

Government response to the New Zealand Productivity Commission report on Regulatory Institutions and Practices

The Government would like to thank the New Zealand Productivity Commission (the Commission) for its final report on regulatory institutions and practices.

The Government will take a wide range of actions to respond to the Commission's findings and suggestions for improving regulatory practice, and the Commission's report will continue to be a valuable reference for regulators and other interested parties well into the future.

The Government commissioned this inquiry because it believed more could and should be done to improve the design and operation of New Zealand's regulatory system. It was conscious of recent situations where regulatory regimes demonstrably failed to achieve intended outcomes. It was also mindful that the public expectations of regulatory regimes have grown over time, requiring regulators to operate in increasingly sophisticated ways within dynamic, complex regulatory environments.

Regulation plays a very significant role in the lives of New Zealanders. The Government agrees with the Commission that getting regulation right matters a lot for the future economic performance of New Zealand and the wellbeing of its citizens. This view is widely shared, and was reflected in the Government's response to the Commission's previous 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.

The Government accepts that there is a need for the different agencies involved in designing and administering regulation, and monitoring how effectively it is functioning, to lift their game. The system as a whole also needs to work more coherently, to secure real improvements in regulatory outcomes. The Productivity Commission's report will be used as a catalyst to achieve this change.

Actions to improve regulatory performance

The Commission's final report contains 44 recommendations for the government on a range of issues. Responses to each specific recommendation are provided in the Annex below.

The Government agrees or partly agrees with all the recommendations. In some cases work is underway to identify the precise actions required to give effect to the response. In other cases the actions outlined may take time to have their intended impact. This is inevitable when improving performance is likely to involve significant changes to agency systems, capabilities and cultures in a tight fiscal environment, or require existing legislation to be reviewed or amended.

The Chair of the Commission has commented that the recommendations in its report can be broadly grouped into four main themes. These themes provide a useful basis for outlining the core elements of the Government's strategy for the regulatory management system.

1 Stronger ownership and leadership from the centre

The Government has increased its focus on the regulatory reform Ministerial portfolio, which has the prime oversight responsibility for the regulatory management system. This includes putting in place a new Parliamentary Under-Secretary role to support the Minister for Regulatory Reform, which includes an explicit responsibility for ongoing oversight of the implementation of this government response, and to work with regulatory practice leaders on how to lift the performance of regulators. Administrative support and advice for the Regulatory Reform portfolio will continue to be led by the Treasury.

The Government's medium-term objectives and work programme for the regulatory management system will be built around a set of core expectations for departmental 'regulatory stewardship'. The Government amended the State Sector Act in 2013 to clearly establish that departmental chief executives have a range of important stewardship responsibilities, including for the legislation administered by their departments which may be implemented by others, including Crown entities.

The nature of this stewardship duty was further fleshed out in the Government's "Initial Expectations for Regulatory Stewardship" published in March 2013. These expectations go beyond the design and implementation of legislative change. They also cover the need for departments to actively monitor and periodically assess the performance and condition of the regulatory regimes established by the legislation they administer, and to use that information to advise or act on problems, vulnerabilities and opportunities for improvement.

The stewardship expectations have now been incorporated in a major upgrade of the regulatory element of the Performance Improvement Framework (PIF) agency model, which is used to assess the performance of individual government departments and Crown entities and how well they are placed to confront their current and future challenges.

In 2014, SSC started to implement a renewed approach to chief executive performance management, which considers chief executives' responsibilities for regulatory stewardship, and related Crown entity monitoring, as part of their core business. As this approach evolves, chief executives will experience SSC playing a bigger role in holding them to account for regulatory functions. SSC also released new Crown entity guidance ("It Takes Three"), outlining the respective roles for Ministers, entities and monitoring departments in relation to Crown entity governance and performance.

The stewardship expectations will also guide the Treasury's approach to its responsibility for oversight of the system as a whole. The Treasury's approach will be

set out clearly and more visibly, as will its priorities and objectives for the regulatory management system. Over the next three years, the Treasury will focus on:

- further embedding the government's expectations for regulatory stewardship across government
- working with key regulatory agencies to refine and improve the performance of existing regulatory management tools (particularly regulatory impact analysis and regulatory planning)
- helping agencies to further develop their internal systems and ability to act as good stewards of regulation in their area, and to report publicly on their progress
- identifying opportunities to better co-ordinate and prioritise work on regulation across government departments, and the Government's wider legislative programme.

