



Australian Government

Productivity Commission

PROTOCOL BETWEEN THE
OFFICE OF REGULATION REVIEW
AND THE
REGULATORY IMPACT ANALYSIS UNIT

Ministry of **Economic
Development**



M a n a t ū Ō h a n g a

1. This document details the working arrangements between the Australian Government Office of Regulation Review (ORR) and the Regulatory Impact Analysis Unit of New Zealand's Ministry of Economic Development (RIAU) in relation to the assessment of Regulatory Impact Statements (RISs) prepared for Ministerial Councils and standard setting bodies under the requirements of the *COAG Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (as amended by COAG June 2004).
2. Attachment A of the *COAG Principles and Guidelines* details the process by which the ORR provides advice and assistance on the preparation of RISs for Ministerial Councils and standard setting bodies and monitors compliance with the *COAG Principles and Guidelines*.
3. This process provides that draft RISs are sent by Ministerial Councils and standard setting bodies to the ORR for advice prior to the RIS being made available for public comment (termed the 'Consultation RIS' throughout this Protocol). Where a trans-Tasman issue is involved, the ORR will refer the Consultation RIS to the RIAU for comment.

Identification of a trans-Tasman issue

4. The criteria to determine whether a particular regulatory proposal gives rise to a trans-Tasman issue is potentially very broad. For the purposes of this Protocol, it is considered by both the ORR and the RIAU that as an initial means of identification, a list of the Commonwealth-State Ministerial Councils with New Zealand participation would provide suitable guidance. This list is attached as Annex A to this Protocol (contact details will be updated as necessary). It is noted that trans-Tasman issues may develop outside the scope of the list of Ministerial Councils with New Zealand participation and that this list is for initial guidance only. In cases where either the ORR or RIAU become aware that other COAG forums are considering matters where there are trans-Tasman issues, where it is feasible, they will advise the other party with the objective of allowing the requirements detailed in the *COAG Principles and Guidelines* to be met in full.

Process for Review of a Consultation RIS by the RIAU

5. As detailed in Attachment A of the *COAG Principles and Guidelines*, the ORR will assess a Consultation RIS within two weeks. The following paragraphs detail the mutually agreed process for consultation with the RIAU assuming this two-week turnaround period.
6. Upon identification that there is a trans-Tasman issue involved in relation to a draft Consultation RIS prepared by a Ministerial Council (as detailed in paragraph 4 above), the ORR will forward the RIS to the RIAU by electronic mail or facsimile as soon as possible (i.e. preferably no later than one working day after its receipt from the Ministerial Council).
7. The RIAU will undertake to advise the ORR (by electronic mail) whether or not it intends to provide any comments on the draft Consultation RIS within two working days of receiving it.

8. Where the RIAU confirms that it doesn't intend to make any comments, the ORR will continue its assessment of the draft Consultation RIS as per normal.
9. Where the RIAU confirms that it does intend to provide comments on the draft Consultation RIS, it will undertake to provide those comments to the ORR (by electronic mail) within five working days of receiving it. This will provide the ORR with sufficient time to incorporate the RIAU's comments within its own assessment of the draft Consultation RIS.
10. The RIAU acknowledges that the ORR may in some instances be required to assess a Consultation RIS in a shorter timeframe than the two weeks indicated in the *COAG Principles and Guidelines*. In these instances, the ORR and RIAU will work together to ensure as far as possible that any comments from the RIAU are incorporated into the ORR's assessment of the Consultation RIS.
11. As detailed in Attachment A of the *COAG Principles and Guidelines*, the ORR will advise the Ministerial Council (or standard setting body) of its assessment of the draft Consultation RIS, which will incorporate any comments from the RIAU. The ORR will forward in a timely manner a copy of its assessment to the RIAU for information. The RIAU notes that the advice presented to the Ministerial Council or standard setting body may or may not be adopted in the further revision of the RIS.

Focus of RIAU Comments

12. Any comments made by the RIAU will focus primarily on the trans-Tasman impact of the particular regulatory proposal. This will be with the view of ensuring that the regulatory proposal is considered in the context of the broader trans-Tasman market. The comments may seek to ensure that the current policy and industry environment in New Zealand is accurately portrayed, (relevant to the discussion of the status quo and potentially the problem definition), and that potential impacts to New Zealand industry, consumers or society generally are identified within the cost-benefit analysis of the RIS. Comments may also seek to encourage that such impacted parties are consulted within the policy development process.
13. To this end, and acknowledging that Consultation RISs often contain only a preliminary assessment of impacts, the RIAU comments will endeavour to draw out in the draft Consultation RIS the relevant information from the responsible Ministerial Council in relation to the identification of impacts in New Zealand.
14. The RIAU may also provide to the Ministerial Council or standard setting body a list of suggested parties that they (in conjunction with the relevant New Zealand government agencies) feel should be consulted by the Ministerial Council in relation to its regulatory proposal. However, this role would be distinct and separate from the role of providing advice to the ORR on the content of the draft Consultation RIS.

Consultation within New Zealand Government

15. As part of its assessment of the New Zealand perspective, the RIAU may liaise with other teams within the Ministry of Economic Development (e.g. the TTMRA team), and with the New Zealand government department or agency of the responsible New Zealand Minister on the relevant Ministerial Council. The focus of such discussions will be the content of the draft Consultation RIS vis-à-vis the RIS requirements. New

Zealand departments and agencies will be advised by the RIAU to treat the draft RIS as confidential. Furthermore, the department or agency should not make contact with the relevant Ministerial Council or standard setting body (or other stakeholders) regarding the draft RIS or its drafting process, but should ensure those detail comments on the RIS are referred to the RIAU. Where appropriate, the RIAU will provide the ORR with background information on the detail and extent of any consultation with the relevant New Zealand government departments or agencies, and the subsequent outcomes, alongside its comments on the draft Consultation RIS.

16. Where the RIAU has undertaken to provide final comments to the ORR on a draft Consultation RIS, it will also forward a copy of these comments to the departmental contact, as detailed in Annex A. This contact may then undertake to advise the responsible New Zealand Minister on the Ministerial Council. This would assist in enabling the responsible Minister to ensure, through his/her on-going participation in the Ministerial Council, that the impacts to New Zealand arising from the regulatory proposal are properly identified and suitably managed.

On-going Discussions

17. The ORR and RIAU will hold regular discussions (i.e. no less frequently than every three months) to ensure that the working arrangements detailed in this Protocol are feasible and complete. The key talking points in these discussions are likely to be the identification of up-coming trans-Tasman issues arising in both Australia and New Zealand, and any necessary improvements to this Protocol.
18. Joint efforts to identify upcoming trans-Tasman issues derive from the mutual aim of the ORR and RIAU to facilitate better and more effective co-ordination of policy development between Australia and New Zealand, in line with the *COAG Principles and Guidelines*.
19. Any subsequent amendments identified as necessary to improve the effectiveness and efficiency of the working arrangements under the *COAG Principles and Guidelines* will be made to this Protocol by mutual agreement.

Key Contacts

20. The ORR and RIAU will each nominate a key contact person for the purposes of the working arrangements detailed in this Protocol.

For the Office of Regulation Review

Date

For the Regulatory Impact Analysis Unit

Date