

The Regulatory Review

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Update on the Quality Regulation Review

In the last issue of the Regulatory Review we outlined the projects that make up the Quality Regulation Review. Here we provide an update on progress made to date.

Overall the review is progressing well with the work programme expected to be completed within the first half of 2007. Over 600 issues have been lodged in the business consultation database, including those raised in the sector study interviews within the wine, hospitality, retail and horticulture sectors, which have now been completed. Reports of these interviews have been drafted and departments are looking at the problems and solutions put forward, as well as alternative solutions for addressing the issues raised.

Departments are required to report to their Ministers before Christmas with the list of issues and solutions related to them, both those that can be dealt with in the short term through a potential 2007 omnibus bill and those for which the 'fix' may require more work. The Minister of Commerce will then report to Cabinet with a list of proposed solutions by 5 February 2007.

The individual projects that make up the review are at various stages.

Interface projects

The DoL is leading the project on the interface between HSE, ACC and HSNO legislation. The main issues raised relate to information provision, hazard management requirements and agency processes and interactions.

DoL have identified some initial solutions, including creating an on-line 'Hazard Builder' for SMEs, developing a transparent enforcement policy and reviewing methods used in ACC

auditing programmes. Consultation is continuing, and the list of possible solutions may be expanded.

DBH is leading the project on the interface between resource and building consents. A report has been written summarising the main issues raised by business. Issues relate to accessible information, connections between related requirements, expectations and accountabilities for administrative performance, consistency of administration/decision making across local authorities, and labour and skill shortages.

DBH has identified some initiatives to address these issues including reviewing the accessibility of information and developing indicators for administrative performance.

The Minister for Building Issues has signed off on this report and it has been forwarded to the Minister of Commerce, the Minister for the Environment, the Minister for Local Government and the President of Local Government New Zealand for their consideration and comment. DBH will prepare a paper based on the conclusions of the report by 29 January 2007.

Fast track vehicle

Departments are working on the basis that an Omnibus Bill for the reduction of regulatory burdens (e.g. a Regulatory Frameworks Improvement Bill) will be considered by Parliament. Departments can put forward potential items for the Bill as part of the 22 December report to Ministers.

Strengthened Regulatory Impact Analysis requirements

Cabinet agreed in October to a package of proposals to enhance the regulatory impact

statement (RIS) regime. A Cabinet Office circular outlining the new requirements will be issued in early 2007 and the RIAU is producing revised RIS Guidelines.

Business Cost Calculator

Development of the BCC is on track. It is expected to be ready for use by agencies in the first half of 2007.

Enforcement Strategies

In November an enforcement strategies forum was held with 35 regulators, managers and policy analysts. The discussion attracted

engagement and interest. This project will lead to guidelines that identify what needs to be considered when designing new regulation.

Other

Other projects underway include a project considering the benefits of regulatory flexibility (including exemptions and performance-based requirements) and a project assessing the role of standards in regulatory frameworks, which links in with the review of the Standards and Conformance Infrastructure.

Strengthened RIS Regime Applies from April

Cabinet agreed to the details of the strengthened RIS regime on 30 October 2006. From 2 April 2007, departments will need to meet the new requirements.

The main changes that departments should be aware of are:

- For proposals that will potentially require a RIS, discussion documents will need to include questions/discussion of the RIS elements (problem, options, impacts of options, implementation and review) or a draft RIS.
- The adequacy criteria have been strengthened. The RIS will be inadequate if:
 - there has not been an appropriate level of analysis of the options given the magnitude of the proposal, including an appropriate level of cost-benefit analysis, risk assessment and assessment of compliance costs
 - the consultation during policy development was manifestly inadequate
 - it has not been established that the existing framework would not suffice to deal with the problem being addressed
 - the RIS does not include the information required (note that the RIS format has changed, and the BCCS has been subsumed into the RIS – this will all be explained in full in the RIS Guidelines).
- The RIAU will be reviewing fewer RISs. Where the proposal is likely to have a significant impact on economic growth (there are defined criteria), the RIAU will review the RIS for adequacy and will advise on whether the discussion document is likely to result in an adequate final RIS. Departments need to give

the RIAU 20 working days to review the RIS and 10 working days to advise on the discussion document. Departments will be responsible for assessing the adequacy of all other RISs and ensuring that discussion documents for these proposals meet the requirements.

- Cabinet papers will need to contain a section entitled Regulatory Impact Analysis, which states whether the Code of Good Regulatory Practice (available at www.med.govt.nz/code-of-good-regulatory-practice/) and the RIS requirements have been met.

The RIAU will disseminate new RIS Guidelines, which will provide more detail on the requirements, early in 2006.

For more information, contact Willie Lewis on 04-470 2318 or at willie.lewis@med.govt.nz

Government Announces Funding for Health Impact Assessment Support Unit

The government has recently approved the establishment of a Health Impact Assessment (HIA) Support Unit within the Ministry of Health to work across central and local government as part of the package of initiatives to improve children and young peoples' lifestyle, funded by the \$67 million government wide Mission-On package.

The unit will promote and support the use of HIA and act as a resource for evidence and evaluation. It is anticipated that the unit will be guided by an external reference group of representatives from key central and local government agencies and individuals with expertise in impact assessment processes, including HIA. Government agencies will be encouraged to carry out HIAs on new policies of significance to the health of the population.

Part of the role of the HIA support unit will be to encourage the embedding of HIA into policy development processes and to assist agencies to develop capacity in this area. The Ministry of Health will work with other agencies to establish the HIA support unit by the end of June 2007.

A number of countries have established small, dedicated HIA units which they believe to be crucial to the successful implementation of HIA. England's Regulatory Impact Assessment (RIA) guidance has been strengthened so that policy makers must now consider health impacts at all the appropriate stages of policy development with the regulatory impact analysis (RIA) process.

Definition of Health Impact Assessment

HIA is a "combination of procedures, methods, and tools that is used to assess policies for potential effects on the health of the population, and of the distribution of those effects within the population" (PHAC). HIA is a practical way to ensure that health and wellbeing of the population is considered as part of policy development and decision-making in all sectors. HIA can be applied at two levels:

- the policy level, as a means for assessing the effects that policies across all sectors including central and local government are likely to have on health; and

- the project level, for example through the resource management process when a new sewage scheme is being considered for a particular community. The Sanitary Works Subsidy Scheme administered by the Ministry of Health requires the environmental assessment to include an HIA which examines current risks to human health and assesses the benefits of the proposed upgrades.

Rationale for HIA

Applying the HIA tool during the policy development stage allows early recognition of the human health effects and can inform policy development. Similar approaches are popular internationally to protect and promote public health and are considered useful in the fight against chronic disease. Use of HIA for policies beyond the health sector reflects the fact that many health determinants are directly affected for good or ill by action in other sectors. In New Zealand the HIA process has been recently applied in a range of initiatives at central and local government level:

- Ministry for the Environment Drinking Water National Environmental Standard Screening HIA. This screening HIA looked at the Ministry for the Environment's national environmental standard for human drinking-water sources which was under development in 2006.
- Parliamentary Commissioner for the Environment in the development of a report that explores two different futures for electricity supply and demand in New Zealand. The HIA was commissioned to identify the health and wellbeing issues associated with the two scenarios.
- Transport sector in meeting the new public health objectives of the New Zealand Transport Strategy 2002.

For further information, please contact Frances Graham (Senior Analyst, Ministry of Health) on 495 4380 or at frances_graham@moh.govt.nz

Online guidance on HIA is available at www.nhc.govt.nz/phac/health-impact-assessment.htm

The Trans Tasman Mutual Recognition Arrangement: A Cornerstone of the Single Economic Market

The Trans Tasman Mutual Recognition Arrangement (TTMRA) is a cornerstone of the efforts of the Australian and New Zealand governments to create a more seamless trans-Tasman market for the sale of goods and the movement of registered occupations. It is, and will continue to be, a powerful driver of trans-Tasman regulatory co-ordination and an important instrument for supporting and advancing the single economic market.

The TTMRA is based on the principles of equivalence of regulatory outcomes which is borne out of confidence in our respective regulatory approaches. This is why under the TTMRA a good which can be legally sold in New Zealand can be legally sold in Australia (and visa versa) without the need for any further testing or certification. Likewise, a person registered to practice an occupation in New Zealand is entitled to register to practice an equivalent occupation in Australia (and visa versa) without the need to undergo further testing or examination.

As a central driver of regulatory co-ordination, the TTMRA is minimising or removing regulatory barriers to trade – either through mutual recognition of our respective regulatory regimes or through harmonisation.

A review in 2003 confirmed that the TTMRA has significantly reduced transaction costs associated with the sale of goods and occupational registration on both sides of the Tasman since it came into effect in 1998. The review also found that there is a need to better inform regulators and business stakeholders of the strategic objectives and obligations of mutual recognition and to ensure mutual recognition implications are considered early in the policy and regulatory development process so that the TTMRA continues to fulfil its trade facilitation role.

Both Australia and New Zealand have taken steps to revise their policy and regulatory development frameworks to ensure mutual recognition obligations are considered at an early stage of the policy and regulatory design process. The *COAG Principles and Guidelines for National Standards Setting and Regulatory Action by Ministerial Councils and Standards Setting Bodies (COAG Principles and Guidelines)*, which are a set of best

practice requirements for developing regulatory proposals and for preparing Regulatory Impact Statements on those proposals, have been amended to ensure that mutual recognition issues are considered and, where necessary, resolved early in the policy development process. New Zealand is in the process of amending our Regulatory Impact Statement Guidelines along similar lines.

To complement this, a Protocol between MED and the Australian Office of Regulatory Review for consultation during regulatory impact statement development has been operational since September 2004. It enables New Zealand to provide comments at an early stage of policy development on Australian proposals which may have trans-Tasman implications.

In addition, a revised version of the *Users' Guide to the Mutual Recognition Agreement (MRA) and Trans-Tasman Mutual Recognition Arrangement (TTMRA)* was launched in September this year. It has been designed to assist exporters, people in registered occupations, policy makers and regulators in both Australia and New Zealand to better understand the arrangements and to ensure that the benefits of mutual recognition are fully realised.

To further promote awareness and understanding of the TTMRA, MED hosted a series of seminars in November 2006. The seminars, which focused on occupational registration authorities, regulators and policy makers, provided an opportunity for people to better familiarise themselves with the key objectives and obligations of the TTMRA as well as the benefits it can offer.

MED has also set up a TTMRA enquiry point (TTMRA@med.govt.nz) to assist you with any TTMRA related queries. We encourage you to use this resource and share your queries and experiences with the application of the TTMRA. This information will help officials consider the issues that will drive the next phase of the TTMRA development.

General information on the TTMRA, including a copy of the revised Users' Guide, is available at www.med.govt.nz/ttmra/

Considering standards as part of policy development

What are Standards?

Standards (with a capital 'S') refer to formal Standards, developed through the consensus of a representative Standards development committee, and formally approved by the Standards Council (in accordance with the requirements of the Standards Act 1988).

Standards affect peoples' daily lives in many ways and span a wide breadth of sectors. Standards exist in areas as diverse as bungy jumping, organic production, energy efficiency, construction, healthcare, risk management, health and safety, food and drugs.

In broad terms, Standards are:

- agreed technical specifications for products, processes, performance or services
- used to provide information, establish measurements, set minimum levels of quality or safety, and support interface and compatibility between products and services
- flexible and relatively inexpensive regulatory instruments that can be used in support of many government policies, suitable to New Zealand's regulatory environment.

How are Standards applied?

Most Standards are voluntary, but when referenced in legislation they can be considered mandatory or one component of "technical regulations". A regulator may accept a Standard as a means of compliance with regulatory requirements ("acceptable solution approach"). Standards may also be a requirement for entering into a service contract without necessarily being referenced in legislation. Voluntary Standards can be developed by industry and Government as codes of practice or guidelines that set out acceptable or better practice.

