

The Regulatory Review

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2007 in Review

2007 has been a particularly busy and challenging year for the RIAU. Here are a few highlights of what we have been doing over the last year and also a few lessons from our experience:

Implementing the enhanced Regulatory Impact Analysis regime

The enhanced RIA regime was introduced in April 2007 after a long period of preparation. The enhanced regime is designed to enable more rigorous assessment of proposals which are likely to have a significant impact on economic growth. It puts a greater emphasis on the actual analysis throughout the policy process for regulatory proposals (including the discussion document stage), rather than simple disclosure. Compared to the previous regime, the RIAU is better placed to add value earlier in the process and do so more comprehensively.

Also, we have put in place a self-regulatory regime for those proposals which are not economically significant. This means that departments take on more responsibility for the quality of policy work, while the RIAU has more resources for those economically significant proposals.

We have over the past year formally reviewed a number of significant proposals. Our experience working with departments under the new regime has generally been positive. There has been a notable improvement in the quality of analysis and compliance with enhanced RIA requirements including analysis at the discussion document stage. Nevertheless there remain some recurring issues which have been brought to our attention. In general, we feel that more effort is needed to make sure that the problem definition is accurate and addresses the fundamental issues. Moreover, there needs to be more analysis and particularly quantification of benefits and

costs. In some proposals we received, formal cost-benefit analysis is appropriate and can add value to the process, but for various reasons has not actually been undertaken.

The RIAU has produced a number of guidance documents to assist analysts and managers in policy formulation and regulatory impact analysis, and have been developed with the broader aims of regulatory reform in mind. These include guidance on regulatory compliance and assessing policy options. These guides are available on the Ministry of Economic Development website (http://www.med.govt.nz/templates/ContentTopicSummary_26461.aspx).

Completing the QRR

Another major project that we have completed in the last year is the Quality Regulation Review (QRR). This Review was announced by the Government in May 2006. The final reports for the QRR were released in September 2007, following two earlier reports in October 2006 and April 2007.

The final report concluded that the current regulatory environment for business is in fairly good shape, but that there is scope to improve the way rules are communicated to business, implemented and enforced. The Review has made good progress in addressing a number of specific issues raised by business. For example, ACC and Inland Revenue have agreed to improve coordination of data collection and share information on business.

Improving New Zealand's regulatory environment is a continuous process. There is still much to be done after the review. The Government's post review approach to ensure the quality of New Zealand's regulatory environment focuses on four objectives:

- Ensuring the quality of new regulation
- Improving the quality of existing regulation
- Developing a culture of good regulatory practice; and
- Building the capability of regulators and business.

There are a number of initiatives flowing on from the Review. The MED, for instance, is looking at an ongoing programme of sector studies to ensure continuous improvement of the regulatory environment and a two year trial of a Business Cost Calculator to quantify the compliance costs of regulation.

We are also making good progress, with the collaboration of other departments, on the proposed Regulatory Improvement Bill. The Bill contains changes to legislation identified by departments during the Quality Regulation Review with the objective of reducing compliance costs on business and improving the regulatory environment.

Key Features of New Zealand's Broader Regulatory Management System

The Regulatory Policy Team recently reported on New Zealand's Regulatory Reform Framework for a roundtable discussion by senior officials of APEC's Economic Committee meeting in Peru in February. The paper summarised the key features of New Zealand's broader regulatory management system for the benefit of other APEC members and provided an opportunity to share experiences with tools used to enhance regulatory quality.

A key motivation for regulatory reform is the Government's economic vision for New Zealand to be "a high-income, knowledge-based market economy, which is both innovative and creative and provides a unique quality of life to all New Zealanders."

In international and academic literature, 'regulatory reform' refers to policies aimed at improving regulatory quality to enhance the economic performance, cost-effectiveness, or legal quality of regulations and related government formalities. Reform therefore applies to whole-of-government operations but particularly focuses on competition and market-openness policies and has two dimensions:

- 1) Managing the flow of regulatory interventions and alterations; and
- 2) Assessing the stock of regulation against economic performance and international best practice.

New Zealand has a range of measures in place aimed at improving the quality of new and existing regulation, but does not have set targets for curtailing 'excessive'

Other matters

We have also undertaken a number of projects which aim to contribute to quality of policy work. One of them is updating the occupational regulation framework, which was first published in 1999. We are due to report to the Minister of Commerce soon on possible ways to progress this matter.

