

The Regulatory Review

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The Regulatory Policy team has undergone changes in recent months. Meet the new team.

Considering regulatory cooperation with Australia?

Officials are intensifying efforts to increase regulatory cooperation between New Zealand and Australia. This article discusses this concept and ways of achieving this.

The trans-Tasman relationship is close. Citizen travel between the two countries is largely unrestricted, trade in goods is free of tariffs, and service-providers are generally treated on the same basis in both countries. Yet barriers to deepening the trans-Tasman relationship remain, in the form of differences in regulatory policy and gaps in the recognition of regulatory outcomes.

In both countries officials are intensifying efforts to increase regulatory cooperation. There are several reasons for this. Reducing regulatory barriers may encourage firms to expand into new markets. Sharing regulatory functions with Australia could provide cost savings or greater access to technical advice and staff. Greater regulatory cooperation could help manage potential cross-border crises or ensure more certain regulatory outcomes.

There is a range of approaches to increasing regulatory cooperation. For example, New Zealand could unilaterally reduce regulatory barriers or both countries could do this cooperatively. Emphasis could be on people-to-people cooperation. Joint institutions could also be developed. Each approach has different costs and benefits. Which approach is appropriate depends on the policy reasons for trans-Tasman regulatory cooperation.

The Regulatory Policy Team can provide advice on approaches to regulatory cooperation with Australia.

Further reading

Further discussion on approaches to regulatory cooperation can be found in Goddard, D. (2002) "Business Laws and Regulatory Institutions: Mechanisms for CER Coordination", in Grimes, A. *et al* (eds.), *States of Mind: Australia and New Zealand 1901-2001*, (Institute of Policy Studies, Wellington) pp. 179-222.

Patrick Nolan

The Regulatory Review

Australia's RIS regime

The New Zealand RIS regime was modelled on its Australian counterpart but there are noticeable differences, for example around when a RIS must be reviewed by the RIAU or ORR (Office of Regulation Review).

In Australia, RISs are required at the federal, COAG (Council of Australian Governments)

and state levels. The RIS requirements are different at each level.

The table below illustrates some of the key differences and similarities between the Australian federal RIS regime and New Zealand's regime.

	New Zealand	Australia (federal level)
Which instruments must a RIS be prepared for?	Primary legislation, statutory regulations, treaties that would result in domestic regulation.	Primary legislation, subordinate legislation, quasi-regulation, treaties that would result in domestic regulation.
In what circumstances must RISs be reviewed by the RIAU and ORR?	Proposals that have compliance cost implications for business (it is proposed that this be changed to proposals with an impact on business).	All regulation that has an impact on business (that is, a direct or significant indirect effect on business) or restricts competition.
What are the consequences of non-compliance with the RIS regime?	Statement included in Cabinet paper and the RIAU will brief the Minister of Commerce.	Public reporting of departmental compliance in the ORR's annual report and the ORR will brief the Assistant Treasurer (Minister responsible for regulatory best practice issues).
Does the RIS have an implementation and review section?	Not currently - an implementation and review section is proposed.	Yes - an implementation and review section is required in every RIS.
Length of RISs	An average length of 6 pages.	No set limit but on occasion have been up to 100 pages.
Where are the RIAU and ORR located?	The RIAU is part of the Ministry of Economic Development.	The ORR is part of the Productivity Commission and shares its statutory independence.

Ashley Tomlinson

RIA and compliance costs proposals

The RIAU wishes to thank departments for their comments on our draft Cabinet paper "Regulatory Impact Analysis and Compliance Costs". Consultation on the paper followed a series of meeting with departments on the proposals.

The key proposal involves extending the class of Regulatory Impact Statements that are reviewed by the RIAU ...

... from those with a Business Compliance Cost Statement attached (that is, the proposal results in incremental compliance costs) ...

... to those for proposals that will impact on business.

This is intended to ensure that the focus of the Unit is better aligned with the government's broader objective of improving the regulatory environment for business. This will address concerns held by the business community

A month in the sun ... in Canberra

Robyn Henderson

After many hours spent studying how the regulatory impact analysis regime works on the ground in Australia, it was a great opportunity to be able to spend four weeks with our counterparts earlier this year.

The Office of Regulation Review (ORR) is based in Canberra as part of the Productivity Commission. The ORR and the RIAU have always shared a close relationship. The amendments to the Council of Australian Governments Principles and Guidelines (COAG RIS guidelines) in June 2004 and the signing of a Protocol between the ORR and the RIAU in September 2004 have brought our working relationship even closer. As discussed in the second issue of The Regulatory Review, the Protocol relates to a new mechanism for consultation with the RIAU on consultation-stage RISs prepared under the COAG requirements that have trans-Tasman impacts.

