

IN-CONFIDENCE

Office of the Minister for Regulatory Reform

Chair  
Economic Growth and Infrastructure Committee

## **RESPONSE TO THE PRODUCTIVITY COMMISSION'S REPORT on REGULATORY INSTITUTIONS AND PRACTICES**

### **Proposal**

1. This paper seeks approval for the attached Government response to the Productivity Commission's (the Commission) report on regulatory institutions and practices.

### **Executive Summary**

2. The Commission's report provides us with an opportunity to improve New Zealand's regulatory system. It concluded that there is clear room for improvement, focussing its recommendations on four broad themes:
  - a. stronger ownership and leadership from the centre
  - b. greater focus on improving the quality of legislation
  - c. greater professionalisation of the regulatory workforce, and
  - d. improving review and evaluation.
3. I recommend that the Government accepts or partially accepts all of the Commission's recommendations.
4. Key elements of the response are initiatives to:
  - a. support departments to meet the Government's expectations for regulatory stewardship
  - b. increase the attention given to legislative design and greater use of exposure drafts for significant legislation
  - c. build regulatory capability through a cross-government forum
  - d. reinforce department's responsibility for the monitoring and review of regulatory regimes through an expectation that departments report publicly on their regulatory management strategy, the state of their regulatory stock, and plans for improvement

- e. strengthen the expectations and process around performance review of crown entity regulators, and
- f. improve regulator cost recovery practices, including providing more information to fee-payers through the use of open-book exercises so fee-payers can have input into agency cost structures.

## **Background**

5. Regulation impacts on the lives of New Zealanders in many significant ways. As we know from experience, regulation that is poorly designed or implemented or is not kept fit for purpose, increases the risk of regulatory failure and the cost of doing business.
6. Over the last six years we have further developed the regulatory management system, including strengthening regulatory impact analysis requirements and processes for managing the existing stock of regulation. A key development was the 2013 Expectations of Regulatory Stewardship which set out Cabinet's expectation that departments should take a proactive, lifecycle approach to the monitoring and care of their regulatory regimes, including identifying areas suitable for reform.
7. However, more can and should be done to improve the design and operation of New Zealand's regulatory system. The demands on regulatory regimes have become more complex over time. The range and complexity of regulatory regimes, the nature of the risks involved, the community's expectations, and the regulatory tools available to achieve regulatory objectives, are wide and varied.
8. With this in mind, in July 2013 we asked the Productivity Commission to develop system-wide recommendations aimed at improving the design and operation of regulatory regimes in New Zealand.

## **The Productivity Commission's Recommendations**

9. The Commission provided us with its final report *Regulatory Institutions and Practices* in July 2014. The report contains in-depth analysis of New Zealand's regulatory management system and 44 recommendations for change.
10. The Commission's assessment that there is "clear room for improvement" in the performance of the regulatory system is based on four key conclusions:
  - a. "the regulatory system struggles to deliver proportionate and necessary rules because of weaknesses in the policy and Regulatory Impact Analysis (RIA) processes (which were not adequately testing proposals for new regulation), heavy reliance on statute and limited Parliamentary time
  - b. the system does not seem to effectively prioritise its efforts, due to the patchy implementation of some regulatory management tools (e.g., regulatory scans and plans) and weak central leadership
  - c. resourcing of implementation is a concern, with inadequate capability of regulatory agencies a contributor to regulatory failures, and
  - d. weak review and evaluation cultures and monitoring practices, and the culture of some regulators, inhibit the ability of the system to identify issues and learn from experience".

## **Proposed Government response**

11. The Commission's report provides an opportunity to continue to improve the quality of regulation in New Zealand. I propose that the Government accept, or partly accept all of the Commission's recommendations. The proposed Government response is attached in Appendix A and consists of a summary of the core elements of the

Government's strategy for the regulatory management system and a response to each of the Commission's recommendations.

12. Some stakeholders may feel that the response does not go far enough or fast enough. Improving regulatory quality involves ongoing development of agency systems, capabilities and culture, driven by sustained engagement and support from ministers, departments and regulators. Consequently, a number of the actions proposed will take time to have their intended impact.
13. This response sits alongside the Government's response to the Productivity Commission's earlier report *Towards Better Local Regulation*. That response led to various new commitments, such as improving collaboration and consultation between central and local government, and establishing the Rules Reduction Taskforce to target particularly problematic rules.
14. The key elements of the strategy are discussed below. This is organised under four broad themes identified by the Productivity Commission. A significant number of these changes are already under way.

#### **Stronger ownership and leadership from the centre**

15. As Minister for Regulatory Reform, I am focussing on ensuring we deliver a robust programme of regulatory reform and that we make faster progress in improving the regulatory environment for businesses. The regulatory reform portfolio is also now supported by a Parliamentary Under-Secretary. Administrative support and advice for the Regulatory Reform portfolio will continue to be led by the Treasury.
16. Central to the Government's medium-term objectives and work programme for the regulatory management system are the Government's Expectations for Regulatory Stewardship that set out how Departments are expected to address their responsibilities under the State Sector Act 2013 for the legislation they administer. Going beyond the design and implementation of regulatory changes, the expectations require departments to systematically monitor and review the legislation they administer and to use that information to advise or act on problems, vulnerabilities and opportunities for improvement.
17. The stewardship expectations have now been incorporated in the regulatory element of the Performance Improvement Framework (PIF). SSC's approach to chief executive performance management has also begun to consider chief executives' responsibilities for regulatory stewardship, and related Crown entity monitoring, as part of department's core business.