Another is the Stock of Regulation project. We are at an early stage of research into determining the impacts of the stock of regulation as a whole, considering the ways of measuring its impacts, and the identification of a range of measures available to manage its impact on businesses and improve the overall quality of the regulatory environment in New Zealand.

Author: JC Somers

regulation. The development of quality regulation draws on New Zealand regulatory experience, generally accepted international best practice (as promoted for example by the OECD and APEC), and reviews of relevant academic literature.

Support for regulatory reform is required at the highest level of government in order to recognise that the three key elements – policies, institutions, and processes – are to be considered as a whole and in terms of structural public governance.

'Deregulation' is a subset of regulatory reform and usually refers to updating or simplifying a specific economic sector's policy framework to reflect present challenges. The complete or partial elimination of unnecessary or obsolete regulation to improve economic performance can therefore be a consequence of assessing the stock.

New Zealand has historically experienced cycles of economic de- and re-regulation and debate has tended to focus on the heavy or light-handedness of settings. After a period of significant deregulation and public sector reorganisation in the 1980s, the emphasis of regulatory policy is now on quality management and the maintenance of robust regulatory frameworks across all sectors.

New Zealand has institutions in each of the judicial, legislative, and executive arms of government to promote good quality lawmaking. Stakeholders utilise a range of consultation and transparency processes for engaging with the government on issues of reform and regulatory

burden. Areas that receive the most attention are compliance costs and 'red tape', and certainty of regulation for investment in key infrastructural sectors.

New Zealand, like other developed countries, uses Regulatory Impact Analysis (RIA) for considering the need for, and design of, regulatory intervention. Essentially RIA is a tool to inform stakeholders and assist decision-makers. RIA aims to make transparent the benefits and costs of different regulatory and non regulatory options. In this way the trade-offs between, and impacts of, different policy options are more apparent to decision-makers.

The location of the RIA oversight body receives considerable attention in the international literature and a range of approaches exist across countries. In New Zealand, the Regulatory Impact Analysis Unit (RIAU) sits within MED and independently advises Cabinet whether the RIA requirements have been met by departments making economically significant proposals.

New Zealand's RIA requirements were recently updated so that in the case of non significant proposals, departments must provide their own assessment against the same criteria. Previously, the RIAU looked at all proposals, irrespective of magnitude. South Korea has adopted a similar approach to New Zealand.

The RIAU has found that RIA procedures are sometimes considered too late in the policy development process to be truly integrated with decision making. Clarifying the purpose of the RIS and how it is different from a Cabinet paper; rationalising the guidance material; amending the approach to adequacy certification; raising expectations of the RIA/RIS quality; and providing support for analysts with no or little experience have all been advanced as possible ways to improve departmental compliance with RIA requirements. It remains an ongoing process to embed the substantive RIA principles in actual policy making and this is reflected in other countries experiences.

A key point made in Peru was that the RIAU is just one part of a broader regulatory reform 'toolbox'. Other institutions are also responsible for policy implementation and maintenance in the law, providing key reference points and guidelines for regulatory formulation and review, including:

The Business Compliance Cost Calculator

The Business Compliance Cost Calculator is a software tool that allows government officials to calculate the true costs for businesses of any regulations they are recommending to government. The tool is designed to assist policy makers to create higher quality regulation in a uniform and efficient manner.

The Cabinet Office Manual (available at www.cabguide.cabinetoffice.govt.nz);

Legislative Advisory Committee guidelines (visit www.justice.govt.nz/lac); and

Guidelines for policy advisers in applying The Bill of Rights Act 1990 and The Human Rights Act 1993 (visit www.justice.govt.nz).

Periodic reviews of regulatory frameworks, key productive sectors, and general compliance issues across government are how New Zealand currently assesses and monitors the effectiveness of the stock of existing regulation. However, there is no central agency formally responsible for reviewing existing regulation. In the first instance, responsibility lies with individual agencies to review the laws that they administer.

The Regulations Review Committee, as a specialist committee within Parliament, conducts regular evaluations of out of date or seldom used regulations. Responsibility for coordinating whole sector or framework reviews with implications for business or the economy often rests with the Ministry of Economic Development.

The Ministry of Economic Development has also been directed to undertake a programme of in-depth sector studies to identify where improvements can be made to the existing regulatory environment from the perspective of businesses.