The key objectives of my time in Canberra were to see first-hand how RISs are developed

about the full regulatory impacts that arise from government regulation - that is, the direct impacts and economic effects, as well as the compliance or "red-tape" costs.

We were pleased with the broad level of support shown by departments during the consultation. Comments are currently being incorporated into a new version of the Cabinet paper. There will be scope for further comments on the paper when it is recirculated to departments later in September. Based on the level of support, and the direction from the Ministerial Group for Small Business, the paper's recommendations will largely remain unchanged. The RIAU is happy to meet with departments to discuss these proposals further should any queries or concerns arise. This can be arranged by contacting Robyn Henderson on (04) 474 2948 or at robyn.henderson@med.govt.nz.

and reviewed for COAG proposals and to gain a better appreciation of how regulatory policy is managed and promoted in the Australian context. Some observations include:

- Regulatory impact analysis (RIA) in Australia has benefited from its relatively lengthy existence within government processes. Requirements to prepare RISs have been in place in Australia in some form or other since the mid-1980s, with the current system introduced in 1997. This has affected the degree to which RIA is viewed as integral to sound policy development by Ministers, officials and external stakeholders.
- Draft RISs prepared for consultation (as required under COAG) are widely viewed as an effective means to "test" proposals with stakeholders and elicit more robust data on the impacts of regulations.
- Being a larger office (20 officials as opposed to eight here) has provided scope for some analysts to become specialists in particular areas of regulation.

- Australian RISs can be extremely lengthy – up to 100 pages in some cases!
- Canberra in autumn is a totally different meteorological experience to being in Wellington. In four weeks, there was one millimetre of rain, very little, if any, wind, and a whole heap of sunshine. People in the street were even heard to complain of *another* sunny day. Now, when was that last heard in Wellington?

Observations of a newcomer to regulatory impact analysis

This is a summary of the consecutive stages that explain my initial, if unorthodox, view of regulatory impact analysis.

A Regulatory Impact Statement (RIS) is a policy process summary. Think, for a moment, of a slideshow.

Just as the slideshow is a series of inter-related slides, the sections of an RIS could be seen as a set of policy snapshots. Both sequences tell a story.

If a slideshow is composed of recently-developed photographs, the relationship between the slides is likely to be clearer for (a) the presenter, and (b) the viewers to whom the presentation's accompanying comments are made.

If the sections of a RIS are compiled at the same time as the policy material is being

Housekeeping

We have noticed that 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.

If you are unclear about how to meet these requirements please contact Elizabeth McDonald on (04) 470 2311 or at elizabeth.mcdonald@med.govt.nz.

developed, both (a) the writing and (b) the reading of the document are also likely to be clearer.

A slideshow or a RIS will be less clear if its elements are put together after such time has elapsed that one cannot readily recall the initial relationship between each part of the series.

Accordingly, a useful tip for regulatory impact analysis is: "start as early as possible".

Will Murray

News flashes

RIS/BCCS training

One of the key functions of the RIAU is to provide training on writing RISs and BCCSs. RIS training will be particularly useful if you are new to policy development or may be required to draft a RIS in the future. Now is a good time to contact us.

To those providing second-tier policy advice

In addition to looking at what is written in Cabinet papers, you should also challenge what is written in the RIS. This will help ensure that both documents contain up-to-date and complete information, and are reflective of the outcomes of departmental consultation.

Changes to the Regulatory Policy Team

We have undergone some changes in recent months. Here is the current team.



Back row (from left): Patrick Nolan, Ashley Tomlinson, Willie Lewis, Will Murray, Martin Garcia.

Front row (from left): Elizabeth McDonald, Robyn Henderson, Bronwyn Turley.



Mark Jones (left) will join us on 19 September.

The Regulatory Policy Team is part of the Regulatory and Competition Policy Branch of the Ministry of Economic Development.

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

Welcomes

The Regulatory Policy team was pleased to welcome:

- Patrick Nolan in May;
- Will Murray in July; and
- Martin Garcia as acting manager in August.

Mark Jones will join us in September.

Farewells

The team was sad to say goodbye to:

- Stephanie Glover, who left us in May to pursue a secondary teaching career;
- Silke Radde, who moved in June to pursue her work in intellectual property policy with MED's IP team in the Regulatory and Competition Policy Branch (Silke will remain involved in reviewing RISs and BCCSs); and
- Lisa Barrett, who moved in August to manage the Corporate and Competition Policy team here at MED in the Regulatory and Competition Policy Branch.

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