Other government agencies, such as the Parliamentary Counsel Office, will also have enhanced central leadership roles to play, as discussed below.

2 *Greater focus on improving the quality of legislation*

The Government is taking a number of steps to increase the attention given to legislative design.

The Legislation Advisory Committee recently revised its *Guidelines on the Process and Content of Legislation* into a form that is much shorter and more focused on helping policy advisors to identify the issues that they should address when developing legislation. The Government has formally adopted these new guidelines as the appropriate reference point for Ministers and officials when assessing whether draft legislation conforms to accepted legal and constitutional principles. The remaining material from the old Guidelines will be reworked into a supporting manual.

The Government plans to establish 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. The Government also supports greater use of exposure drafts of legislation, and will provide some guidelines for Ministers and departments on when this may be helpful.

The Parliamentary Counsel Office will also take on a broader stewardship role in relation to the development of legislation and the state of the New Zealand statute book, as discussed in its recently published Performance Improvement Framework (PIF) Review. Together with other responsible agencies, this will include an enhanced education and training role, and a clear strategy for modernising and simplifying the New Zealand statute book.

The Government is also considering mechanisms to better keep legislation up to date, such as omnibus Bills to repeal redundant legislation or make technical or minor policy changes. It expects to introduce a Legislative Repeal Bill during 2015.

3 *Greater professionalisation of the regulatory workforce*

While the Commission suggested that the Treasury could provide intellectual leadership of regulatory practice, the Government considers that it needs to be led from, and have the support of, subject-matter experts in the regulator community. The chief executives of regulatory agencies have agreed to work together to build regulatory capability, and the Ministry of Business, Innovation and Employment is providing leadership for a cross-government forum to:

- share regulator practices and experiences
- promote greater consistency between regulators' compliance strategies where there are overlapping mandates, and
- further develop the programme previously run by a voluntary network of individuals working in local and central government regulation.

The regulator forum will offer regulators a useful way to collectively consider the findings and suggestions for improving regulatory practice set out in the Commission's report. The initial focus will be on further developing a qualifications framework and best practice compliance strategies. Further consideration will be given to future areas of focus.

The Parliamentary Under-Secretary supporting the Minister for Regulatory Reform will work with regulatory practice leaders to support a sustained lift in regulator performance.

4 *Review and evaluation*

The Government acknowledges the weaknesses in current regulatory review and evaluation practices. Promoting regulatory stewardship is a key element of the Government's response – in particular, driving home expectations around how important regulatory regimes are monitored and reviewed. 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.

Better monitoring and review practices will require greater departmental engagement with stakeholders, between regulators and regulatory policy agencies, and between central and local government. The Government hopes that external stakeholders will see and respond to the opportunity to work constructively with departments and regulators to better deliver beneficial regulatory outcomes. Where appropriate, the Government will put mechanisms in place such as the Rules Reduction Taskforce to

get input from stakeholders on ways to improve regulation. The Minister for Regulatory Reform will also maintain an overview of the progress.

The review of the performance of regulatory agencies themselves is also important. The PIF agency model and review process administered by the central agencies is central to this and the model has been upgraded recently to reflect the regulatory stewardship expectations. The strength of the PIF is its broad focus. It looks across core business including regulatory responsibilities and multiple elements of performance including leadership, direction, and customer focus. High performing organisations with strong stakeholder and customer culture know when and how to regulate for effective government.

The PIF model and review process is open to, and expected to be used by, both departments and Crown entities. Some entities have already undergone, or are going through, the PIF process. Government expects that if Crown entities are not using the PIF they should be able to demonstrate the use of another rigorous organisational self-review improvement tool. Government also expects Crown entity monitors, acting on behalf of responsible Ministers, to focus on ensuring Crown entities demonstrate effective self-review.

End

Proposed Responses to Recommendations from Productivity Commission on Regulatory Institutions and Practices

No.	Recommendation	Draft response (agree /partially agree)
Improving guidance, clarifying expectations, sharing good practice, developing capability for regulatory practice		
4.01	The State Services Commission should develop guidelines to assist regulatory bodies to manage cultural changes associated with restructures and changes in functions. Monitoring agencies should use this guidance as the basis for assessing whether cultural issues are adequately reflected in broader change management strategies.	Cultural issues are likely to be a success factor in any restructure, not just those in regulatory bodies. It is not clear that system-wide guidance is possible given that every restructure is different. The SSC will draw on the Productivity Commission's work in future revisions of Machinery of Government guidance.
5.01	The State Services Commission should develop a set of minimum expectations around the promotion of regulatory capability, and require Crown entity statements of intent to demonstrate how the Crown entity will meet those expectations.	Intellectual leadership of regulatory practice should come from the regulator community, so that it stays grounded in reality. Central Agencies can play a supporting role. Building on existing cross-agency collaboration, the regulator community has considered how a regulator-led model to improve capability and performance would best work. Regulator chief executives have agreed to work cooperatively to build capability, with an initial focus on further developing a qualifications framework and best practice compliance strategies. MBIE will provide the leadership and secretarial support for the initiative, with other agencies providing financial support. The relevant Productivity Commission recommendations will be considered in the development of the future work programme.
5.02	Guidance on regulatory practice should be updated to provide additional information on: <ul style="list-style-type: none"> • how to define and target risks; • how to select compliance tools that reflect both the risk and compliance attitudes of regulated parties; • how to establish strong internal feedback loops for gathering and assessment of how well enforcement strategies are working; and • tools and strategies to enable the regulator to understand the wider influences that shape the response of regulated parties to the regulatory regime. 	
5.03	The Government should provide partial direct funding of regulator communities of practice (subject to a suitable business case and performance measures) and strengthen its expectations about regulatory agencies participating in these networks (for example through revising Cabinet's Expectations for Regulatory Stewardship).	
5.04	A position should be created to provide intellectual leadership in the area of regulatory practice. The position would be responsible for: <ul style="list-style-type: none"> • disseminating information on the latest developments in regulatory theory and practice; • coordinating the development of professional development pathways and accredited qualifications; working with chief executives of regulatory bodies to identify common capability gaps and strategies for filling these gaps across the system; • working with research organisations to investigate regulatory issues of importance to New Zealand agencies; developing and maintaining good practice guidance; • promoting a common "professional language" throughout New Zealand regulatory agencies; • coordinate study tours and visits by international experts and leading academics in the field of regulatory studies; and • leading and managing professional forums of regulators. 	
9.05	Updated State Services Commission guidance on machinery of Government choices should discuss the practical benefits, costs and risks associated with allocating functions to a department or stand-alone agency, as well as the accountability and governance considerations.	The SSC will draw on the Productivity Commission's findings and recommendations in its revision of the relevant Machinery of Government guidance, scheduled for completion by December 2015.
14.03	Once the Ministry of Business, Innovation and Employment (MBIE) has completed the development of Statements of Intent/charters for the workplace health and safety and employment relations regimes, the Treasury and MBIE should evaluate the process, with a view to: <ul style="list-style-type: none"> • identifying any areas for improvement; and • providing guidance about the model to other policy ministries. 	The Treasury will work with MBIE to evaluate its trial of regulatory charters, to identify any areas for improvement and provide guidance on the approach to other agencies.

No.	Recommendation	Draft response (agree /partially agree)
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Improving role clarity

9.03	The Minister of State Services should review agreements between ministers to establish and allocate functions to departmental agencies to ensure that respective roles, responsibilities and accountabilities are clear and, where appropriate, in statute.	<p>The Government agrees that respective roles, responsibilities and accountabilities need to be clear. However, it considers the existing arrangements achieve this. In particular:</p> <ul style="list-style-type: none"> • the State Sector Act reforms and the Public Finance Act provide for clear accountability at both the Ministerial and chief executive levels • it is a Cabinet Manual requirement that the Minister of State Services be consulted on machinery of Government issues, and the SSC provide the Minister with advice on such issues • the State Services Commission appoints chief executives, and supports and monitors their performance and will ensure that agreements between respective chief executives are appropriately clear and implemented.
9.04	The State Services Commissioner should approve agreements between the chief executives of host departments and departmental agencies to ensure that respective roles, responsibilities and accountabilities are clear, and that there are appropriate formalities in place to preserve the independent exercise of statutorily independent powers.	Section 27B of the State Sector Act requires the working arrangements between a departmental agency and its host department to be approved by the appropriate Ministers and SSC provides advice on such arrangements.
13.03	Department–regulator relationships that involve very regular and close contact should be revisited, with a view to moving to more formal interactions, based on clearly-defined roles and responsibilities.	SSC's new guidance on Crown entities outlines the respective roles for Ministers, entities and departments, including the assessment of Board performance and the appropriate balance in Board-management relationships. The Government agrees that departments' responsibility for overall policy direction includes taking into account the practical experiences of regulatory agencies implementing regulatory policy decisions. However, this should not mean departments take a close interest in day-to-day administrative matters, or that regulators should drive policy decision making. Nevertheless, some flexibility is necessary; for example, when a department is considering a policy change it is appropriate for the regulatory practitioners who will eventually be required to implement the new policy to be consulted about the practicality of implementing it.