#### **Greater focus on improving the quality of legislation**

18. We are taking a number of steps to increase the attention given to legislative design, including the establishment of a new expert committee similar to the original Legislation Design Committee, to advise Ministers and departments on key legislative design issues at an early stage in the development of legislation. This will include advice on the appropriate allocation of material between primary and delegated legislation. I propose that the Government support the greater use of exposure drafts of legislation, and provide some guidelines on when they may be helpful.

19. The Parliamentary Counsel Office will be taking on a broader stewardship role in relation to the development of legislation and the modernising and simplifying of the New Zealand statute book.
20. I propose that we also consider mechanisms to better keep legislation up to date, such as omnibus Bills to repeal redundant legislation or make technical or minor policy changes. *Sentence withheld – under active consideration.*

### **Greater professionalisation of the regulatory workforce**

21. I consider that intellectual leadership of regulatory practice needs to be led from, and have the support of, subject-matter experts in the regulator community. The chief executives of regulators have agreed to work together to build regulator capability, and the Ministry of Business, Innovation and Employment is providing leadership for a cross-government forum to contribute to initiatives to improve regulatory leadership, culture, practice and workforce capability.
22. The initial focus will be on further developing a qualifications framework and best practice compliance strategies. The Parliamentary Under-Secretary will work with regulatory practice leaders to support a sustained lift in regulator performance.

### **Review and evaluation of regulatory regimes**

23. The response acknowledges the weaknesses in current regulatory review and evaluation practices. Departments responsibilities for monitoring and review of the regulatory regimes they administer is a central element of the regulatory stewardship expectations. To ensure these responsibilities get appropriate attention, regulatory departments will be expected to report publicly on their regulatory management strategy, the state of their regulatory stock, and plans for improvement. This will also be a priority for the Treasury's oversight of the regulatory management system in the next three years.
24. This information on the state of regulatory regimes and department's plans for improvement will assist external stakeholders to work constructively with departments and regulators to better deliver beneficial regulatory outcomes.
25. The review of the performance of regulatory agencies themselves is also important. The PIF process is open to, and expected to be used by, both departments and Crown entities. Crown entities that do not use the PIF are expected to be able to demonstrate the use of some other form of organisational self-review improvement tool. The SSC are considering how to improve regulator peer/self-review processes.

### **Cost recovery practices**

26. I am also seeking to improve regulator cost recovery practices and the Productivity Commission made a number of recommendations for improvement in this area. The Treasury is currently updating its guidance on cost recovery practice to be clearer about the expectation that fees and charges should be fair, efficient and transparent; and to strengthen expectations on the timely management of over or under recovery of costs. The Treasury will be reinforcing the expectation that information about the rationale for and level of user charges is made publicly available to improve the scrutiny of fees and charges, and agency cost structures.

### **Implementing the Government Response**

27. SSC and the Treasury will work with departments and agencies to implement the proposed Government response. I have given responsibility for overseeing the implementation of the response to the Parliamentary Under-Secretary for Regulatory Reform and he will report to me on progress.

### **Consultation**

28. The Government response was prepared by the Treasury in consultation with the State Services Commission and other key regulatory departments.
29. The Parliamentary Under-Secretary for Regulatory Reform has been consulted on the response.
30. The following departments and agencies were consulted on this paper: the Ministry of Primary Industries, the Ministry of Transport, the Ministry for the Environment, the Ministry of Justice, the Ministry of Business, Innovation and Employment, the State Services Commission, the Department of Internal Affairs, the Ministry of Health, the Inland Revenue Department, the Ministry of Education, the Ministry of Social Development, Te Puni Kokiri, the Reserve Bank, the New Zealand Customs Service, the Department of Conservation, the Department of Prime Minister and Cabinet and the Parliamentary Counsel Office.
31. The departments who provided feedback were supportive of the proposed response. Several departments have noted that giving effect to the proposals and continuing to strengthen their regulatory management systems to meet the Government's Expectations for Regulatory Stewardship will increase resourcing pressures for them.

### **Financial Implications**

32. There are no immediate fiscal implications arising from the Government's response.

### **Human Rights**

33. There are no human rights implications arising from the Government's response.

### **Legislative Implications**

34. There are no immediate legislative implications arising from this paper.

### **Regulatory Impact Analysis**

35. A Regulatory Impact Statement is not required. Any regulatory changes arising from work to take forward the Commission's recommendations will be considered as part of other work programmes.

### **Publicity**

36. I propose to release a media statement on the Government response and the response will be made available on the Treasury's website.
37. I propose to share an embargoed copy of the response with the Productivity Commission prior to its release.

### **Recommendations**

38. The Minister for Regulatory Reform recommends that Cabinet:

- 1 **note** that the Productivity Commission's report *Regulatory Institutions and Practices* concluded that there is "clear room for improvement" in New Zealand's regulatory system
- 2 **note** that the Commission made 44 recommendations for change focused on four key themes:
  - 2.1 stronger ownership and leadership from the centre
  - 2.2 greater focus on improving the quality of legislation
  - 2.3 greater professionalisation of the regulatory workforce, and
  - 2.4 improving review and evaluation.
- 3 **note** that the proposed Government response accepts or partially accepts all of the Commission's recommendations
- 4 **agree** to the release of the Government's response to the Commission's report as detailed in Appendix A
- 5 **note** that the Minister for Regulatory Reform proposes to release a media statement on the Government response to the Commissions' report.

Hon Steven Joyce  
**Minister for Regulatory Reform**

Date: