.
- Maintain enthusiasm and support for the shift in thinking to regulation as a ‘social system’ for SMEs.

**Intended outcomes of Phase Two:**

- Incremental understanding of the process of regulation and a sound backing in regulatory Agencies and the SME community.
- A number of tested and reliable solutions / tools to regulatory problems that could be disseminated in Phase Three.

All solutions developed during Phase Two will be trialled and refined. This process will require project staff to genuinely engage with SMEs and with regulatory agencies to ensure that potential solutions are robustly tested for their ability to reduce compliance costs and assist businesses to thrive. The process will include a plan to record the understanding gained from Phase Two, and distribute the documentation and information to a wider audience. Regular reporting to the relevant Ministers and funder (MoRST - timeframe to be defined by Interim Design Team) will be implemented to ensure the project stays aligned to strategic goals, and continues to work towards deliverables.

### **3.4 Phase Three: Implementing Solutions (planned to start January 2006)**

The overall goal of Phase Three is to provide practical support for a change in regulatory practice, so that SMEs and Government both benefit from regulatory activities. Phase Three focuses on the broader dissemination of regulatory solutions / tools that were developed in Phase Two.

#### **Phase 3 Objectives:**

- Achieve a 'paradigm shift' in understanding the role of regulation with SMEs.
- Distribute and implement the solutions / tools developed during Phase Two.
- Publish and disseminate the understanding gained from the project.

#### **Possible outcomes of Phase Three:**

In particular this phase may include:

- Establishing interagency networks that support co-ordinated regulatory development (including organisational structures if these are necessary).
- A change programme for any regulations found to be inappropriately burdensome.
- Development and promotion of commercial tools that assist enterprises in managing risk and regulation.
- Shared understanding (between government agencies and SMEs) of good regulatory practices and how to apply and support these to aid Businesses.

### **3.5 Project Timeline**

The overall timeline is set out below:

<b>Phase</b>	<b>Delivery Date</b>
Phase One – Understanding Issues	June 2004
Phase Two – Developing Solutions	June 2005 – December 2005 (12-18 months)
Phase Three – Delivery of Solutions	June 2005 – June 2006.

### **3.6 Funding**

In January 2003, funding from MoRST's CDRP was approved for the SME "Good Regulation" Project developed by LMPG. The funding for the project has been allocated to DoL, who are leading Phase One of the project.

Each Agency will fund its own participation in the project, absorbing costs of staff, travel and other incidentals that would be attributable to the project.

The budget outlined in the Cabinet funding request (see Appendix 2) will fund external costs for the project as outlined below.

<b>Financial year</b>	<b>Project Phase</b>	<b>Funding (GST inclusive)</b>
2003/4	Phase One – Identifying Issues	\$127,000
2004/5/6	Phase Two – Developing Solutions	\$403,000
2005/6	Phase Three – Implementing Solutions	\$120,000
<b>Total</b>		<b>\$650,000</b>

Additional funding may be sought from the Government or individual agencies involved in the Project as the Project progresses, and the key requirements for the research are identified and scoped. The CDRP is designed to allow projects to develop; it is an expectation that agencies using that funding will contribute with time and other resources to the funded projects.

### **3.7 Project Assumptions**

The project goals and outcomes depend on a number of key assumptions, as outlined below:

<b>Assumption</b>
1. Agencies are willing to devote time, funding and resource to the project.
2. Current regulatory development / regulatory models are generally NOT based on an understanding of regulation as a connected social system.
3. It is feasible to generate and support the establishment of shared collective responsibility between agencies and SMEs to develop and apply regulatory solutions

### 3.8 Risks and Limitations

The table below presents possible issues that jeopardise the project's ability to achieve its intended outcomes:

<b>Risk</b>	<b>Consequence</b>	<b>Priority</b>	<b>Treatment Plan</b>
The budget will be insufficient for the work to be undertaken.	The goals of Phase One will not be achieved.	Medium	Identify requirements early and apply for additional funding.
Political risk that key stakeholders will not support the cross Government nature of the project.	The goals of Phase One will not be achieved.	Medium	Project Leader/Initiator to contact individual key stakeholders and seek support.
There is insufficient time to complete all the exploration groups and workshops.	The quality of the output will be poor, and the "Good Regulation" Forum will not succeed.	Medium	Plan carefully to deadlines and add more resource if required.
SMEs may be inadequately represented or not be representatively spread, and may not feel involved in the project.	SMEs will not recognise the output as representative.	High	Cross check SME representation to ensure that it is adequate. Recruit more SMEs in selected areas.
The evolving nature of the research methodology may lead to additional costs if it takes longer than anticipated to achieve a result.	The Budget will be insufficient for each Phase.	High	Ensure processes are focussed on the end goal and assist the research team to stay organised. Ensure best use of resource for each task.
Use of the DWR research methodology will be unsuitable for a project of this size (only proven in organisations to 300 people).	The research will fail to produce any meaningful results.	Medium	Risk assessment of the research methods and input by R&E into the research process. Peer review by the Universities of Helsinki, Hamburg and Wollongong

## **4 Project Plan and Delivery Approach for Phase One – Understanding Issues**

### **4.1 Overview**

Phase One of the project involves gathering information from the main government regulatory agencies that have impacts for SMEs and some SMEs, on how they work with each other, and sharing that information within a small project Interim Design Team (IDT). IDT members will visit with other agencies or SMEs as part of the information sharing process, which will initially take the form of exploration group meetings. Phase One of the project will establish the research methods, theoretical models, and networks to support the initiatives planned for Phase Two. This can only be done, however, from a basis of understanding what the issues are for the key stakeholders in regulation of SMEs.

Phase One will deliver the outcomes detailed below to a “Good Regulation” Forum of the next phase of the project, to be held on 23 June 2004. This function is organised to share and test two outputs from this stage of the project with government agencies, researchers (from New Zealand and overseas), SME representatives and other stakeholders:

- Development of the theoretical models to be used in research; these models will build on the work undertaken already in NZ (and overseas).
- Selection of problem or initiative areas for further research; and for the development and trial of potential solutions in Phase Two.
- Establish a network of participants with different levels of engagement to ensure the productivity and success of the project.

This section provides an overview of the research method, deliverables and processes. Details are contained in Appendix One – the Research Management Plan.

### **4.2 Intended Outcomes from Phase One**

The intended outcomes of Phase One are:

- Commitment to shared generation and development of solutions to regulatory issues.
- A broad and multi-layered network of those involved in the project that runs through government and SME representative groups.
- Establishment of a shared language and understanding of regulatory terms and issues.
- Contextualised understanding about what is currently happening with regulations and SMEs.
- Definition of the scope and focus of Phase Two of the project as based upon Phase One outcomes.

### **4.3 Deliverables for Phase One:**

Deliverables for Phase “One include the following plans and interim work products:

1. Project Overview and Management Plan
2. WEB Research Management Plan, which will include
  - design of Phase One
  - research process
  - methods of generating, collecting, analysing data from Agency and SME groups
3. Research Report for Phase One, which will include:
  - A model for a typology of SMEs and regulation
  - A summary of findings from Phase One
  - Recommendations for content and potential areas of research for Phase Two.

The following interim work products will also be produced, as a by-product of the process

- Sample model of Agency/SME conceptual map;
- Trial of the conceptual map with Exploration Group data with IDT
- Exploration Group overall summary of tensions and contradictions
- Eight individual Exploration Group summaries
- Tutorial on activity theory and DWR for IDT meeting
- Boundary-crossing tools for communicating with broad range of stakeholders
- list of contacts within SMEs and their representatives, and government agencies

The information from Phase One is expected to provide a clear indication of exactly where regulatory compliance problems lie and to highlight areas where solutions are most needed. This will set the framework for further research to be carried out in Phase Two.

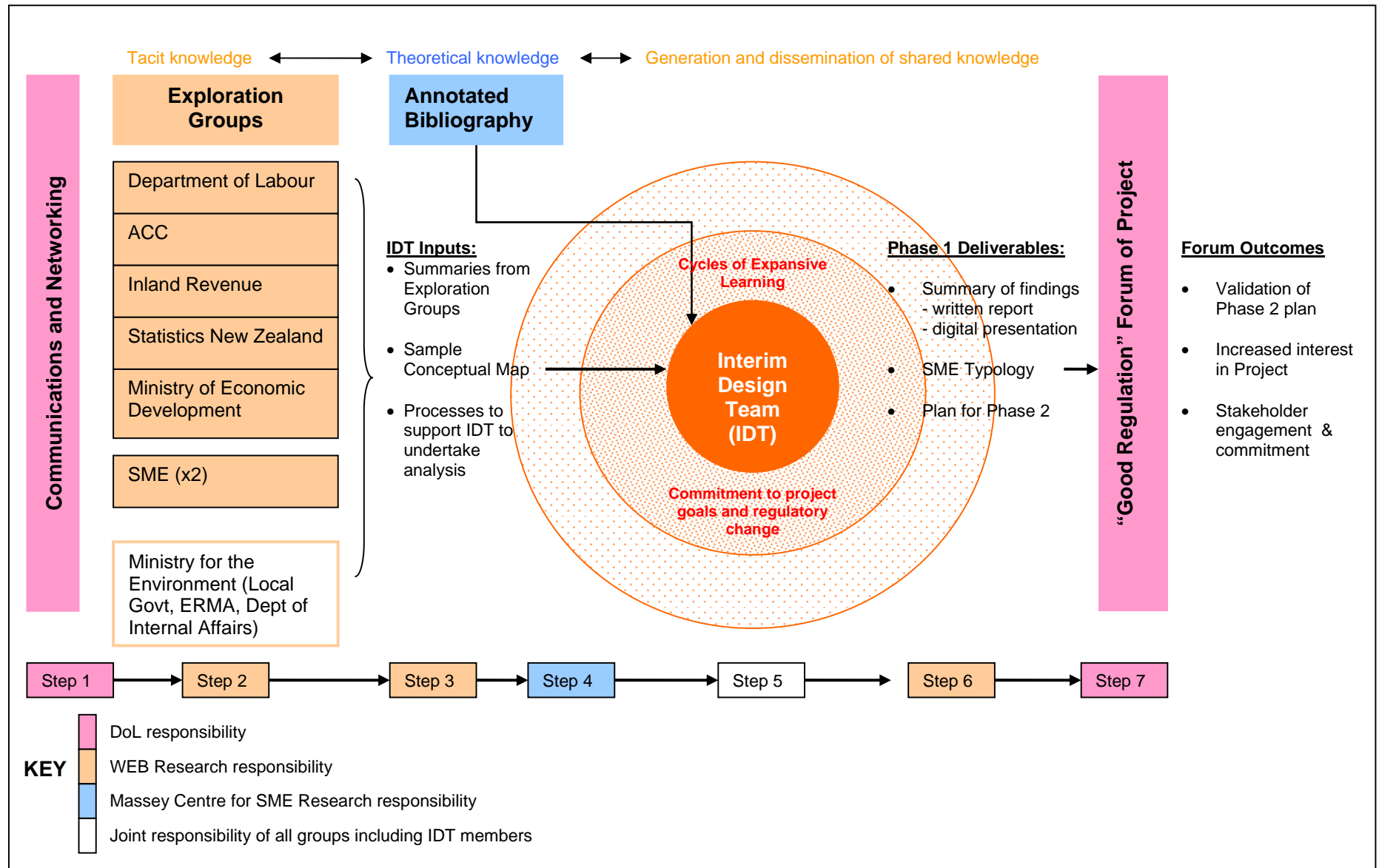
### **4.4 Approach**

Research consultants WEB Research have been contracted to assist DoL in completing Phase One of the project.

The research methodology for Phase One is based on a particular application of Activity Theory and DWR, developed by WEB Research and DoL for this project. The approach assumes that, in complex situations of regulatory activity, the focus needs to be on the dynamics of the process. For this ‘we need a theoretical framework and a systemic unit of analysis that allows us to analyse the relationships between different elements in human activity’ (Virkkunen and Kuutti, 2000).