Improving operational transparency

10.04	Regulators should make their conflict of interest policies available on their website.	The Government agrees that such information should be kept up to date and readily available. Existing guidance for regulatory organisations already recommends full documentation of policies and procedures and the Government will reinforce the expectation that these are easily accessible, including being available on agency websites.
10.06	All regulators should publish and maintain up-to-date information about their regulatory decision-making processes, including timelines and the information or principles that inform their regulatory decisions.	

Oversight, strategic objectives and performance of the regulatory management system

14.01	<p>The Government should:</p> <ul style="list-style-type: none"> • publish the regulatory system reports prepared by departments; • require departments to articulate in their Statements of Intent their strategies for keeping their regulatory regimes up to date; • within three years, commission a review of each department's progress and seek advice from that review about whether it is necessary to create a legislative framework or new mechanisms for managing the stock of regulation. 	<p>The Government agrees that information on departments' strategies and systems for meeting their regulatory stewardship expectations (including how they manage their stock of regulation) should be publicly available. We will be setting an expectation that each year major regulatory departments publish their regulatory management strategy, information on the state of their regulatory stock, and their plan for the year ahead. The Treasury will work with departments to make sure this information is readily available.</p> <p>The Government considers that a better outcome will be achieved by making planning information available to stakeholders so that they can provide feedback to departments, rather than undertaking a central review of departments' progress or putting a legislative framework in place. The Treasury is following the different approaches some of the major regulatory departments are currently taking to managing their regulatory stock and will apply any lessons learnt more broadly. In addition, the Performance Improvement Framework has been upgraded to reflect active stewardship of regulatory regimes and these reports are also publicly available.</p>
15.02	As the Regulatory Systems Report (or equivalent monitoring processes) evolves, the Treasury should collect more information about the outputs and outcomes from departmental regulatory management systems.	

No.	Recommendation	Draft response (agree /partially agree)
14.04	The Government should publish an overarching strategy that sets out how it will improve the management of the stock of regulation. The strategy should explain how specific initiatives fit within it, and should describe how successful implementation of the strategy will be measured and how it will benefit the community.	The Government will publish its strategy for the regulatory management system, including information on the roles of the Minister for Regulatory Reform and the Treasury.
16.02	The Government should publish the responsibilities of the minister for regulatory management. These responsibilities could include: <ul style="list-style-type: none"> • defining the overall objective of the regulatory system; • prioritising effort across the system; • specifying and allocating tasks for improving the system; and • promoting regulatory policy and the case for continuous improvement in regulatory design and practice. 	
16.03	The minister for regulatory management should publish a strategy report that sets out the medium-term objectives that the Government is seeking to achieve through the regulatory system, its strategic prioritisation of effort for achieving these objectives, and its work programme. The minister should report regularly on progress towards delivering this work programme, and update the statement as necessary.	
16.04	The Treasury should provide support for the minister for regulatory management, through an expanded team, with a published charter setting out its objectives and functions, its own website, and the authority to identify itself as a separate unit within the Treasury.	The Government does not consider it necessary for the Treasury's regulatory team to have a separate identity. An increase in the size of the team is also considered unnecessary, particularly given the proposal for intellectual leadership of regulatory practice to be primarily led from within the regulator community. The Treasury accepts that its oversight role in support of regulatory quality is not clearly set out, and the material published on the Treasury website relating to regulatory quality management issues is not well organised or easy to find. The Treasury will make this material more visible and easy to navigate as part of a broader process underway to redevelop the websites of the central agencies. In the first instance, this will include expanding and reorganising the regulatory material on the existing Treasury website.

Improving the development and presentation of legislation

8.01	The Cabinet Manual should be amended to set a general expectation that exposure drafts will be published and consulted on before introducing into Parliament legislation that creates a new regulatory regime or significantly amends existing regimes.	The Government agrees that greater use of exposure drafts will help to lift the quality of final legislation. The Government intends to develop guidance for Ministers and government agencies on the kinds of legislation and legislative situations in which it would be useful to publish and consult on an exposure draft, such as changes to complex or technical regulatory regimes. The guidance will cover exposure drafts for delegated legislation as well as bills.
9.01	The minister with responsibility for regulatory management should coordinate a principle-based review of regulatory legislation to ensure greater consistency in allocation of legislation material between primary legislation and types of secondary legislation.	The Government intends to remodel the Legislation Advisory Committee into a smaller committee of public sector legislative experts that will engage departments earlier in the policy and legislative development process, along similar lines to the original Legislation Design Committee. The new committee will have a mandate that includes advising departments on the appropriate allocation of new material between primary, secondary and tertiary legislation. The new committee will be able to identify existing legislation where there appear to be significant opportunities to improve legislative performance through changes in the allocation of material between primary, secondary and tertiary legislation.
9.02	The Legislation Advisory Committee should expand its guidelines to describe the situations where different types of delegated legislation are appropriate, including delegating authority to the Governor-General in Council and to regulators.	The Legislation Advisory Committee has recently revised the LAC Guidelines into a form that is much shorter and more focussed on helping policy advisers identify the issues they need to address, and seek further advice about, when developing legislation. The remaining material from the old guidelines will now be progressively reworked into a supporting manual which will provide a more detailed discussion of the issues covered by the guidelines, including case references. One of the first elements of the manual to be developed will be advice on the appropriate use of delegated legislation, how to determine an appropriate decision-maker, and safeguards relating to the exercise of powers to make delegated legislation.

No.	Recommendation	Draft response (agree /partially agree)
15.01	The Parliamentary Counsel Office should expand the New Zealand Legislation website (www.legislation.govt.nz) to provide a central and comprehensive source of Other Instruments.	<p>The Government recently considered the public accessibility of Other Instruments as part of its formal response to the Regulations Review Committee's report on its "Inquiry into oversight of disallowable instruments that are not legislative instruments". The response was presented to the House on 9 December 2014 and is available on the Parliamentary website.</p> <p>The Government acknowledges there is a significant concern about access to these instruments and has directed the Parliamentary Counsel Office to look at providing a register of Other instruments, based on the Australian Commonwealth model.</p> <p>There is a considerable amount of work involved in designing and implementing a register, registration system, and rules concerning the consequences of a failure to register. The Australian Federal Register of Legislative Instruments took several years to develop and implement. In advance of any formal register, the Government has asked PCO to use its best endeavours to get as many instruments listed on the Legislation website as it practically can.</p>
16.01	<p>Government should commission a review into improving and maintaining the quality of new and existing legislation, including:</p> <ul style="list-style-type: none"> • processes for producing and vetting the quality of legislative proposals and draft legislation; • the respective roles of the Parliamentary Counsel Office, the Law Commission, Legislation Advisory Committee, and Legislation Design Committee; and • relevant parliamentary processes. 	<p>There are a number of initiatives underway to help maintain and improve the quality of new and existing legislation. These include continuing to embed and refine the Government's expectations for regulatory stewardship, introducing departmental disclosure statements for Government-initiated legislation, remodelling the Legislation Advisory Committee, and developing a policy on the use of exposure drafts. The Government will consider the need for a system-wide review once the impact of these initiatives becomes clearer.</p> <p>A review of relevant parliamentary processes is appropriately the responsibility of Parliament itself and is best addressed as part of the review of Standing Orders that takes place during each Parliamentary term. The Government will draw the Productivity Commission's recommendation on this matter to the attention of the Standing Orders Committee of the House.</p>

Improving regulator appointment processes

10.01	The centre supporting the minister for regulatory management should actively support departments in managing appointments and reappointments to regulatory Crown entities. It should particularly assist departments in analysing the knowledge, skills and experiences required on the board of each regulatory Crown entity, and work with the department and the board chair to analyse the current skills on the board.	<p>The Government agrees that board performance is important for organisational performance and it will request that relevant agencies consider any additional steps necessary to ensure a capable and diverse cohort of potential appointees. However, the Government sees no benefit, and potential practical difficulties, in operating a separate appointment process for regulatory agencies. Existing requirements provide for the Minister for Regulatory Reform to be consulted on relevant board appointments.</p>
10.02	The Cabinet Office should require that agencies consult with the centre supporting the minister with responsibility for regulatory management, before submitting papers proposing the appointment of members to regulatory Crown entities. The centre should be able to insert a comment in appointment papers about the quality of appointment processes undertaken.	
10.03	The State Services Commission and the Treasury should evaluate the effectiveness of more active support of regulator board appointments, and advise the Government on whether a similar process should apply to non-regulatory board appointments.	
10.05	The State Services Commission's guidance about appointing board members to Crown entities and its induction material for new board members provide good information on the duties of members. But it should update these documents to emphasise that a member is neither appointed nor should act as the representative or agent of any external group.	SSC has updated the relevant guidance in line with the Productivity Commission's recommendations.