Standards are well-recognised by industry, regulators and consumers and also accepted trans-Tasman as helping to underpin and to promote the aims of a SEM (Single Economic Market) and TTMRA (Trans-Tasman Mutual Recognition Arrangement). Standards are also recognised internationally where developed in conjunction with Standards New Zealand (as New Zealand's representative in the International Organisation for Standardisation ("ISO") and the International Electrotechnical Committee ("IEC")).

Standards are a useful tool for policy makers

When developing policy, it may be useful to consider Standards as one of your options.

New Zealand and Australia have endorsed a framework which requires consideration of international (ISO) standards, then joint trans-Tasman (Australia/New Zealand) standards before the development of domestic only standards.

Government has expressed a desire for the regulatory environment to be less prescriptive, encourage stakeholder participation and, wherever possible, not to add unnecessary business compliance costs. Examples of the variety of government objectives that can be met through Standards include enhancing wellbeing and public welfare, promoting regional or international best practice, promoting appropriate and adequate commercial communication, supporting regulatory harmonisation and encouraging technological diffusion.

Standards can complement policy development and/or reduce the level of detail required in regulation drafting, promote sector involvement and reduce associated monitoring and business compliance costs. Direct stakeholder and industry involvement in developing Standards means they are widely accepted by those who have to implement them.

Standards can also be developed and published relatively quickly compared to the timeframes for changing legislation or regulation. Standards are therefore flexible and can be responsive to and reflect New Zealand's changing economic and social environment.

Standards & Conformance Infrastructure Review underway

Standards New Zealand is working closely with the Ministry of Economic Development as a participant in the Ministry's current review of New Zealand's standards and conformance infrastructure (see www.med.govt.nz/sc-tbt/infr/review/).

The review forms part of the government's economic transformation agenda and may identify opportunities to enhance the contributions made by Standards towards achieving economic growth, innovation and broader public good outcomes.

Over the coming year, Standards New Zealand is looking to actively engage across government to promote a better understanding of Standards and

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their place in the spectrum of available policy options.

For more information on Standards

Contact Rob Warner (Business Relationships Manager, Standards New Zealand) on 498 5946 or at rob.warner@standards.co.nz

www.standards.co.nz

For more information on the standards and conformance infrastructure review or how standards fit into policy development

Contact Sharon Blaikie (Senior Advisor, Ministry of Economic Development) on or sharon.blaikie@med.govt.nz

www.med.govt.nz/sc-tbt/

Examples of Standards sponsored by government

STANDARD	IMPLEMENTATION	SPONSOR
Health and Disability Sector Standards (NZS 8134:2001)	Mandatory (to access funding)	Ministry of Health (MoH)
Timber Framed Buildings (NZS 3604:1999)	Means of compliance ("acceptable solution")	Department of Building and Housing (DBH)
Accident and Medical Clinic Standard (NZS 8151:2004)	Contract requirement	Accident Compensation Corporation (ACC)
Gender - Inclusive Job Evaluation Standard (NZS 8007: 2006)	Voluntary (best practice)	Department of Labour (DoL)

Changes to the Regulatory Policy Team

The Regulatory Policy Team is part of the Effective Markets Branch of the Ministry of Economic Development.

A description of our role is contained in the first issue of The Regulatory Review.

Since the last issue of the Regulatory Review, the Regulatory Policy team said goodbye to Robyn Henderson, who has moved into a role in the Ministry of Tourism.

All the best Robyn.

Subscribing to and Unsubscribing from the Mailing List

To be removed from the mailing list, email TheRegulatoryReview@med.govt.nz with "unsubscribe" in the subject line. To subscribe to The Regulatory Review, send an email with "subscribe" in the subject line.

Contact us

Email TheRegulatoryReview@med.govt.nz

Information on writing RISs and BCCSs

Visit www.med.govt.nz/regulatory-impact/

Housekeeping

Many RIS/BCCSs are not meeting the publication requirements.

The Cabinet Step By Step Guide requires that all RISs that contain a BCCS be:

- attached to the press statement announcing the new policy;
- lodged on the websites of the responsible department and MED; and
- included in the Explanatory Note to Bills that are introduced into the House of Representatives.