



Regulatory Design and Operations – Terms of Reference



Office of Hon Bill English

Deputy Prime Minister
Minister of Finance
MP for Clutha-Southland

10 July 2013

Mr Murray Sherwin
Chair
New Zealand Productivity Commission
PO Box 8036
The Terrace
WELLINGTON 6143

Dear Murray

TERMS OF REFERENCE FOR AN INQUIRY INTO IMPROVING THE DESIGN AND OPERATION OF REGULATORY REGIMES INQUIRY

I am pleased to refer to you the Terms of Reference for a Productivity Commission inquiry into improving the design and operation of regulatory regimes, on behalf of referring Ministers.

It is important that Government has a good understanding across regulatory regimes of their issues, challenges, similarities and differences and how to improve their design and operation. This inquiry will provide the Government with a good understanding, and a strong set of recommendations to consider.

I wish you all the best as you commence the inquiry and look forward to your results.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Bill English'.

Hon Bill English
Minister of Finance

TERMS OF REFERENCE: IMPROVING THE DESIGN AND OPERATION OF REGULATORY REGIMES

Purpose

1. The purpose of this inquiry is to develop recommendations on how to improve the design of new regulatory regimes and make system-wide improvements to the operation of existing regulatory regimes in New Zealand. The inquiry is not a review of individual regulators, specific regulations or the objectives of regimes.
2. The aim is to improve the design and operation of regulatory regimes over time and ultimately improve regulatory outcomes.

Context

3. This Government is focused on delivering better regulation. We have improved the processes around introducing new regulation, increased our understanding of the stock of existing regulation, and conducted a number of significant regulatory reviews. There is more that can be done to improve the design and operation of regulatory regimes in light of the recent need to develop new or amended regulatory regimes and regulators to manage instances where regulation has not achieved its intended outcomes.
4. The demands on regulatory regimes are often more complex than in the past. The range of regulatory regimes, the nature of the risks involved, the expectations of the community, and the regulatory tools available to achieve regulatory objectives, are wide and varied. It is crucial that government has a good understanding across regulatory regimes of their issues, challenges, similarities and differences and how to improve their design and operation.

Scope

5. Having regard to the above purpose and context, the Commission is requested to undertake an inquiry that addresses the parameters set out below.

An overview of regulatory regimes and their regulators

6. Develop a high-level map of regulatory regimes and regulators across central government, including their organisational form.
7. Develop a set of thematic groupings which can be used to broadly categorise regulatory regimes by their objectives, roles or functions. For example core objectives might include health and safety, environmental protection, or economic efficiency.

Understanding influences and incentives on regulatory regimes

8. Outline and explain key factors which act as incentives or barriers to regulatory regimes and regulators producing the outcomes stated in legislation. For example these factors may include:
 - institutional form of the regulator
 - quality of the regulatory design and clarity of mandate, functions and duties
 - resourcing and funding
 - capability
 - approach to consultation and engagement with stakeholders
 - accountability mechanisms, including the ability to challenge regulatory decisions
 - performance measurement and reporting
 - external monitoring
 - approach to risk management and innovation

10. Undertake a series of case studies to compare and contrast the approaches taken to these factors across different regulatory regimes. A key part of this analysis would be to identify strengths and weaknesses of different approaches taken to these factors to support broader insights into the design and operation of regulatory regimes.
11. This analysis should be undertaken in the context of existing guidance about good practice for the performance of different regulatory functions.

Recommendations

12. Develop guidance that can be used to inform the design and establishment of new regulatory regimes and regulatory institutions, and the allocation of new regulatory functions to existing institutions. The guidance should take into account other existing work in this area to avoid duplication, such as the State Services Commission's *Reviewing the Machinery of Government*.
13. Develop system-wide recommendations on how to improve the operation of regulatory regimes over time. The recommendations may include how to both build on strengths and address weaknesses in current practices and may lead to general comments about key differences between regimes within thematic groupings. The recommendations will not be specific to particular regulations or regulators.
14. The Commission should also specifically consider how improvements can be made to the monitoring of regulator performance across central government.
15. In developing the recommendations, the Commission should take account of any key features or characteristics of New Zealand's regulatory environment that differ from other jurisdictions. For example, these may include differences in scale, resourcing, or the need to coordinate with overseas regulatory regimes.

Other matters

16. The Commission should prioritise its effort by using judgement as to the degree of depth and sophistication of analysis it applies to satisfy each part of the Terms of Reference.

Consultation requirements

17. In undertaking this inquiry the Commission should consult with key interest groups and affected parties, including on the selection of case studies in paragraph 9 above. Consultation should include both regulators and those subject to regulation.

Timeframe

18. The Commission must publish a draft report and/or discussion paper(s) on the inquiry for public comment, followed by a final report, which must be submitted to each of the referring Ministers by 30 June 2014.

Referring Ministers

Hon Bill English, Minister of Finance
Hon John Banks, Minister for Regulatory Reform