No.	Recommendation	Draft response (agree /partially agree)
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Cost recovery

12.01	<p>The Government should publish its cost recovery policy, outlining its policy objectives, and setting out guiding principles relating to:</p> <ul style="list-style-type: none"> • how to make trade-offs should objectives conflict; • when cost recovery may be appropriate; • consultation requirements before implementation; • how and when arrangements are to be reviewed and by whom; and • responsibility for ensuring compliance with the policy. 	<p>The Treasury and the Office of Auditor-General (OAG) publish guidance which covers cost recovery objectives and principles respectively. The guidance reflects that decisions about cost recovery should be considered on a case by case basis, reflecting the overall objectives of the activities. The two pieces of guidance have separate but complementary purposes and each set of guidance refers to the other where appropriate.</p> <p>Treasury is reviewing its guidance to be clearer on expectations that fees and charges should be fair, effective and efficient and that they need to demonstrate this through information disclosure and reporting to decision makers and fee payers. The Treasury will liaise with the OAG to address any inconsistencies in the guidance and ensure that the scope is clear. It will also consider any lessons from the Australian review of its cost recovery guidelines.</p>
12.04	<p>The Government and the Auditor-General should review the Treasury's Guidelines for setting charges in the public sector and the Auditor-General's Charging fees for public sector goods and services, to ensure that the guidelines reflect current knowledge about when and how to implement cost recovery. Users of the guidelines (whether the two sets of guidelines continue or are combined) should:</p> <ul style="list-style-type: none"> • only have to go to one place for advice on any issue; • not receive conflicting advice from the guidelines; and • be clearly informed about the scope of the entities and charges that the guidelines cover. 	
12.05	<p>The Government, when it reviews New Zealand's cost recovery guidelines, should seek to collaborate with the review of the cost recovery guidelines currently being undertaken in Australia.</p>	
12.02	<p>Agencies proposing a new or amended fee or levy for regulatory services should publish a statement outlining, for example:</p> <ul style="list-style-type: none"> • the reasons why they are introducing/amending a fee or levy; • their legal authorisation for doing so; • the expected effects of the fee or levy; • the consultation undertaken; and • the process for monitoring these effects and reviewing the policy. 	<p>The Government agrees that there is more that can be done to ensure that decision-makers and users can access information about the rationale for user charges, the levels and effects of these charges, the performance monitoring of activities funded by user charges, and agency cost structures. This is essential for adequate scrutiny of the rationale for and level of user charges by statutory monopolies.</p> <p>The Government expects agencies to take an open book approach to making this information publicly available, including in both a consultation document and the Regulatory Impact Statement, and Treasury will reinforce this expectation. The Treasury is developing a template for cost recovered activities that will ensure that the appropriate information is provided to decision-makers and users. This will include being explicit about how trade-offs are made, what measures have been taken to ensure that cost recovered activities are efficient, and how cost recovered activities will be monitored.</p>
12.03	<p>Agencies responsible for cost recovery arrangements should make sure that the arrangements are reviewed periodically to ensure that they remain justifiable in principle, efficient and effective.</p>	<p>The Government agrees that cost recovery arrangements should be regularly reviewed, including strengthening expectations regarding timely management of over or under recovery of costs. This expectation is already included in relevant guidance and the Treasury will consider how the guidance can provide clearer expectations about how entities plan and sequence reviews of cost recovery arrangements, and what should be reviewed.</p>
12.06	<p>The Government should consider whether those agencies that set or amend fees or levies can access adequate advice and experience from other agencies and departments.</p>	<p>The Government expects that agencies and departments will establish communities of practice to share knowledge and experience where this is appropriate. For regulators, the Compliance Common Capability Programme has fulfilled this role. The recently enhanced regulator-led cooperative approach to building capability will consider whether further support is needed for fee setting agencies.</p>

No.	Recommendation	Draft response (agree /partially agree)
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Improving monitoring and review

13.01	Departments should appoint staff into monitoring roles for terms that support good working relationships with regulatory Crown entities.	The Government agrees that it is desirable that monitoring staff remain in roles sufficiently long to establish and maintain good working relationships with those they monitor, but there are many factors that will affect staff turnover. The Government expects agencies to appropriately manage their ongoing capability including managing turnover and ensuring good knowledge management practices.
13.02	Departments should move towards risk-based monitoring and reporting, with higher-performing regulatory Crown entities subject to less frequent reporting obligations.	The Government agrees a risk based approach to monitoring and reporting is appropriate and many monitoring departments have already moved in this direction. However, there can be practical issues involved and the Government considers that each department is best placed to decide how it approaches monitoring, given the different circumstances of various Crown entities. SSC's guidance on Crown entities supports a proportionate, risk based approach to monitoring and reporting.
13.04	Some form of peer review, drawing on the expertise of other regulatory leaders, should be established to help fill the gap in current monitoring processes.	<p>The Government agrees that it is important to be able to properly assess performance in such bodies and peer review is an effective tool to assist this. The Performance Improvement Framework (PIF) approach is proving effective in raising the performance of agencies.</p> <p>Primary responsibility for entity performance rests with boards and the PIF process is available to Crown entities as an option to help boards assess performance. The strength of the PIF is its broad focus. It looks across core business including regulatory responsibilities and multiple elements of performance including leadership, direction, and customer focus. High performing organisations with strong stakeholder and customer culture know when and how to regulate for effective government.</p> <p>Some entities have already undergone, or are going through, the PIF process. Government expects that if Crown entities are not using the PIF they should be able to demonstrate the use of another rigorous organisational self-review improvement tool. Government also expects Crown entity monitors, acting on behalf of responsible Ministers, to focus on ensuring Crown entities demonstrate effective self-review.</p> <p>The State Services Commission has recently completed a substantial upgrade to the regulatory component of the PIF agency model. The upgrade raises the bar from procedural oversight to active stewardship of regulatory regimes, in line with the Productivity Commission's recommendations.</p>
13.05	The regulator peer reviews should be conducted as part of the Performance Improvement Framework process.	
13.06	The State Services Commission should convene a panel of current and former senior regulatory leaders to develop a set of regulator-specific questions for the Performance Improvement Framework reviews.	
13.07	If resource constraints mean that progress on rolling PIF out to the wider set of Crown entities will be slow, central agencies should explore the feasibility of introducing a streamlined PIF process for regulators, focusing on regulatory practice, engagement and culture.	
13.08	The State Services Commission should identify current and former regulatory leaders to join PIF review teams.	
13.09	The priority for the PIF peer reviews should be the larger regulatory Crown entities, those entities that implement regimes managing significant potential harms, and departments that implement regulatory regimes. Smaller Crown entities (eg, with a total budget of less than \$5 million) should be able to volunteer for a peer review, but not be required to undertake one.	
14.02	<p>The Treasury should:</p> <ul style="list-style-type: none"> articulate a set of principles to encourage departments to focus effort on reviews that have the largest anticipated benefits; set up an ongoing preliminary assessment process to identify areas requiring attention (these assessments could be undertaken by the responsible departments, or by a central department or even by a new agency); and specify targets such as overall yearly expenditure, or a target number of reviews, to force identification of the reviews with the largest potential benefits. 	The Government uses similar criteria to those discussed in the Productivity Commission's report to select areas for major regulatory review, and the Treasury will reinforce these criteria with departments. The Government's Expectations for Regulatory Stewardship require departments to systematically and regularly assess the performance and condition of their regulatory regimes to identify opportunities for improvement in the design and operation of those regimes. The Government does not support the use of a target number of reviews to be undertaken each year, although it will put in place such requirements if it considers this necessary. The Government will also use omnibus repeal bills to remove superfluous and redundant legislation.

Miscellaneous

11.01	The Officers of Parliament Committee should review the adequacy of funding for the Office of the Ombudsman to undertake its statutory functions to a high standard.	The funding for the Office of the Ombudsman has been increased in recent Budgets to help manage its caseload, and the annual report of the Office for the 2013/14 year shows a reduction in the backlog of casework for the Office. The Officers of Parliament Committee will continue to monitor the performance of the Office and the adequacy of its funding.
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