Phase One (Understanding Issues) stimulates the first steps of an expansive learning cycle, including fostering ‘a process of collaborative analysis and modelling’ (Engestrom, 2000:1966). Engestrom argues that this is a crucial precondition for the creation of a shared vision for the ‘expansive solution’ of systemic problems:

Diagram 3. Structure for Phase One of SME “Good Regulation” Project



To achieve the outcomes listed above, the following seven steps are needed:

#### **4.4.1 Step One – Establish contacts and communication strategy**

##### *Establish contacts*

WEB Research in conjunction with Richard Whatman of DoL will initiate interaction with existing and new contacts within regulatory Agencies and SMEs to outline the project and its goals. This will involve initial meetings with individuals within agencies, and is designed to set up contact networks in each agency to enable future access to key stakeholders to contribute to the research activities.

##### *Communications Strategy*

A communications strategy will be developed for Phase One of the project, outlining key messages, key audiences, what material is required for each audience, in particular the “Good Regulation” Forum, and how the messages will be delivered to that launch.

##### **Deliverables / Interim work products**

- Joint Deliverable (WEB and DoL) – list of contacts within SMEs and their representatives, and government agencies
- WEB deliverable - boundary-crossing tools for communicating with broad range of stakeholders (design of exploration groups, IDT and forum)
- DoL deliverable – communications strategy for the “Good Regulation” launch with Litmus.

#### **4.4.2 Step Two – Exploration Group Meetings**

A series of eight exploration group meetings<sup>12</sup> will be held, to communicate the goals of the project, surface tacit knowledge, and gather feedback on areas of importance or concern, focussing on interactions with SMEs and regulation setting practice.

The goal of the exploration group meetings is to:

1. Ensure participants understand the project’s objectives, content and deliverables, and confirm the role of each participant.
2. Develop a record of participants’ views on:
  - what is working well between the Agencies and SMEs in the area of regulation
  - regulatory issues and problems.
3. Collect data that can be used to generate a conceptual ‘map’ of the relationships between the Agencies and SMEs when dealing with regulation.

Exploration group meetings will be held with the following five agencies:

- DoL (including Occupational Safety and Health and Employment Relations Services)
- ACC
- Ministry of Economic Development (MED - with NZ Trade and Enterprise)
- IRD
- Statistics NZ

Ministry for the Environment has been invited to participate and its possible role is under consideration by the Ministry.

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<sup>12</sup> Depending on Ministry for the Environment’s involvement.

Each exploration group will comprise a mix of management, policy and operational staff from the particular agency, together with a person from at least one of the other agencies (called the visitor). The visitor will provide an 'outsider's' perspective, and help facilitate a clearer explanation of the roles and responsibilities of the agency they are visiting. The exploration group meetings will be organised and facilitated by WEB Research.

Two further exploration group meetings will be held with SMEs and their representatives, in Auckland and Christchurch.

DoL staff and WEB will record the meetings. DoL staff will compile detailed meeting notes for each meeting, providing the first field data for the project.

***Deliverables / Interim work products***

- DoL will write up detailed notes for each meeting, from DVD's provided by WEB.
- WEB will produce a summary of the major points of each exploration group based on the detailed notes.

***4.4.3 Step Three – Group Analysis of Data Collected and Conceptual Maps***

The data generated at the exploration groups will be used to develop a conceptual map, based on an activity system model, of the regulatory activities of each agency, and their interaction with SMEs. The data will be analysed by WEB Research, DoL and the IDT using the analysis techniques described in Appendix One.

***Deliverables / Interim work products***

- sample conceptual map
- summary of emerging issues.

***4.4.4 Step Four – Annotated Bibliography***

An annotated bibliography of literature relating to regulatory practice and SMEs (produced both internationally and in New Zealand) will be compiled to supplement the data collected from the exploration groups. This work will be completed by Claire Massey and Kate Lewis of Massey University.

***Deliverables / Interim work products***

- Mind map of how information will be organised
- Annotated Bibliography

***4.4.5 Step Five – Interim Design Team Meetings***

The project will establish the IDT. The IDT will be comprised of:

- Visitors from the participating Agencies (IRD, DoL, Statistics NZ, Ministry for Economic Development/NZ Trade and Enterprise, ACC, and (to be confirmed) Ministry for the Environment).
- SME exploration group members (up to 5).
- Research team members (WEB Research and DoL staff).

All participants will have participated in exploration group meetings. An approach for the IDT meetings, their format and agenda, will be agreed within the research team.

Three IDT meetings will be held to validate the data, and set the strategy for moving forward into Phase Two. WEB Research will organise and facilitate these meetings. From the analysis of data collected in the exploration groups, and the framework for the annotated bibliography, a set of information will be compiled as key inputs into the IDT meetings.

#### ***Deliverables / Interim work products***

- IDT team understanding of the principles of activity theory and the models to be used (so that they can apply them to the data)
- summary of IDT feedback and issues arising
- tutorial on activity theory and DWR for IDT meetings

#### ***4.4.6 Step Six – Phase One deliverables and planning for Phase Two***

The IDT process will produce the outcomes of the research process in Phase One. The issues arising will be summarised and agreed with the IDT. The IDT and WEB Research will work together to document the outcomes and produce a final report for Phase One, including recommendations for Phase Two.

This base documentation will be used to generate communications material for the “Good Regulation” Forum of the SME “Good Regulation” Project in June 2004. DoL, in consultation with WEB Research, have key responsibility for preparing this material.

The draft report will be produced prior to the “Good Regulation” Forum (Step Seven) and include the material to be presented to the Forum. This will be updated for the results and outcomes of the Forum to form the Final Report for Phase One.

#### ***Deliverables / Interim work products***

- Research Report for Phase One - The IDT will be in communication with WEB Research who will produce a Research Report for Phase One, which will include:
  - A model for a typology of SMEs and regulation
  - A summary of findings from Phase One
  - Recommendations for content and potential areas of research for Phase Two
  - Recommendations for the structure and ownership of Phase Two.

#### ***4.4.7 Step Seven - “Good Regulation” Forum***

In June 2004, the results of Phase One – Understanding Issues will be presented to a “Good Regulation” Forum of the project, involving Ministers, senior Government officials, New Zealand and international researchers, and SMEs and their representatives and others. The launch is specifically aimed at consolidating the profile of the project and gathering stakeholder support for Phase Two. This stakeholder release will outline the progress to date and the plan to move forward.

This function is an integral part of the research method, and as such will contain a workshop component to provide an opportunity for stakeholders to have input into the process, by sharing and testing two outputs from this stage of the project

- Development of the theoretical models to be used in research. These models will build on the work undertaken already in NZ (and overseas)
- Selection of problem or initiative areas to be further researched or trialled in Phase Two.

#### 4.5 Phase One Milestones and Deliverables

Step	Deliverable Milestone	Responsible	Date/ Progress
One	Establish contacts Set up contacts in various agencies, SMEs and SME representative groups	DoL / WEB	<b>December 2003</b>
One	Communication Strategy for "Good Regulation" Forum	DoL	<b>15 March</b>
One	Identify initial group of Agency and SME participants (visitors)	WEB / DoL	<b>December 2003</b>
One	Research budget scoped for additional activities	WEB	<b>5 March</b>
One	Revised Research Plan completed	WEB	<b>12 March</b>
Two	Hold Exploration Group meetings <ul style="list-style-type: none"> <li>• Department of Labour</li> <li>• ACC</li> <li>• Inland Revenue</li> <li>• Statistics NZ</li> <li>• SME – Auckland</li> <li>• Ministry of Economic Devt/NZ Trade &amp; Enterprise</li> <li>• SME – Christchurch</li> <li>• Ministry for the Environment</li> </ul>	WEB	<b>19 September 2003</b> <b>31 October 2003</b> <b>17 November 2003</b> <b>20 November 2003</b> <b>24 February 2004</b> <b>25 February 2004</b>  <b>24 March 2004</b> <b>under discussion</b>
Three	Walk through conceptual map process with project team	WEB / DoL	<b>26 February</b>
Three	Finalise material for IDT meeting one	WEB	<b>12 March</b>
Three	Plan for "Good Regulation" Forum and book venue (IDT)	DoL / WEB	<b>19 March</b>
Four	Annotated Bibliography - mind map of organisation - bibliography	Claire Massey Kate Lewis	<b>19 March</b> <b>23 June</b>
Five	Interim Design Team Meetings	IDT	<b>26 March</b> <b>19 April</b> <b>10 May</b>
Six	Report on findings and next steps for Phase Two	WEB	<b>17 May</b>
Six	Finalise material for "Good Regulation" Forum and engagement with stakeholders prior to Forum	DoL	<b>21 May</b>
Seven	"Good Regulation" Forum	DoL	<b>23 June</b>
Seven	Final Report	WEB	<b>30 June</b>

#### **4.6 Stakeholders**

The stakeholders for Phase One are the same as those outlined in section 2.4 - Stakeholders.

#### **4.7 Owner and sponsorship of Phase One**

Additional emphasis is placed on the role of DoL, as the Sponsor of Phase One and the custodian of the Phase One budget.

#### **4.8 IDT members for Phase One**

Below the current members of the IDT from SMEs and agencies:

<b>SME and agency visitors</b>		
Greig Duncan	Auckland City	Advocate and small business owner
Alison Quesnel	Independent Advisor	SME mentor and Director
Jane Puddephatt	Akl Regional Council	Environmental Management
Steve Woodside	Canterbury Employers Chamber of Commerce (CECC)	Business Advisor
Dave Smith	WEBTEX	SME IT Business owner and SME consultant
Raymond Burr	ACC	Senior Market Segment Specialist, Marketing
Elizabeth Jones	Statistics NZ (Akl)	Advisor, Integrated Data Collection Programme
Melanie Edwards	Inland Revenue Dept	Design Advisor, Student Loans
Mary Harris	Ministry of Economic Development	Manager Companies Office, Auckland
Bob White	Department of Labour	Occupational Safety and Health, Policy Analyst

#### **4.9 Project Structure**

The project structure for Phase One is very flat, with loose relationships being established with the various contributing parties. The Project Leader holds responsibility for delivery of the outcomes, and for the budget. The structure for delivery of project outcomes is outlined in section 4.1 Overview.

#### **4.10 Project Management**

The project management oversight task is managed by DoL staff through two weekly meetings:

- the Project Team meeting will focus on project tasks and deliverables
- the Research Team meeting will focus on research techniques and outcomes.

Notes and action points will be prepared for each meeting, and reviewed at the next. Responsibility for specific deliverables is outlined in the project plan, and the WEB Research plan.

The DoL Research and Evaluation team will undertake a critical review of the project to ensure that the research techniques for Phase One are robust and the results meaningful.

## 4.11 Project Team Roles and Responsibilities

### 4.11.1 Project Team Resources

The table below outlines the roles within the project, and the responsibilities of each are detailed below:

Role	Name	Organisation
<b>Individual Roles</b>		
Project sponsors and oversight in DoL	Geoff Bascand Andrew Annakin Bob Hill	DoL - LMPG DoL - ERS DoL - OSH
Project Owner	Julian Silver	DoL
Project Leader / Initiator	Richard Whatman	DoL
Researchers	Ken Wilson Phil Capper Roberta Hill Zlatko Bodrozic	WEB Research WEB Research WEB Research WEB Research (observer)
Project Research Technical Advisors	Karen Wong Nicole Brown	DoL R&E (LMPG) DoL R&E (LMPG)
Analysts	Jo Burton Frances Butcher Celia Galbraith Ana Gilling	DoL (LMPG) DoL (OSH) DoL (LMPG) DoL (LMPG)
WEB Researchers	Phil Capper Roberta Hill Ken Wilson	WEB Research WEB Research WEB Research
Visitors (one per Agency)	Raymond Burr Elizabeth Jones Melanie Edwards Mary Harris	ACC Statistics NZ (Akl) IRD Ministry of Economic Development/ NZ Trade and Enterprise
SME IDT representatives Small Business Advisory Group -	Bob White  Greig Duncan Alison Quesnel Jane Puddephatt Steve Woodside Dave Smith Leanne Holdsworth	DoL - OSH MfE – not representing Auckland City and SME SME mentor and Director Environmental Management Business Advisor IT Business owner Business Consultant
Project Manager	Sue Taylor	DoL
Literature Researchers	Claire Massey Kate Lewis	Massey University Massey University

<b>Role</b>	<b>Name</b>	<b>Organisation</b>
<b>Composite Groups</b>		
Exploration Group	Visitors Staff from a broad range of key areas within the Agencies and SMEs (total of 90 participants over 8 exploration group meetings to date) Richard Whatman Roberta Hill Phil Capper Jo Burton	Agencies and SMEs  DoL WEB Research WEB Research DoL
IDT	Visitors Richard Whatman Roberta Hill Phil Capper Nicole Brown Karen Wong	Agencies and SMEs DoL WEB Research WEB Research DoL DoL

#### **4.11.2 Project Team Responsibilities**

##### ***Project Sponsors/Strategic oversight – (DoL)***

Department of Labour have responsibility for strategic oversight for Phase One. How much responsibility remains within the Department for subsequent Phases will depend on the management structures that are devised in the IDT, and agreed by DoL.

The project sponsors will ensure that Phase One stays on track within and outside DoL, and so will have final accountability for the overall running of the Project over this period. They will also ensure that the necessary steps are taken to anchor the Project within DoL.

##### ***Project Owner***

The project owner holds the budget and budget sign off responsibility for the project. Julian Silver has sign-off for resources as the CDRP funds have been placed with the SWWELL team's budget in Labour Market Policy Group, DoL.

##### ***Project Leader / Initiator***

The project leader is the spokesperson for the project, through all interactions. He will promote the Project to other agencies, SMEs and others to recruit people for it. He will ensure that the steps that are agreed to are followed through, and work closely with the 'visitors' and with WEB to achieve this. He will also work with the Project Manager to ensure that specific tasks are allocated, resourced and completed.

##### ***Project Research Technical Advisers***

The role is to consider the methodological development, ensuring rigour and testing the assumptions of WEB, the project leader, and the IDT. This role is particularly important while formal inter-agency structures are not established, as Phase One will reflect on the credibility of the Project and DoL, particularly as the methods and process are novel. Karen Wong and Nicole Brown are undertaking this role.

### ***Project Analysts***

Analysts assist the visitors, project leader / initiator and advisers to make sense of the information and undertake project tasks as assigned. They will also assist with drafting communications, for instance introductory letters to agencies or SMEs, organising meetings, note taking etc.

### ***WEB Researchers***

WEB Research will be consultant researcher during Phase One. They will generate information, design developmental research work processes and stimulate cycles of expansive learning among the project team, exploration groups and IDT; as outlined in the Research Plan (see Appendix One), They will be responsible for the delivery and presentation of the research data.

### ***Agency visitors (one per Agency)/ SME visitors***

The visitor is part of an exploration group, and then joins with other agency and SME visitors in the three IDT meetings. The visitor 'carries' their agency or SME perspectives into the IDT. They must, therefore, be proactive in seeking people out and maintaining communication channels both within and outside their Agency.

The visitor has a unique role. They 'visit' another agency (or accompany researchers on visits to SMEs). They assist WEB Research to ask the 'naïve outsider' questions during the exploration group meetings and to act as a 'mirror' for that agency or SME within the IDT meetings. – speaking from their own experience, rather than as a representative of their government agencies, or for all SMEs. The Project depends on the gathering and communication of information on what agencies and SMEs are doing with regulation, including what people do not already know and understand.

### ***Project Manager***

The project manager will keep track of expenditure, timing of events (meetings, the launch etc) and undertake other tasks to make these things happen. Duties include preparation of project plans and management plans, risk assessment, budget tracking and communications planning (in conjunction with the project leader). They will work closely with the leader, advisers, analysts and WEB to maximise the development of the Project.

### ***Literature Researchers***

An annotated bibliography is being prepared under contract to DoL by Massey University's Centre for SME Research. The bibliography will be used to assist the IDT prepare Phase Two.

## ***4.12 Phase One Project Budget***

As outlined above, each Agency will fund its own participation in the project, absorbing costs of staff, travel and other incidentals that would be attributable to the project.

In recognition of SME's contribution to the research, for Phase One at least, each SME attendee at exploration groups will be re-imbursed for travel and incidental costs by payment of DoL allowances.

Additional budget is required for the completion of Phase One, and this will be sought from DoL in the first instance. This is due to the iterative nature of the research method, and the additional external resource required to supplement the project team. The Project Sponsors are requested to consider the additional budget sought at the meeting of 15 April, in order to progress approval of that funding from within the DoL.

Detailed cost components for Phase One are outlined in the DoL internal version of the Overview Document.

## SME “Good Regulation” Project: Phase One – Understanding Issues

### Research Management Plan

Author: WEB Research (with Department of Labour)

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## Review Version history – Research Management Plan

Release Date	Author of Version	Version	Changes
15 March 04	Roberta Hill	Research Management Plan finalV2	Created by Roberta and Phillip for circulation to project team for review.
16 March 04	Sue Taylor	Research Management Plan V2.1Draft (corrupted)	Sue included appendices and other detail, some formatting.
19 March 04	Sue Taylor	Research Management Plan V2.2Draft	Sue removed corruption, reviewed Nicole's comments, re-organisations and re-incorporated appendices.
21 March 04	Richard Whatman	Research Management Plan, creation as Appendix 1	Richard removed repetition vis-à-vis the Project Overview document, reformatted and placed in the body of the Overview document.
26 April 2004	Sue Taylor	Updated as Appendix 1	Sue updated Appendix 1 to reflect finalised Research Management Plan V3.0Final

### 1 Introduction

The evolving nature of understanding about regulation and its impact on SMEs within the NZ context has prompted the Department of Labour (DoL) to develop a project that seeks to increase understanding of regulatory issues as they apply to SMEs (see Project Overview and Management Plan).

This Research Management Plan relates specifically to Phase One – Understanding Issues of the broader Project (Phase One - July 2003 to June 2004). Its purpose is to clearly identify the scope of the research deliverables for Phase One. The Research Management Plan in Appendix One (this document extract) should be read in the context of the Project Overview document as a whole. It does not repeat information contained in the Overview document.

### 2 Overall SME “Good Regulation” Project Research goals

#### 2.1 Objectives

The overall goal of the SME “Good Regulation” project (as stated in the funding request to the Ministry of Science Research and Technology - MoRST) is: **to enhance the economic and social productivity of New Zealand SMEs**, as stated above in the Overview document.

#### 2.2 Research Rationale for the Overall Project

The SME “Good Regulation” project has been designed to construct a ‘research laboratory’. The project deliberately seeks to merge the usual ‘silos’ that apply in the development and application of regulation by involving SMEs and agencies together in an investigation, development and re-design process.

**Research methods** will be employed by the project to:

- Facilitate cycles of expansive learning (defined in Section 9).
- Explore the dynamics of the relationship between regulator and regulated in order to distinguish how the attitudes and situational factors affect the final outcomes of the regulations.
- Identify the circumstances in which the regulatory objectives for both regulator and regulated are best achieved, and the barriers to achieving them.
- Develop and trial means of removing or reducing barriers to 'good regulation' (Phase Two).

### **2.3 Project Approach**

To achieve its objectives the project has been structured into **three separate phases**.

- **Phase One:** Understanding Issues (June 2003 – June 2004). Understanding issues through in-depth discussions and consultation with SME representative groups, SME owners and operators and government agencies.
- **Phase Two:** Developing Solutions (July 2004 – December 2005). Testing the analysis and developing solutions. Using information from Phase One, the Project will develop specific solutions to improve regulatory development and compliance requirements for SMEs.
- **Phase Three:** Delivery of Solutions (Planned to start January 2006). In Phase Three, the Project aims to bring about change in regulatory practice so SMEs and Government both benefit from regulatory compliance activities.

## **3 Overview of Phase One – Understanding Issues**

### **3.1 Research Questions for Phase One – Understanding Issues**

The following issues and questions emerged in the setting up of Phase One of the project (March – July 2003). These questions generated the design of the exploration group and interim design team processes, and are being tested and explored in Phase One, particularly in the Exploration Groups and in the Interim Design Team process:

- what are regulations?
- what is 'regulation-making' and who does this?
- what is the difference between regulation and other rules?
- what is the difference between regulation and good/best business practice?
- what is the relationship between the two?
- when is the government or an SME involved in one process and when another?
- how do agencies and SMEs distinguish between the two processes (regulation and good business practice), and do they need to?
- what 'realities' do agencies and SMEs face in managing regulation?
- what does 'regulation' mean?
- what is an 'SME' from the perspective of government
- why do these things matter?

## **4 Research Methodology**

Phase One of the Project has adopted a methodological approach known as Developmental Work Research (DWR) to examine regulatory issues. DWR is a methodology based on principles of activity theory and has been applied in this project in order to reflect and support the evolving understandings about regulation as a social system that are developing internationally and within NZ. This methodology section provides a brief explanation of how regulation is becoming increasingly thought of as a social system and explains why a DWR – activity theory based methodology is appropriate for the Project.

#### **4.1 Research Philosophy - Understanding 'Regulation' as a System of Activity**

Although theoretical work with particular resonance for NZ is occurring in the UK, US and Australia<sup>13</sup> there is little consistent agreement, both internationally and in NZ, over the definition of 'regulation' and there is considerable debate over how to usefully define what constitutes a small or medium business enterprise (SME)<sup>14</sup>.

Despite this, OECD countries are adopting some similar philosophical approaches to regulatory development and application. The two most important philosophical trends relevant to the Project and Research Plan are firstly, a trend towards general or 'aspirational' regulatory standards that allow enterprises to adapt compliance procedures to meet their unique and often changing circumstances. Secondly, increasing realisation that regulatory problems are commonly associated with *application* – in particular, the degree of discretionary decision-making inherently involved in the application of regulation - rather than from the existence of regulation itself. As a result, regulatory 'rules' have become less important than actual social interactions, namely, the practice and activities of regulators and the regulated (for more detail refer to Appendix 3 Project Overview and Management Plan).

However, the scale of regulatory activity also means that regulatory practices and conceptualisations continue to differ between government agencies, industries and individual SMEs - making it difficult for regulatory issues to be resolved in a manner that co-ordinates the impact that regulation has on SMEs. Within New Zealand, government is seeking to achieve effective regulatory change. Regulatory compliance costs have been recognised as a legitimate issue for business, and reflected in a number of government directives, and increasing emphasis is being placed on the need to use whole-of-government approaches to resolve regulatory concerns.

These circumstances suggest that there are opportunities to begin generating an activity-based understanding and practice of regulation with the NZ context. With sound knowledge about regulatory practice across agencies and SMEs being accumulated iteratively, using methods based upon principles of activity theory and DWR that can accommodate multiple perspectives. These methods and principles are described below.

#### **4.2 Developmental Work Research**

Developmental Work Research is based on a particular application of activity theory that has been developed jointly between WEB Research and the Department of Labour. The main principles of the DWR approach are explained below.

##### **4.2.1 Activity Theory**

Activity theory is a theory of learning, innovation and change in conditions of complexity where research can be used as a developmental tool (Engestrom, 1996). Activity theory views people as co-creators of their learning environment and agents of change with the power to act (Roth, Tobin and Zimmermann, 2001). Attitudes and behaviour cannot be adequately understood when separated from their practical context (Paine *et al*, 1998; Paine, 1997) .

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<sup>13</sup> The Centre for Analysis of Risk and Regulation, London School of Economics; the Kennedy School of Government, Program of Regulatory Policy, Harvard University; "Regnet", Australian National University.

<sup>14</sup> The US and UK have FTEs of 250 or less for medium enterprises; in NZ MED uses 1-5 as Micro, 6-20 for Small and 21-50 as Medium. These are used, along with financial turnover statistics as proxies of a definition, but their do not assist in determining what are the unique policy issues (if any) that exist for 'SMEs'

Activity theory is itself based upon five key principles that are summarised below:

1. The 'activity system', seen in its relationships to networks of other systems, is the **unit of analysis**. The activity is collective, oriented towards an 'object' and mediated (e.g. by rules or cultural norms).
2. **Multivoicedness**. An activity system is always a community of many points of view, traditions and interests, both individual and collective. This multivoicedness is multiplied in networks of interacting systems.
3. An activity system is the result of **historical evolution**. What happens now can only be fully understood against its own history.
4. **Contradictions are the basis of development**. Contradictions are *not* problems or conflicts, but deeply embedded structural tensions between elements of the system. Problems or conflicts (disturbances) are signposts that indicate the presence of contradictions.
5. There is always the **possibility of expansive transformation**. These are shared and deliberate journeys towards whole new sets of objects and purpose.

Activity theory is particularly suited to the goals of phase one of the Good Regulation Project, because it enables researchers to understand the *systemic connections* between the activities of particular government agencies and particular SME owners and the collective activity that constitutes regulation and regulatory practice. This includes 'the community of practice' engaged in developing, implementing and complying with the rules and the 'tools' (including heuristics, practices) used in the 'activity system' that arises from the history, culture and practice of regulation in New Zealand.

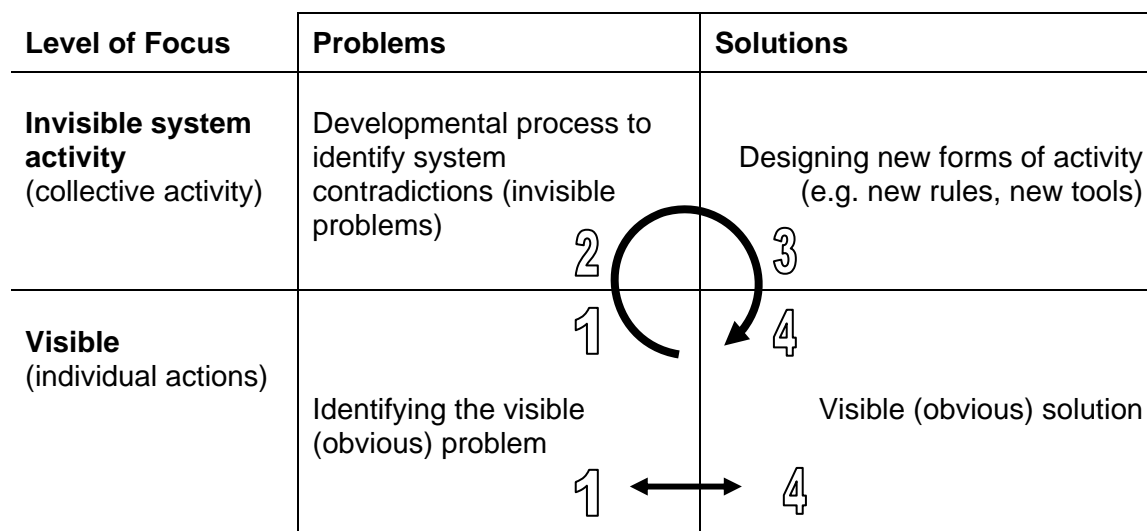
#### **4.2.2 Expansive Learning Cycles**

The main aim of developmental work research (DWR), which is based on Activity Theory, is to facilitate 'cycles of expansive learning' among participants. In the case of the Good Regulation Project, this involves facilitating learning and change amongst SME owner/operators and people, groups and business units in government agencies that will ultimately result in an effective regulatory system and set of practices that enable SMEs to thrive.

A cycle of expansive learning depicted below (diagram 2) depicts movement through a cycle of expansive learning and involves participants being taken through a structured process that helps them to:

1. begin with the visible or obvious problems
2. uncover invisible problems that exist because of system interactions and contradictions
3. design new forms of activity (e.g. new rules; new tools; new mental models) to address these problems and contradictions
4. Come up with new actions that provide novel solutions to systemic problems and contradictions (e.g. implement the new rules; use the new tools).

**Diagram 2: Managing Change using an Expansive Learning Cycle**



(Adapted from Seppanen, 2000; Botha, Hill and Tarbotton, 2002)

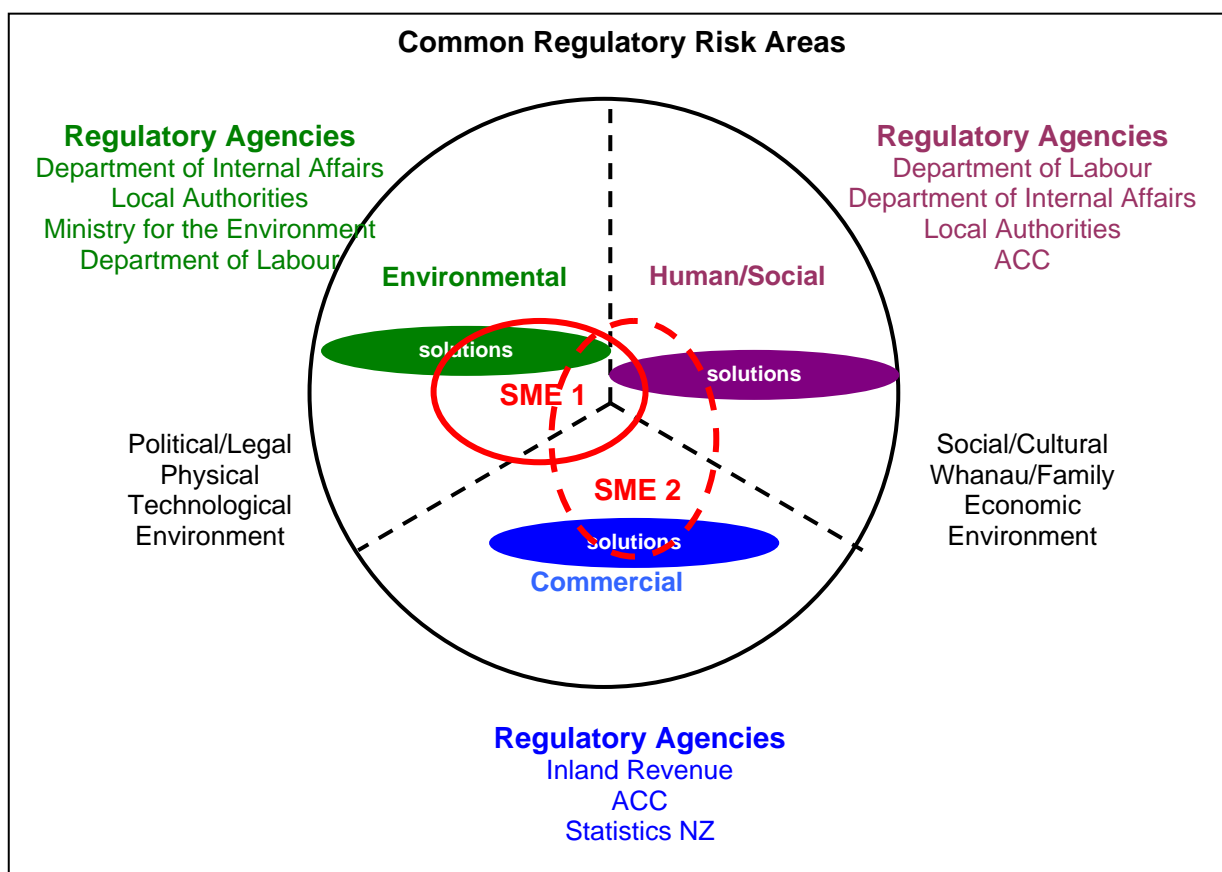
As shown in Diagram 2, commonly people manage change and resolve problems by connecting the “obvious” problem (box 1) to the “obvious” solution to that problem (box 4). Using the principles of developmental work research involves making the problems that exist because of systemic interactions and contradictions visible (box 2); designing new forms of the activity system to solve these problems (eg new rules or tools – box 3); and arriving at new solutions (box 4).

#### **4.2.3 Using integrated approaches to problem-solving in complex systems**

The particular DWR methodology developed for this project blends activity theory and expansive learning cycles to create a deliberately integrated and holistic problem-solving approach that can be used to engage participants in a structured process exploration, analysis and redesign. Using an integrated analytical approach to examine regulatory problems is particularly important for the goals of the Good Regulation Project because to date, regulatory solutions have been generated by government in a relatively segmented fashion and have remained focused on particular ‘domains’ of regulation, i.e. those associated with commercial, social/human or environmental risks. Agencies tend to ‘fall into’ one of these areas, given their particular regulatory responsibilities; for instance IRD with commercial risk.

Domain-specific regulatory solutions have not always been highly successful from an SME perspective, not least because SMEs are subject to regulation from all three domains and segmented solutions often contradict one another when translated into practice – as illustrated in diagram 3 below).

**Diagram 3: Segmented regulatory problem solving**



Secondly, international and New Zealand experience shows that individuals and organisations may be caught in their own history and have difficulties developing solutions, particularly when the systems and organisations involved have overlapping accountabilities.

Consequently this project focuses deliberately upon **the overall activity system associated with regulation and SMEs**, rather than the individual actions of SME owners or government agencies, so that the overall system of activity is considered the key unit of analysis for research purposes.

### **4.3 Rationale for Using DWR Methodology**

The SME Good Regulation Project defines regulation not as a set of rules, but as activities within an overall system of regulatory activity. DWR methodology is an appropriate basis for analysing the behaviour and practice of regulation because it allows the research to move from purely empirical and descriptive methods to ‘an analysis of the inner structures and dynamic relationships that produce the observable phenomena’ (Virkkunen, 2003). The methodology is constructivist. It is based on the assumption that there is no single ‘truth’, and that the purpose of the research process is to understand the different voices and perspectives of all the actors engaged in the activity being investigated (Ritva Engestrom, 1999).

Using an activity theory framework as part of a DWR methodology for this project involves analysing:

- the motivations of the different actors in the system (e.g. owners of SMEs, Ministers, policy analysts, and those who enforce regulations)
- their work practices (e.g. how government agencies establish and maintain communications with businesses using technologies such as the Internet, contact centres, conventional mail, as well as face to face contacts)
- the people and organisations with whom they interact and divide tasks (e.g. among government agencies; and between education and enforcement roles in occupational health and safety divided between the Department of Labour and ACC)
- How they perceive their joint activity and goals (e.g., do they think of regulation in compliance terms, or as fostering 'thriving enterprises', or both?)

Consequently, a DWR activity theory methodology contributes to the Project goals by:

- Surfacing the tacit, often undocumented, knowledge of those involved in the activity of regulation in New Zealand.
- Generating an open space for dialogue between agencies and SMEs outside their normal policy and operations' processes.
- Engaging both agencies and SMEs in a more robust analytical process to examine and understand the realities they each face in 'managing' the activity of regulation.
- Helping researchers and participants to develop a clear understanding of the issues that are associated with regulation.
- Giving the participating agencies opportunities to learn from each other and from SMEs about existing 'good practice'. In particular, the methods help to surface and share examples of good regulatory behaviour, systems, heuristics and tools – both within government and in enterprises.
- Using interactive consultative processes to communicate the overall goals and objectives of the Project to participants from government agencies and SMEs in order to facilitate and promote a sense of Project ownership amongst all stakeholder groups – especially the SMEs themselves.

The activity theory-based techniques that are being used in this project have been successful in other projects in New Zealand and overseas. Two examples of the successful application of DWR methodology in redesigning complex systems are:

- New Zealand's Formway Furniture in designing their award-winning 'Life' chair and redesigning their business structures and processes (Capper *et al* 2002; Hill *et al* 2003).
- Helsinki healthcare providers dealing with complex patient care problems (Engestrom, 2000).

## **5 Structure and design of Phase One – Understanding Issues**

### **5.1 Context of the overall expansive learning cycle**

In Phase One, the Exploration Groups, Interim Design Team process and the public launch create a space for dialogue within this overall system of expansive learning. Together with the Annotated Bibliography, and work from related projects like the Small Business Active Pilot, they provide ways of:

- surfacing the tensions and problems that the six government agencies and SMEs in the Exploration Groups identify in the system of regulation
- mirroring back, and testing, the research team's analysis of these problems, particularly in the actions and practices of individuals, or individual units/agencies, and owners/managers in SMEs, and
- beginning a more in-depth study of the deeper contradictions in the overall system; what is usually referred to as the systemic level of collective activity.

Where deeper contradictions have been identified, they provide the leverage, or springboard, for the redesign of key elements within the system in Phase Two of the Project. The research steps are as described in sections 4.4 and 4.5 of the body of the Project Overview and Management Plan.

### **5.2 Limitations of the DWR Approach**

The approach is experimental. This is the first time that it has been used in the world on this scale to tackle issues of regulation. It is a knowledge-intensive and resource-hungry process. This presents a risk to the project which is outlined in the risk register, and will be actively managed.

### **5.3 General data collection and analysis processes**

The following methods of data collection and analysis are used in the exploration group and IDT meetings:

- Verbatim videotape record written up by a DoL member of the research team
- Recorded observations by WEB and DoL researchers
- Written comments by participants during the meeting, in answer to three questions (see Appendix 2.2) are summarised
- Main points of the discussion are summarised on a whiteboard by members of the research team
- Ongoing development and trial of analytical models, such as the SME typology.