Due to its experience with economic policy reform, New Zealand is often looked to by other economies for examples of tools and experiences with policies. The regulatory reform agendas of APEC and the OECD, being so broad as to encompass institutional arrangements within government (and including the legislative and judicial branches), provides a key perspective to view the effectiveness of regulatory management systems and provide pointers for other countries reforming their current governance arrangements.

Author: Ben Temple

Compliance costs are those additional costs borne by the business owner that arise as a result of complying with the regulation. For example, a (hypothetical) new rule could require all engineering firms to report, in a prescribed format, the quantity of a particular hazardous chemical kept on their premises as at 1 October each year. Most firms would already have such information as part of their normal record keeping. Therefore the compliance cost for each firm would include the additional staff time and any

other resources needed to collect this information from existing systems and complete the form on 1 October each year.

The costs that are calculated in this tool include fees, time, and capital requirements and also includes start-up and one-off costs. In general, some examples of the kinds of costs involved are: fees for consents; payments for signs, guards, manuals, or courses for safe work practice; and payments for software or professional fees. These costs often have a disproportionate impact on small and medium-sized enterprises, which make up approximately 97 percent of total businesses in the New Zealand economy.

The key use of the calculator is to imbed high quality policy development processes into policy making entities, ensuring that the impact on business is to reduce or eliminate compliance costs. The other function is to improve communication between stakeholders on the quantum of regulatory burden and to provide a standard method of reporting and communicating regulatory burden.

Cabinet has agreed that the tool is to be implemented as a pilot programme within government departments and its effectiveness evaluated over two years. This decision was

made as part of the government's Quality Regulation Review as a commitment to improve the quality of regulation as it is being developed.

A similar type of tool has been used successfully in Australia and some European countries, and the Australian model is currently being adapted for use in the New Zealand environment.

It is envisaged that in the long-term, use of this tool will support greater productivity and competitiveness by allowing more resources to be applied to core business activities.

From 2008 it is expected that all policy proposals that impact on businesses will include the results from the calculation using this tool. Initially the calculator will be available through the Ministry of Economic Development and will be available on line by the end of May 2008.

To find out how to access this tool, or for more information, contact Patti Poole, Senior Advisor, Small & Medium Enterprises, Ministry of Economic Development (04) 474 2917.

Author: Patti Poole

Compliance with Regulatory Impact Analysis Requirements- A Summary of the 2007 Evaluation

The RIAU recently commissioned NZIER to undertake the first evaluation of departmental compliance with the regulatory impact analysis (RIA) requirements that came into force on 1 April 2007. The evaluation has provided information on compliance, the processes followed by departments and the relationships between these processes and compliance.

In total NZIER evaluated 20 regulatory proposals that the authoring departments considered unlikely to have a significant impact on economic growth. Among the 20 regulatory proposals, 12 were evaluated based only on their regulatory impact statements (RISs), and 8 had their full RIA processes and their associated RISs evaluated.

A copy of the evaluation report can be viewed either by going to the MED website (www.med.govt.nz) or (if you have the electronic copy of this newsletter) by clicking on this [link](#).

Here is a brief summary of the reports key findings and recommendations.

Key findings of the evaluation

Housekeeping

Please remember to keep the [Regulatory Impact Analysis Guidelines](#) in mind right from the beginning of the information research and gathering stage (for a summary; follow this link to see a RIA [‘Hint and Tips Sheet’](#)). While this is extra work in the short-run, in the long run it will mean much less work for both the unit and departments.

Strong points of those RIAs and RISs that were evaluated were that consultation was usually well done with close attention being paid to submissions and making according amendments to proposals. In addition, the RISs were all sufficiently short and in relatively plain language.

However, there is still room for improvement. The areas needing improvement - as identified in the report - were defining the problem in the regulatory environment, describing the scale of the issue, and analysing the risks, costs and benefits of proposals. The report also noted that the final RIS did not always do justice to the quality of the underlying analysis.

Key Recommendations from the Evaluation

As a result of their evaluation, NZIER made a number of recommendations, including clarifying the purpose of the RIS and how it is different from a Cabinet paper, rationalising the guidance material and providing more support for analysts with no or little RIA experience.

Author: Jeff McDonald

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We also recommended that the [Guidelines on Assessing Policy Options](#) and [Regulatory Compliance Guidelines](#) are kept in mind as a way of adding value to your policy making process.

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