These five data sources are integrated into a summary by WEB Research in consultation with DoL personnel and circulated to participants. Together, these data sources are used to develop an overall conceptual map of the activity of regulation, based on an activity system model. A particular focus is the search for the contradictions within, and between, different activity systems (e.g., between particular agencies and SMEs; among agencies; and SMEs), and for the gaps at the boundaries between the different systems.

### **5.4 Intended storage of data**

Procedures are still to be finalised relating to the intended storage of data. Currently, WEB Research holds all written and video-recorded material from the Exploration Group meetings.

### 5.5 Procedures to handle ethical obligations to research participants

Detailed information from the exploration groups will be seen only by the research team. Summaries of the information, in particular key themes and issues, will be used when presenting exploration group material outside the research team. Information that could be attributed to anyone personally will only be used publicly or in a group wider than the research team if the person who could be identified agrees to that. An example of the letter sent to exploration group participants is included below in Appendix 2.5 - Ethics Letter – Exploration Groups

## 6 Resourcing and Budget

WEB Research will allocate the following resources to the project on a part time basis:

- Roberta Hill
- Phillip Capper
- Ken Wilson

It is estimated that a weekly commitment of 5 person days per week for the 16 weeks to 30 June, spread across the WEB team, will be required. Tasks and deliverables are outlined in the draft budget outlined below in Table 1:

**TABLE 1: WEB RESEARCH DRAFT BUDGET TO 30 JUNE 2004**

Estimated Work Required		Days actual to 28 Feb 04	Milestone / Deliverable
1.	Preliminary design work	6	
2.	a) Communications Strategy (enrol)	2	
	b) Tailored tutorial re DWR	2	Training complete
3.	Agencies – Exploration Group Meetings		
	a) 6 x visits (includes MfE and SME, ChCh)	12	
	b) 2 x SMEs	6	
4.	IDT Meetings - Estimated 5 hours per meeting, preparation, follow-up and liaison	12	
5.	Preliminary scan of data analysis	2	
6.	Design communication tools – internal seminar	4	
7.	Co-ordination and discussion	10	
		<b>56</b>	

Budget 1 March to 30 June 2004 (estimated for 16 weeks)		Budget to 30/06/04	Milestones / Deliverables
8.	Planning/reporting/reviewing (1 FTE day per week)	16 days	
9.	Prepare research plan (see also *)	10 days	Revised Research Plan completed

<b>Budget 1 March to 30 June 2004 (estimated for 16 weeks)</b>		<b>Budget to 30/06/04</b>	<b>Milestones / Deliverables</b>
10.	Ongoing support to IDT members and their work within their own agency/SME groups Organise and facilitate additional Exploration Groups (see also 5) and IDT meetings (1 FTE day per week)	16 days	
11.	Review and prepare materials that are grounded in the Exploration Group data, as input to the IDT process.	5 days	Summary of Issues for IDT meeting 1
12.	Develop and trial analytical tools for data gathering and processing within the IDT process; as inputs into the research design for Phase 2; and as research findings for the Report (see item 15) a) conceptual map, project diagrams, typology of SMEs, etc b) individual Exploration Group summaries and synthesis c) summary of the common tensions d) emerging set of contradictions in the form of tentative activity system models e) R&D associated with boundary-crossing lab Overall design and planning	16 days	Trial of the conceptual map process
14.	“Good Regulation” Forum – attendance and preparation of presentation material	7 days	
15.	Research Report Diagram of the project process and research process; model for a typology of SMEs and regulation; Exploration Group summaries of tensions and contradictions; overall summary; model of Agency/SME conceptual map; a trial of the conceptual map with Exploration Group data; a description of analytical tools used in the project; technical appendices;	5 days	Report on findings and next steps
16	Research Plan and budget for Phase 2, based on outcomes of Phase One)	5 days	
	<b>Total Estimated Days</b>	<b>80 days</b>	

### **Role of Researchers**

WEB Research will fulfil the role of consultant researcher on the project during Phase One, as they did for the setup phase. WEB Research will generate information and design processes for the further development of research methods for the project, and be responsible for the methods themselves and for the delivery and presentation of the research data and other deliverables as outlined.

## 7 Insights from the literature on activity, learning and practice

Activity theory views people as co-creators of their learning environment and agents of change with the power to act (Roth, Tobin and Zimmermann, 2001). There is a growing body of related literature that argues that attitudes and behaviour cannot be adequately understood when separated from their practical context (eg, Paine *et al*, 2000; Paine *et al*, 1998; Paine, 1997). Put differently, studies of knowing and doing need to be seen as interdependent. Historically these studies have been conducted in isolation (Paine, *pers. comm.*, 1999).

In the research field of learning, 'communities of practice' are being seen as the prime unit of analysis (Ahonen *et al.*, 2000; Paine *et al*, 1998). Research on learning processes also has to shift from a static view to one that is dynamic, particularly when dealing with complex, uncertain environments.

Similarly, *knowing* is increasingly conceptualised in the literature as a *process* (e.g., see Ammentorp, Morgan and Roca, 1996). As Blackler *et al* explain,

*There has been a shift away from thinking about knowledge as a commodity that individuals and organizations have or may acquire, towards the study of knowing as something that they do. The key question arising from this perspective is: how do people do their knowing? Answers to this question have highlighted the link between knowing and social processes. (1998:74).*

In their review of the knowledge management research field, Blackler and his colleagues point to the considerable recent interest in rethinking the concept of knowledge, and note that a consensus is beginning to emerge. They distinguish five images of knowledge in the literature (*ibid.*: 71-72):

They conclude that: "in the emerging global economy, knowledge that is embrained, Embodied knowledge *in which a physical presence is needed; involves 'knowing how'.*  
Embedded knowledge *knowledge contained in systemic routines; organisational capabilities.*  
Embrained knowledge *knowledge depending on conceptual, cognitive abilities; 'knowing that'.*  
Encultured knowledge *this is a process of achieving shared understandings.*  
Encoded knowledge *information that is conveyed by signs and symbols.*

encultured and encoded is of growing significance compared with knowledge that is embodied or embedded" (*ibid.*:72).

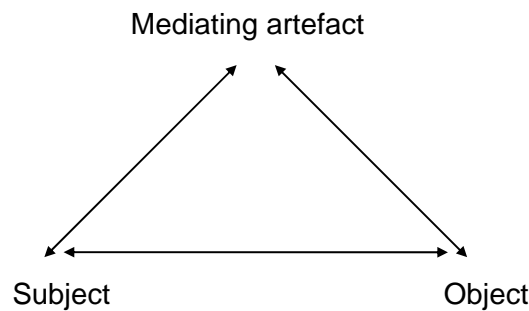
Based on recent developments in theories of activity, learning, practice, and knowledge management outlined above, and on WEB's recent experience in working with organisations in the public sector (DoL) and private sector (eg Formway; EDS Ltd), WEB and DoL concluded that activity theory was an appropriate framework for analysing regulatory processes and behaviour.

In the next two sections of the technical appendix we summarise the origins and principles of activity theory.

## The Origins of Activity Theory

Engeström and his co-workers in Finland, in particular, have written extensively on activity theory. This section summarises Engeström's (1996: 131-133) analysis of the key stages in the evolution of the theory, which centre around particular theorists and concepts.

*First generation: the idea of mediation.* In contrast to the behaviourist model of action based on the concepts of stimulus and response (S-R), Vygotsky claimed that all actions were mediated by cultural artefacts. This has been commonly formulated in the following model:



Cultural artefacts could be physical as well as psychological tools. These include language, mental models and concepts and, like technical artefacts, are culturally and historically determined. The insertion of cultural artefacts into human action as the basic unit of analysis overcame the split between the 'Cartesian individual and untouchable social structure' (*ibid.*: 132). This meant that the individual could not be understood without an understanding of his/her culture and society and that society could not be understood without 'the agency of the individuals who use and produce artefacts' (*ibid.*). The first generation of the theory was limited, however, because the unit of analysis remained primarily focused on the individual. The second generation addressed this issue.

*Second generation: collective activity.* Leont'ev distinguished the crucial difference between an individual action and a collective activity, extending the focus to complex interactions between the individual and his or her community. This theoretical development centres around the Developmental Work Research programme at the University of Helsinki, associated with Engeström and his colleagues.

Building on Leont'ev's insight, Engeström developed a model of human action contained within an activity system. Not only were actions mediated by cultural artefacts, they also occurred within a social context. This included the rules by which that activity takes place, the community of practitioners (people associated with the activity) and the division of labour (who does what). At this time, the idea of internal contradictions as the central driving force of change and development in activity systems (as conceptualised by Il'enkov) became one of the guiding principles. A contradiction, or disturbance, could occur along any axis within the activity system. For Engeström, such disturbances create powerful opportunities for learnings to take place.

Blackler *et al.* (1997) provide an explanation of an activity system that is grounded in the study of management and work transformation (as illustrated in Fig 1 below). They note that the *inner triangle* represents the relationships that occur between individuals and their communities of practice when they participate in shared purposeful activity.

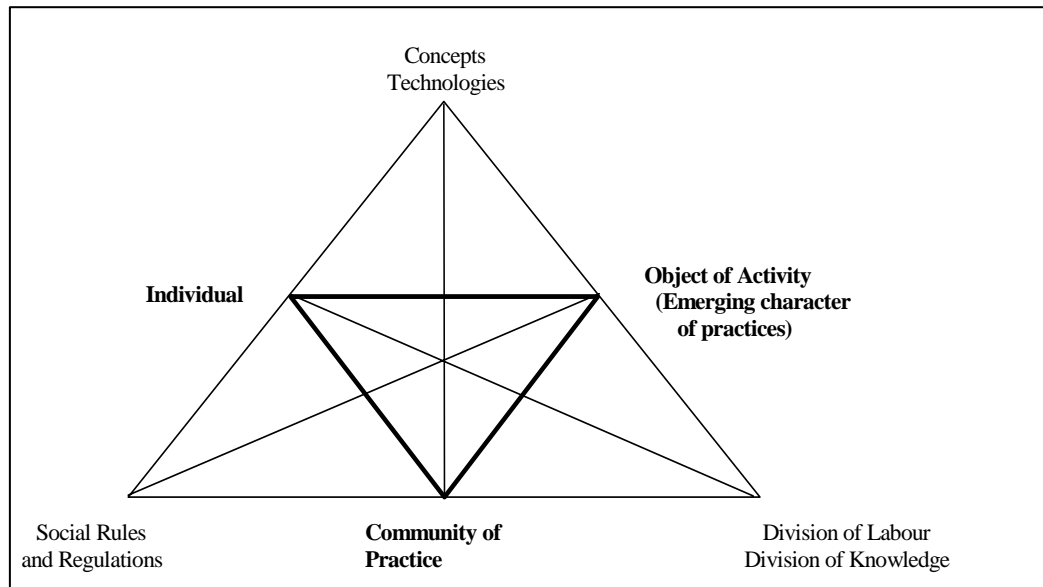


Fig. 1. A 'Community of Activity' (Blackler *et al*, 1997, adapted from Engeström, 1987).

Blackler *et al* (*ibid.*) explain that the *outer triangle* represents the relationships, artefacts and technologies that mediate individuals and this activity. The diagram represents the 'social, cultural and technological infrastructure of expertise'. 'Mind' is social in construction and effect (Vygotsky, 1978) and arises from, and is maintained by, social interaction; and learning takes place in situations and through activities; what is sometimes referred to as 'situated learning' (Clancy, 1995). The second generation of theory, however, also had significant weaknesses - in particular an insensitivity towards cultural diversity (Engeström, 1996). As activity theory was disseminated internationally, questions of diversity and dialogue between different traditions became increasingly serious challenges (*ibid.*).

*Third generation: dialogue, multiple perspectives and networks of activity systems.* The third generation of activity theory is concerned with developing conceptual tools to understand the diversity and complexity that exists within activity systems and networks of interacting activity systems. For example, Blackler *et al* (1997) have reformulated Engeström's activity system model to networks of activity systems. Other researchers such as Wertsch and Ritva Engeström have explored ideas on 'dialogicality' while Holland and Reaves have explored notions of multiple perspectives (cited in Engeström, 1996). Engeström suggests that no clear model for the third generation has yet emerged except that, minimally, it is concerned with at least two interacting activity systems (*ibid.*:133).

### Principles of Activity Theory

The key principles of activity theory are summarised by Seppänen (2000b).

*The unit of analysis is an activity system.* The activity is defined as an 'object-oriented, culturally and materially mediated system, with division of labour [or knowledge] and rules that regulate interaction between the participating individuals' (*ibid.*: 4). The distinction between the *actions* of *individuals* and *collective object-oriented activity* within this system is of central importance to the theory. Seppänen emphasises that the activity system, including its object or motive, is more durable and complex than discrete, goal-oriented actions. Actions can only be understood in relation to the object and motive of an activity system.

*The object of activity* is transformed, both in conversation and materially (eg in language, tools, equipment), into an outcome or a product. A collective activity is driven by a deeply communal motive, which is embedded in the object and the object is constantly transformed by the individuals participating in the activity over time.

*Inner contradictions within and between the elements of an activity system* can be identified and analysed. Contradictions are 'tensions between forces pulling in opposite directions in the activity' (*ibid.*) Engeström (*pers. comm.*, 2000) points out that the concept of contradiction provides a theory of how movement occurs in complex systems, both (a) from action to activity; and (b) through different types of contradiction within the activity system. Disturbances and dilemmas are visible in practitioner's everyday actions. They are also expressions of the underlying contradictions between elements within the overall activity system. Encountering these contradictions through analysis of their history and development provides a way for the actors to find a 'springboard' for transformation of the system.

Major changes in the activity system happen through *expansive learning* in which the object and the whole activity system are transformed. Expansive learning is collective and takes long periods of time. It begins when participants start to question the aims of the activity, what is produced and why. In expansive learning, the practitioners create a new mode of practice that was not there at the outset. 'This type of learning is little discussed in standard learning theories' (Seppänen, *ibid.*: 4).

## **8 Exploration Group**

### 8.1 Process for Exploration Group

#### **The exploration group meetings**

Phase One – Understanding Issues includes a sequence of half-day 'exploration group' meetings. Information from these meetings will be used as key inputs for the interim design team who will design the full project, including a launch involving a broad group of stakeholders. Exploration group meetings will be held in each of the government agencies taking part in the project (Department of Labour, Ministry for Economic Development/NZ Trade and Enterprise, ACC, Ministry for the Environment, IRD, Statistics NZ), and with SMEs and representative groups.

#### **Exploration group meeting outcomes**

These meetings will help generate an understanding of the realities that agencies and SMEs face in managing regulation. Each Agency exploration group will comprise a mix of management, policy and operational staff from the particular agency, together with a person from one of the other agencies (called the visitor). The visitor will provide an 'outsider's' perspective, and help facilitate a clearer explanation of the roles and responsibilities of the agency they are visiting. The meetings will be facilitated by WEB Research.

Comprehensive notes of the meeting will be made not only for normal record keeping purposes, but because the meeting will provide the first field data for the project about the Agency and how it operates.

There are three intended outcomes of the meetings:

1. Participants will understand the project's objectives and their role in it. Other project roles will also be understood.
2. A record of participants' views on:
  - What is working well between the Department and SMEs in the area of regulation
  - Some of the key issues and problems.
3. A conceptual 'map' of the Departments' ways of relating to SMEs when dealing with regulation.

**Exploration group data analysis process:**

1. Summary of exploration group data created by WEB for each group - both group summary and also a synthesis that points towards issues
2. All summaries compiled into 1 set of key issues/themes  
Issues/themes then assigned a code (for tracking purposes)
  - Issues then plotted onto 2 typologies to determine:
  - What issues are affecting which groups? (see model 1 below) (Thought: is this equiv to mapping Tensions?)
3. Where do these issues originate from?: that is: what types of regulations, and which agencies are responsible for these reg issues. (see model 2 below) (Thought: is this equiv to mapping Contradictions?)

Model 1: Where regulatory issues impact most (i.e. the tensions)

<b>Impact&gt; SME type</b>	<b>On Profits</b>	<b>On Lifestyle</b>	<b>On Values</b>	<b>On Innovation &amp; creativity</b>	<b>On a range of these factors</b>
Small/medium by choice					
Small/medium for competitive advantage					
Small/medium and growing					

Model 2: where are the regulatory issues being generated ? (i.e. the contradictions?)

<b>Desired Agency focus/function&gt;</b>	<b>Business:</b> focused directly on enterprise (eg Commerce Commission, MED)	<b>Society:</b> focused on Public Good but may have unintended impacts on enterprise (eg MoH, MoE)	<b>Business-Society:</b> focused explicitly on both enterprise and greater good (eg ACC, OSH, MfE)
<b>Type of regulation</b>			
<b>Financial</b>			
<b>Social</b>			
<b>Environmental</b>			

4. Most commonly highlighted issues in both models designed to be presented to the Interim Design Team at their first meeting for validation.

## 9 Interim Design Team Processes

The project will establish an Interim Design Team (IDT). The role of the IDT is to analyse the data summarised from the exploration groups and from the annotated bibliography, using the analytical models. Through this process they will start to identify the areas of interest that could be further explored during Phase Two. This team will be comprised of

- Visitors from the participating Agencies (IRD, DoL (incl OSH), Statistics NZ, Ministry for Economic Development, ACC, and (to be confirmed) Ministry for the Environment)
- SME exploration group members (up to 6)
- Research team members (WEB Research and the Department of Labour staff involved)

All participants will have participated in the exploration group meetings. Additional attendees may be added if the research team decides that they will add value to the process, or have a particular additional area of expertise. Three interim design team meetings will be held:

- **IDT1: 26 March** – Introduction to project and DWR methodology, trial methodology using exploration group data, overview of “Good Regulation” Forum
- **IDT 2: 19 April** – Practical DWR analysis of data to identify change ‘levers’ to guide research design for Phase Two,
- **IDT 3: 10 May** - Detailed work on research design for phase two, “Good Regulation” Forum, other issues resolved

### The overall objectives of the IDT process are:

1. To continue to engage the commitment of participants (stakeholders) who are drawn from regulatory agencies and SMEs that participated in the Exploration Groups (Exp Grps).
2. To design the management structure and process for this publicly-funded cross-departmental research project.
3. To form a cross-organisational team from the communities of regulatory agencies, SMEs and research.
4. To design the “Good Regulation” Forum process on the basis of the options presented by the Research Team and developed by the DoL.
5. To contextualise the work of the IDT in the Exp Grp data and preliminary literature review. This will include validation by the agencies and SMEs involved in the Exploration Group process – “is this research looking at problems that are of concern to me?”
6. To test and further develop the initial set of models and tools that have been generated by the Research Team. These models of the activity system of regulation in New Zealand are to be tested in Phase 2 through systematic data collection and analysis.
7. To ‘interrogate’ and further develop the Exp Grp data and analysis, particularly focusing on generating ‘conceptual maps’
8. To design the Research Plan for Phase 2 which will be validated through the “Good Regulation” Forum process.
9. To shape the direction of the annotated bibliography on theories and practices of regulation and stimulate the engagement of the international research community in this field.
10. To draw on theories and practices of activity theory and DWR, and stimulate the engagement of the international research community in this field.

## Interim Design Team Meeting 1: 26<sup>th</sup> March 2004

The intended outcomes of this session are:

1. IDT members will understand how the data from the Exploration Groups has been summarised for their use
2. Members will be given tools to use in working with their own data from the exploration groups, together with practice in how to use them
3. Members will have commented on a trial set of data, using the activity system model
4. Members will have practised using the tools to identify issues from the data
5. Members will understand actions they need to take before the next IDT meeting

### ***Following IDT 1:***

Debrief session for facilitators and WEB:

- review IDT 1 against intended outcomes
- identify especially successful and unsuccessful elements of IDT 1
- adjust any elements of current agenda for IDT 2

Maintain connections with IDT members:

- summarise events of first session and seek reflections of individual members provide members with any material requested (based on email and draft appended to this)
- summarise responses & reflections to generate an list of key concerns that may need to be addressed in IDT 2
- Keep this 'review of IDT 1' as data for the summary of project to date (needed for "Good Regulation" forum) and as input data for Phase 2 Research plan.
- Plan facilitation process and exercises required to robustly apply the activity theory models to the exploration data during IDT 2
- Trial facilitation processes with facilitators and adjust as needed

## Interim Design Team Meeting 2: 19<sup>th</sup> April 2004

### Intended outcomes for IDT 2 are:

1. IDT members cement understanding of activity theory
2. Members use activity theory to thoroughly examine visible regulatory problems *and* their underlying (i.e. invisible, systemic) causes
3. A list of key issues and key changes which may address these are identified

### Following IDT2:

Debrief session for facilitators and WEB:

- review IDT 2 against intended outcomes
- identify especially successful and unsuccessful elements of IDT 2
- adjust any elements of current agenda for IDT 3
- consider whether data generated to date (and expected from IDT 3) is able to generate products needed for the "Good Regulation" forum. i.e. review process against overall IDT objectives listed at front.
- Review and adjust IDT 3 if necessary to supplement data needs - FAST.

Maintain connections with IDT members:

- summarise notes taken from break out sessions & initial collective session
- generate a list of the key changes proposed and their implications for individual agencies and SMEs and circulate (ie. to socialise the ideas discussed within agencies)
- Draft a preliminary DWR-based research plan to test the changes identified. Indicate the changes which seem the most feasible and important to test. Note that this plan is an overall expansive learning cycle with data-gathering, analysis and developmental dimensions. A range of research approaches and methods of data-gathering and analysis are envisaged.
- Circulate plan prior to IDT 3.

Plan facilitation process and exercises required to discuss key aspects of the research plan during IDT 2. Note: it is crucial that the exercises that can help members practically critique as well as add flesh to the research proposal are designed and trialled before IDT 3 occurs.

Trial facilitation processes with facilitators and adjust as needed

## Interim Design Team Meeting 3: 10<sup>th</sup> May 2003

### Intended outcomes for IDT 3 are:

1. IDT members critique and refine Research Plan for phase 2
2. Members take responsibility for supporting or directly piloting aspects of the research plan
3. Members apply principles of activity theory to undertake components of research plan

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## Appendix 2 - Funding Approval for Budget

Extract from accepted application to the Ministry for Science, Research, and Technology

<p>The budget sought is \$650,000 total over 3 years. Approximate costs are:</p> <p><b>Phase One: developmental phase</b></p> <p>Literature searches and meta-analysis of literature for development of methodology (not undertaken by agencies alone). Spent over first 6 months of the project.</p> <p>Development of methodology – 2 one day workshops, contractor/academic time and input to workshops, transport, accommodation etc. These are “all up” meetings, more in the nature of seminars. One to develop commitment, understanding of the project and allocation of responsibility for methodology development, establish a working and steering group. The second to follow up on development and confirm direction following work by the working and steering groups. These meetings would be between 4 and 6 months apart.</p> <p>Formation of research team(s), involving government agencies and contractors and academics. 5 one day meetings over three months. Discussion of literature reviews for development of methodology (quantitative and qualitative techniques for measuring change in SMEs and amongst regulators), identifying the regulatory issues that are likely to be at issue, and preliminary frameworks for analysis. These would involve the researchers that would be undertaking the research, on occasion steering group advisers and contractor/academic input. The number of researchers will ultimately depend on agencies involved and the contractors/academics used. Agencies will be asked to provide a policy analyst/researcher and an operational staff member involved in regulation to undertake research activities – between 8 and 12 researchers from agencies. Numbers of Contractors/academics will vary over the course of the project, but at this time most would be involved and would likely number 5 (case-study methods, SME research, business performance analysis, economic and social measures of outcomes in compliance). Accommodation, travel, etc.</p> <p>Workshop to establish criteria for selection of cases and establishing means of identifying cases. This would involve the full research team for ½ to 1 day. Accommodation, travel etc.</p>	<p></p> <p>\$30,000</p> <p>\$60,000</p> <p>\$30,000</p> <p>\$3,000</p>
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<p>Establishment of 3 or 4 pilot studies. This process will involve selection of pilot cases (diversity of location, industry, size etc), agreement of the pilots to be involved, accessing administrative data for the pilots, final development of methods (interview sheets, observation sheets, statistical measures). It will involve the researchers involved in the pilots and others from time to time. Accommodation, travel etc.</p>	\$4,000
<p>The elements of this phase will, apart from 4. and 5., be conducted over the same period, with a completion date of 9-12 months from the inception of the project.</p>	
<p><b>Phase Two: Implementation of research</b></p>	Total Phase One \$127,000
<p>There are two parts to this, firstly the conduct of the pilots, and then rolling out the methodology to the other cases. It will take place over two or three periods, with the first period establishing “baseline” observations of the SMEs and agency’s behaviour and performance and the next one or two periods assessing changes to both groups following adjustments to the application of regulation to the SMEs.</p>	
<p>Conducting pilots will require two researchers per case, and additional contractor/academic support across cases. They will be located in different regions and would require, probably, a week of observation and data analysis per case, with a workshop of 2 days with all researchers and contractors/academics to establish whether the methodology is effective and make necessary adjustments. Accommodation, transport, payments for lost time or other costs imposed on SMEs (hourly rate). Note - the pilot phase will need to be repeated for the second part of this phase, where changes to regulatory practice will be assessed, as the methodology may need to be adjusted. The pilots will take 3 months to complete, with the workshop and preliminary analysis of data.</p>	\$60,000
<p>Conducting full field research. The number of cases would likely be between 15 and 25. The number will depend on the resources available, the intensity of the method required (not able to be determined at this time), the criteria for selection (to ensure representative diversity) and the time available. 2 or 3 2-day long workshops to analysis data will be required, one following each of the parts of these phase. Each case will require the same types of input as the pilots, though refinements from the pilots will mean they are less intensive. This part of the research will require between 12 and 18 months to complete.</p>	\$343,000
	Total Phase Two \$403,000

<p><b>Phase Three: analytical and dissemination phase</b></p> <p>On completion of the field work there will need to be a comprehensive 2 or 3 day seminar to consider the full range of data that has been assembled, the understandings that have been developed and test this with a range of stakeholders. The likely groups are -employer representatives, union representatives from the industries examined, academics with a particular interest, policy managers and operational managers involved at the margins of the project. Travel, accommodation etc.</p> <p>Following this workshop the final analysis and report writing will occur. Built into this process will be joint and separate consideration by agencies of the applications of this work to their operational and policy activities. There may be particular guides, computer programmes or other products that will be generated that will need to be co-ordinated across the project. Printing costs or other production costs will be a part of this process. There may be meeting costs, depending on the nature of the report and product teams. This phase will take the remainder of the project; 6-12 months.</p> <p>Peer review and consultation with experts over life of project (who are not directly involved in the research).</p>	<p>\$30,000</p> <p>\$70,000</p> <p>\$20,000</p> <p>Total Phase Three \$120,000</p>
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## Appendix 3 – Regulatory Debate

### *Policy background and Regulatory Debate*

This section outlines the key features of the regulatory debate that has been occurring within New Zealand and other OECD over the last two decades and provides the rationale for the development of the current SME “Good Regulation” Project led by Department of Labour.

### *The New Zealand Regulatory Debate*

Within New Zealand, the regulatory debate has predominantly centred on compliance costs borne by small and medium enterprises (SMEs) and the need to either reduce, or more rarely, increase regulatory measures to support business more effectively.

The debate as to whether regulation should be increased or decreased has been widely documented in the media, particularly in recent years. Much of the media representation has highlighted apparent contradictions between stated government support for business on the one hand, and the negative consequences of regulatory compliance on the other, resulting in an increasingly polarised debate between SMEs and Government that continues today.

For example Business Editor for the Weekend Herald, Jim Eagles, began a column on 10-11<sup>th</sup> January 2004 with<sup>15</sup>:

*“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness...”*

In quoting *A Tale of Two Cities*, Eagles conjured a picture of disparity between a booming economy and government assistance for business in the form of training and immigration policies, and business having to “...absorb an outpouring of new laws, tougher regulations, higher penalties, extra obligations, new charges, extra costs, fresh obligations and added paperwork.” Eagles list of regulation included “...security charges for exporters, holiday pay, petrol tax”, as well as the new employment relations law changes introduced to Parliament before Christmas.

While the Eagles article is a particularly recent example of the New Zealand regulatory debate, the debate itself is not new. Concerns about the impact of regulation have been loudly voiced by business commentators and owners from the 1980s onwards, most notably the NZ Business Roundtable. Many business groups have argued that regulation, ‘compliance costs’ and intrusive government are an unwelcome feature of New Zealand’s current economy. Unnecessary compliance costs were argued to be the result of complicated and unnecessary volumes of regulation, removing or reducing government regulatory requirements was argued to be necessary in order to stimulate a productive economy. Successive governments have, however, continued to modify or implement new regulatory measures on the grounds that these are necessary to constrain and reduce risks that may impact on economic growth in the long term<sup>16</sup>.

The rising concern about whether regulation is unnecessary or wrong has paralleled the political and economic changes that occurred throughout the mid 1980s and through the 1990s, during which, successive governments sought to establish a more ‘de-regulated’ economy, introducing competitive markets and quasi-competitive

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<sup>15</sup> Section C, page 2

<sup>16</sup> The regime introduced to manage subcontractor payments in the building industry is a recent example: Construction Contracts Act 2002, see [http://www.med.govt.nz/buslt/bus\\_pol/bus\\_law/construction/payment02/index.html](http://www.med.govt.nz/buslt/bus_pol/bus_law/construction/payment02/index.html) for explanatory material.

social structures<sup>17</sup>. These changes were radical, given the preceding decades of close government control of the economy, (for example, wage and price controls, a regulated foreign exchange and high tariff barriers etc). However, de-regulation activities were also associated with attempts to improve regulation; for instance by pursuing performance based rules, negotiated compliance or standards, 'Plain English' drafting, requirements to produce compliance costs statements, and a host of other approaches. At the same time, the flow of regulation did not abate. Regulation was needed for managing the emergent markets, and new areas of law and regulatory practice were created. This occurred both in New Zealand and overseas, so much so that this period has since been characterised as one of "re-regulation" rather than just "deregulation"<sup>18</sup>. This period has also seen the rapid development of a body of literature arguing that society can be conceptualised as a "risk society", which has produced a "regulated state" to manage risk<sup>19</sup>.

Some deregulation and re-regulation efforts have been successful, at least in part. For example, the cost and standards of services, such as in telecommunications and air travel in New Zealand, have improved for the consumer as a result of competitive deregulation. However, in other instances the removal of regulatory requirements has created considerable debate and criticism. The New Zealand power industry is a recent high profile example<sup>20</sup>. Other industries have been plagued by apparent regulatory failure, for example, the 'leaky building' construction boom of the 1990s<sup>21</sup>, and have generated concern and demands for tighter regulation.

Although the regulatory debate has been occurring over the last two decades within New Zealand, it has remained largely one-dimensional, particularly within the media – with the issue defined as being about more or less regulation<sup>22</sup>. This has led to an increasingly entrenched struggle between those opposing regulatory measures and those arguing their merits, which is evident in recent press coverage, for example, *Happy New Year! Let the battle begin*<sup>23</sup>, *Employers set for stoush on job law reform*<sup>24</sup>, *Minding our small business – rules and regulations threaten to cripple backbone of NZ Economy*<sup>25</sup>, *Small business grows, despite the red tape*<sup>26</sup>. Thinking about regulation as a process occurs sporadically in New Zealand regulatory agencies<sup>27</sup>. The academic discussion of how to develop and apply regulation in a way that takes full account of the social processes is largely occurring overseas. In practical terms these ideas have been slow to influence regulatory development and application within New Zealand, though they can be found taking root in some regulatory agencies. Overseas there are attempts to configure agencies and regulatory processes in a way that matches the needs of the regulated,

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<sup>17</sup> See, for instance: Boston J et al. (eds). *Redesigning the Welfare State in New Zealand* (Auckland, Oxford University Press, 1999), 356 pp, and Boston J et al., *Public Management: The New Zealand Model* (Auckland, Oxford University Press, 1996), 412pp.

<sup>18</sup> See, for instance: Ayres and Braithwaite *Responsive Regulation – Transcending the Deregulation Debate*, 1992, Oxford University Press, pp7-18; M Sparrow *The Regulatory Craft – Controlling Risks, Solving Problems, and Managing Compliance*, Brookings Institute, 2000, pp 1-77; [The New Politics of Risk Regulation in Europe](#), [Critical Reflections on Regulation](#), and [Is Regulation Right?](#) - LSE CARR. Also see discussion of society and the state as being a 'risk society' and a 'regulated state': Hood et al, *The Government of Risk Risk – Understanding Risk Regulation Regimes*, Oxford University Press, 2001 and Demos *The Long Game – How regulators and companies can both win* [http://www.demos.co.uk/catalogue/thelonggame\\_page324.aspx](http://www.demos.co.uk/catalogue/thelonggame_page324.aspx) where Demos argue that the regulation should be conceived of as a complex adaptive system.

<sup>19</sup> See, for example: Hood et al, *The Government of Risk – Understanding Risk Regulation Regimes* pp 3-19, Jaeger et al, *Risk, Uncertainty, and Rational Action* pp 7-19.

<sup>20</sup> See: <http://www.med.govt.nz/ers/electric/governance-gps/media/minister-20030914.html>

<sup>21</sup> See: the Building Bill 2003, and see [http://www.med.govt.nz/buslt/bus\\_pol/building/review/index.html](http://www.med.govt.nz/buslt/bus_pol/building/review/index.html) - Demos in particular (note 10 above) argue that problems like the one in NZ of 'leaky buildings' could be seen as a "regulatory mess", where system dynamics were unappreciated because of the application of an over-simplified market model.

<sup>22</sup> There are some rare exceptions in the general media, see, for example: *Solving our biggest problem* Rod Oram, Sunday-Star Times, Aug 10 2003, D2 and *Helping business do the right thing* Rod Oram, Sunday-Star Times, Nov 23 2003, D2.

<sup>23</sup> Lesley Springall, Sunday-Star Times, Jan 18 2004, D1.

<sup>24</sup> NZ Herald, Jan 12 2004, C4.

<sup>25</sup> Sunday-Star Times, Aug 10 2003, D3.

<sup>26</sup> James Weir and AAP, Dominion Post, Oct 4, C3.

<sup>27</sup> That this is the case has already become clear through the preliminary work on this project.

for instance, the work of the Small Business Service in the UK, and in particular in this area the enforcement concordat<sup>28</sup>.

Increasingly within New Zealand government is seeking to achieve *effective* regulatory change. Regulatory compliance costs have been recognised as a legitimate issue<sup>29</sup> for business, and this has been reflected in a number of government initiatives, for example, the requirement to prepare Business Compliance Cost Statements and Regulatory Impact Statements for new regulation<sup>30</sup>. Two recent examples where enterprise has been involved in extensive consultation are the establishment of a Business Compliance Cost Panel to determine where compliance burdens are greatest and develop solutions<sup>31</sup>, and more recently, the establishment of a Small Business Advisory Group, that has been tasked with representing business operators and giving SMEs a “policy voice”<sup>32</sup>. Previous administrations were also active in seeking reform of regulation that would make it more effective. Institutional arrangements for good regulation practices are also being assembled in different parts of government<sup>33</sup>. In particular, there are pushes for more “whole of government” or “joined up government” approaches – from stakeholders, Ministers and government agencies themselves<sup>34</sup>.

These government initiatives suggest that there are opportunities to begin generating an activity-based understanding *and practice* of regulation within the New Zealand. Engendering and supporting this regulatory ‘tack’ is an important goal of the SME “Good Regulation” Project.

### ***The International Regulatory Debate***

A similar regulatory debate has been occurring internationally, and been driven by broadly similar economic and political changes. As in New Zealand, the 1980s-1990s were a period of very active regulatory reform within the OECD<sup>35</sup>. An increasing demand for deregulation led to the privatisation of government assets and the development of markets where there had previously been monopoly state institutions. This was particularly so in the area of utilities – railways, postal services, power, water and air transport services, roading, telecommunications, health and even welfare and penal institutions. These reforms altered the regulatory landscape, and produced as much new and re-regulation as deregulation<sup>36</sup>. While approaches to regulatory reform have been broadly similar across the OECD, there has been a great deal of variety in the timing and intensity with which the changes were implemented. The debate on the consequences and outcomes of the reforms has diverged even more wildly.

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<sup>28</sup> See: <http://www.sbs.gov.uk> and <http://www.cabinet-office.gov.uk/regulation/publicsector/enforcement/enforcement.htm> for the concordat.

<sup>29</sup> Surveys such as National Bank Small Business Monitor (<http://www.nationalbank.co.nz/business/banking/information/publications/monitor/030404/default.htm>), Business NZ/KPMG *BNZ-KPMG Compliance Cost Survey* (<http://www.businessnz.org.nz/doc/556/BusinessNZKPMGComplianceCostSurveyReport>) and one by the Ministry of Economic Development (MED) (<http://www.med.govt.nz/buslt/compliance/perceptions-survey/summary/index.html>.) have identified compliance costs as a significant burden for SMEs (as characterised by staff numbers). In-depth qualitative research on compliance costs, partially focusing on SME concerns was conducted by MED and the Department of Labour into the Health and Safety in Employment Act 1992, see: <http://www.dol.govt.nz/publication-view.asp?ID=37>

<sup>30</sup> See Ministry of Economic Development (MED) <http://www.med.govt.nz/buslt/compliance.html#ris>

<sup>31</sup> See MED <http://www.med.govt.nz/buslt/compliance.html#bccp>  
[http://www.med.govt.nz/irdev/ind\\_dev/sbag/index.html](http://www.med.govt.nz/irdev/ind_dev/sbag/index.html)

<sup>32</sup> Some recent examples: LTSA recently created a post for National Adviser on operational compliance strategy; Department of Internal Affairs has established a similar role; the Department of Labour is working towards greater integration of regulatory activities within the Department to achieve ‘high quality working lives’, concentrating on the workplace; IRD has applied a compliance strategy based on the writing and ideas of Braithwaite (see FN 9 above); the NZ Injury Prevention Strategy was developed to manage the multiple agency responsibility for injuries in NZ.

<sup>34</sup> One example is the development of a New Zealand Injury Prevention Strategy: <http://www.nzips.govt.nz>

<sup>35</sup> [http://www.oecd.org/topic/0,2686,en\\_2649\\_37421\\_1\\_1\\_1\\_1\\_37421,00.html](http://www.oecd.org/topic/0,2686,en_2649_37421_1_1_1_1_37421,00.html)

<sup>36</sup> Ayres and Braithwaite *Responsive Regulation – Transcending the Deregulation Debate*.

The debate has, however, progressed; thinking about regulatory issues internationally has become increasingly characterised by four main features that are particularly relevant for the SME “Good Regulation” Project.

Firstly, understanding how to achieve the goals of regulation is still developing. Although theoretical work with particular resonance for NZ is occurring in the UK, USA and Australia<sup>37</sup> there is no agreement, either internationally or in NZ, over whether there is a ‘best’ means of managing ‘regulation’<sup>38</sup>.

Secondly, despite differing interpretations of regulation and of SMEs, OECD countries have generally adopted some similar philosophical approaches to the development and application of regulations. An international trend in regulation since 1980 has been to move from specific requirements towards general standards, even ‘aspirational’ standards, to allow enterprises to adapt compliance procedures to meet their unique and often changing circumstances.

Thirdly, the notion of the regulated ‘customer’ has become increasingly popular. In the 1990s the US Clinton administration pursued an agenda of ‘reinventing government’, to get the public service to view their task as assisting the regulated, rather than being engaged simply in enforcement activity<sup>39</sup>. These ideas were also pursued in NZ, with privatisation of public assets one of the means of introducing increased customer focus, but also more expectation of ‘service’ being built into core public service operations. While this idea of customer focus is not without its drawbacks (prisoners may not realistically be thought of as ‘customers’) the idea has been a powerful shaper of public services.

Fourthly, the regulatory debate has moved from being a two dimensional argument about the need for more or less regulation - to a more nuanced approach, recognising that fewer rules alone are not the answer to many regulation problems<sup>40</sup>. This shift is particularly important as it highlights that previous conceptualisations (and thus solutions) to regulatory issues have struggled to account for the fact that many regulatory problems stem from the application of rules, in particular the degree of discretionary decision-making that inherently occurs in the application of regulation, rather than from the existence of regulation itself. Discretion is exercised by SME owners and operators as well as regulators, as individuals and by the enterprise as a whole, either explicitly or covertly, for instance: “Shall I run this orange light because I am late?”.

This shifting conception has developed in conjunction with work focused on achieving ‘regulatory goals’. As a result, ‘regulations’ as rules become to be seen as less

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<sup>37</sup> The Centre for Analysis of Risk and Regulation, London School of Economics; the Kennedy School of Government, Program of Regulatory Policy, Harvard University; “Regnet”, Australian National University.

<sup>38</sup> And there is much debate over how to usefully define what constitutes a SME. For instance, in the US and UK, Medium enterprises are defined as a being those with FTEs of 250 or less; in NZ the working definitions most often used are: Micro (FTE 1-5), Small (FTE 6-20) and Medium ( FTE 21-50). FTE numbers are used along with financial turnover statistics internationally and within the New Zealand public service as descriptors, but have not proved useful in identifying likely policy issues that may affect SMEs.

<sup>39</sup> Malcolm Sparrow in *Imposing Duties – Government’s Changing Approach to Compliance* Greenwood Press, 1994 and *The Regulatory Craft – Controlling Risks, Solving Problems, and Managing Compliance* Brookings Institution Press, 2000 gives many examples of the way in which US government agencies tried to respond to the administration’s demands. The frequent unintended consequences of this approach are beautifully described in “the Babylonian Test” pp 11-14 of *The Regulatory Craft*. The IRS in the US and the Australian Tax Office went through a similar process of transformation that the IRD in NZ has entered before the IRD - going from “widget” producer (audits, inspections, tax forms processed) to a broader mission of increasing compliance and thereby increasing the tax take. This has been taken even further by the Canadian Revenue Service has identified its task as being about income redistribution as well as revenue collection (see *Imposing Duties*). The NZ tax commissioner, it is no coincidence, is an Australian.

<sup>40</sup> <http://oecdpublications.gfi-nb.com/cgi-bin/OECDBookShop.storefront/EN/product/422003061P1> This report discusses attempts to reduce SME compliance problems in particular, and see also the discussions in Ayres and Braithwaite, Sparrow and the LSE, footnote 9 above.

important than actual social interactions, namely, the practice and activities of regulators and the regulated.

### **Conceptualising Regulation as Social Activity**

The resultant shift is an emerging understanding of regulation as a social activity; it is “as much a process as an event”<sup>41</sup>, and one that occurs through on-going interaction between the various players in a regulatory system. Social norms dictate that individuals almost never explicitly follow “the rules” but instead incorporate their perceptions of the rules into their existing behaviours<sup>42</sup>. In some instances this may mean individuals – either unintentionally, or deliberately - avoid rules altogether. As a result, regulators are required to exercise discretion on a daily basis. This discretion includes interpreting what the rules mean in practice, who will be subject to certain interpretations, when they will be subject, and, ultimately, what consequences will result. Discretion is exercised both by individuals in an organisation and by the organisation as a whole, either explicitly or covertly, a mundane example would be: “shall I run this orange light because I am late?”. As a result, “the rules” are less important on a daily basis than the actual social interactions, namely, the practice and activities of regulators and the regulated.

Giving due recognition to the practice and activity of regulation is particularly relevant in cases where the rules are expressed as “performance based” requirements, as is becoming increasingly common. The area of Health and Safety regulation is one example where regulation centres around generic principles – such as “taking all practicable steps” to avoid harm to people<sup>43</sup>. Making sense of such a requirement means that employers, employees and contractors need to be alive to the dynamics of a workplace, assessing and responding to changes that might create a hazard on a regular basis<sup>44</sup>. Regulators must also be alert to these dynamics; including how they have influenced the past and present compliance activities. As no two individuals are likely to fully agree about all elements of a workplace health and safety situation, both the regulator and regulated will explicitly and implicitly negotiate an agreed way of interpreting the situation to determine if “all practical steps” have been taken to their satisfaction. Research into the regulation of paper manufacturing plants in the US, Canada, Australia and New Zealand described the task of a regulator as being like a “cowpoke”, making sure that the “herd” of regulated stayed together and generally moved in the right direction, while keeping the hindmost moving. This research also indicated that even when regulations were tightly prescribed with significant consequences, regulators still exercised significant discretion<sup>45</sup>.

Conceptualising regulation as an *activity* that occurs within a broader context of organisational and social behaviours, and values, recognises that the problems associated with the application of regulation (whose which trouble ‘the regulated’) is a complex and entwined process that is linked to both regulatory *development and the process of application*. There are often several regulatory processes applying at once seeking to cover the same activity, with differing requirements. For instance, within New Zealand, both the Accident Compensation Corporation (ACC) and

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<sup>41</sup> Hutter, B *Compliance: Regulation and the Environment*, Clarendon Press, Oxford, 1997 p 13.

<sup>42</sup> See case studies into Winemaking, Accommodation and Brewing industries <http://www.dol.govt.nz/PDFs/op1999-4.pdf>. There is a rich literature on social norms and their role in determining behaviour developing in legal scholarship and law and economics, reviewing articles at the SSRN website amply demonstrates this: <http://papers.ssrn.com/sol3/results.cfm>.

<sup>43</sup> Sections 2 and 6 of the Health and Safety in Employment Act 1992 define and set out the general duties of employers.

<sup>44</sup> Demos in *The Long Game* argue that increasing complexity in the world is impelling the adoption of more self-regulation and co-operative action between government and enterprise.

<sup>45</sup> See: Gray and Shadbegian *Environmental Regulation, Investment Timing, and Technology Choice*, NBER Working Paper W6036, May 1997 at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=226446](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=226446) (this is not a free download unless you are an NBER subscriber).

Occupational Safety and Health (OSH) arm of Department of Labour have developed health and safety regulation<sup>46</sup>. These types of issues are ones that are unlikely to be resolved by simply reducing or increasing the amount of health and safety regulation.

The role of government in generating and enforcing rules is of central concern to a democracy. The power that resides in a state is both awesome and necessary in a democracy, but at the same time dependent on the agreement of citizens to be governed. Devising the best means to ensure both appropriate regulation making and enforcement, and community willingness and acceptance of those processes, is vital to the life and health of a functioning democracy. The SME “Good Regulation” project is designed to explore how at the level of the enterprises regulation can best be developed and applied.

### **Summary**

The conceptual shift toward thinking about regulation as an activity is occurring sporadically, and remains generally isolated to the international academic arena. In practical terms this conceptual shift is slow to be applied to regulatory development and application within in New Zealand, in part because of the entrenched and rather two-dimensional nature of the debate on regulation. However, in recent years, governments have placed increased emphasis on the need to focus on achieving regulatory “outcomes”, not just outputs, and to seeking “whole-of-government” or “joined-up-government” responses to regulatory problems.

Increasingly NZ is seeking to tap in to these principles; the Ministry for Economic Development has a policy section in the Regulatory and Competition Branch with a work programme aimed at improving the quality of regulation<sup>47</sup>. The principles of good regulatory design, including the institutional arrangements for good regulation, are being assembled in different parts of government<sup>48</sup>. In particular, there are pushes for more working together by agencies – “whole of government” or “joined up government” approaches – from stakeholders, Ministers and government agencies themselves.

Generating an activity based understanding *and practice of* regulation within the NZ context as it applies to SMEs is an important goal of the SME “Good regulation” Project. The project utilises activity-based research processes that will deliberately promote learning, exploration and change within and alongside the existing systems and networks of Government agencies and SMEs, as opposed to devising changes in isolation from the practical activities of these groups. For more detail about activity theory and associated research practices, refer to the Project’s research plan (Appendix One).

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<sup>46</sup> An issue specifically noted in the Compliance Cost Panel’s report:  
<http://www.businesscompliance.govt.nz/reports/final/index.html>

<sup>47</sup> See: <http://www.med.govt.nz/buslt/compliance/balance/balance-03.html>

<sup>48</sup> Some recent examples: LTSA recently created a post for National Adviser on operational compliance strategy; Department of Internal Affairs has established a similar role; the Department of Labour is working towards greater integration of regulatory activities within the Department to achieve ‘high quality working lives’, concentrating on the workplace; IRD has applied a compliance strategy based on the writing and ideas of Braithwaite (see FN 9 above); the NZ Injury Prevention Strategy was developed to manage the multiple agency responsibility for injuries in NZ.