

Chair

CABINET ECONOMIC GROWTH AND INFRASTRUCTURE COMMITTEE

PROPOSAL FOR A NEW ZEALAND PRODUCTIVITY COMMISSION

Proposal

- 1 We propose that the Committee agree to establish a New Zealand Productivity Commission.

Executive Summary

- 2 EGI directed officials to 'undertake the detailed design, analysis and costing of a possible agency to carry out inquiries into productivity related matters and *ex post* reviews of regulatory regimes and potentially other functions' (EGI(09) 17/15).
- 3 New Zealand needs to significantly improve its public and private sector productivity through addressing constraints and exploiting opportunities. Placing New Zealand's productivity performance on a new trajectory requires a high level of ambition in the sorts of policy options that are considered by the government and supported by the community. This in turn requires:
 - analysis that is grounded in evidence and well regarded by peers and critics;
 - the testing of ideas that are at the boundaries of what is currently known or considered to be possible; and
 - a process of stakeholder and public engagement that involves the community with both the analysis and ideas.
- 4 While departments provide productivity-related policy advice, in reality they are not unfettered in the preparation and delivery of such advice. They are influenced by Ministerial preferences and government policy frameworks, and in some cases the immediate demands crowd out or limit the effort they might otherwise put into forward looking evidence-based policy. *Ad hoc* bodies have their place but their temporary nature makes it harder for them to support the accumulation of knowledge over time and build their credibility.
- 5 The Australian Productivity Commission (APC) has a reputation in Australia, New Zealand and beyond as filling the 'gap' left by departments and *ad hoc* bodies. The APC model has been successfully replicated at the State level, with the establishment of the Victorian Competition and Efficiency Commission (VCEC).

The critical attributes for an agency that fills the 'gap' are independence, relevance to the government's policy agenda, community-wide engagement and competence.

- 6 The design features of the proposed New Zealand Productivity Commission are intended to embody these attributes in the agency. In summary, we recommend that:

- The purpose of the agency is to improve productivity in both the public and private sectors in a way that is directed at supporting the overall well-being of New Zealanders.

- The functions of the agency are:

On referral by the Responsible Minister, in conjunction with the relevant portfolio Minister and, in the case of reviews of regulatory regimes, the Minister for Regulatory Reform, to:

- Hold inquiries into, and report to the referring Minister(s) about, productivity related matters;
- Conduct one-off *ex post* reviews of regulatory regimes;
- Conduct one-off reviews of the efficiency and effectiveness of regulatory agencies; and
- Undertake *ex ante* regulatory impact analysis (RIA) for a small number of specific regulatory proposals.

On its own initiative, to:

- Undertake and publish its own research into productivity-related matters to build its institutional knowledge and, as such, support its inquiry and review functions; and
- Promote public understanding of matters relating to productivity.

- The agency is headed by 3-4 Commissioners, and is supported by an establishment of approximately 21 FTEs.
- The agency is an Independent Crown Entity (ICE).
- The annual work programme of the agency and terms of reference of inquiries/reviews are made public.
- The agency is expected to consult widely when undertaking inquiries, reviews and regulatory impact analysis.
- Reports produced by the agency pursuant to a referral must be tabled in the House, but the government is not required to respond to them.
- The Commission obtains its analytical and administrative support from Treasury, with a capacity to employ its own staff in future if required.

- 7 In August 2009 the Australian and New Zealand Prime Ministers agreed that if New Zealand chose to establish a Productivity Commission there would be

cooperation between this agency and the APC. Discussions have taken place with both the Australian Treasury and APC on options for cooperation, and have led to a commitment to cooperate in respect of supporting the establishment of the agency, and cooperation in regard to how issues of mutual interest can be taken forward. This includes aspiring to joint inquiries or studies on future Single Economic Market (SEM) issues.

- 8 Funding for the NZPC will be from the baselines of departments and agencies that currently provide productivity-related policy advice and those agencies/Crown Entities whose delivery has a significant influence on productivity.

Background

- 9 Cabinet agreed that officials undertake the detailed design, analysis and costing of a possible agency to carry out inquiries into productivity related matters and ex post reviews of regulatory regimes and potentially other functions (EGI(09) 17/15). This work was carried out by a joint Treasury/MED working group. An interdepartmental reference group was also established and contributed to the work.

Design Features

Purpose of agency

- 10 We propose that the purpose of the agency is to provide advice to the government on improving productivity in both the public and private sectors in a way that is directed at supporting the overall well-being of New Zealanders.
- 11 The scope of the agency will include all matters relating to productivity, including: enterprise (tax, regulation and competition); skills, innovation, infrastructure, natural resources, investment, international connectedness, and public sector productivity.
- 12 The scope is deliberately broad to enable the agency to do a wide range of inquiries and reviews, given that the factors that impact on productivity are themselves many and varied. What the agency is actually asked to do will be determined by the government. It is expected the agency will do no more than 2-3 large inquiries or reviews each year, or more smaller ones. Public sector productivity is emerging as an important issue in New Zealand. It is a reasonable expectation that inquiries and reviews into public sector productivity would occur.

Functions

- 13 We propose the functions of the agency are to:

Primary

- Hold inquiries into, and report to the Minister about, productivity related matters that are referred to it by the Minister;
- Conduct one off *ex post* reviews of regulatory regimes;

- Conduct one-off reviews of the efficiency and effectiveness of regulatory agencies; and
- Undertake *ex ante* regulatory impact analysis for specific regulatory proposals.

Secondary

- Undertake and publish its own research into productivity related matters to build its institutional knowledge and, as such, support its inquiry and review functions; and
 - Promote public understanding of matters relating to productivity.
- 14 An indication of the range of matters that could be the subject of inquiries is provided by the APC and VCEC (annex 2). The potential range is inherently very broad.
 - 15 The intent to undertake one-off ex post reviews of regulatory regimes and one off reviews of the efficiency and effectiveness of regulatory agencies on referral is consistent with the Government's 'better regulation, less regulation' objective, and recognises that the efficiency and effectiveness of regulatory regimes can have a material effect on both private and public sector productivity.
 - 16 The intent to undertake ex ante regulatory impact analysis for specific regulatory proposals reflects the fact this will be an agency with specialist capability in cost-benefit analysis and evidence-based policy, and is also independent. It therefore provides another avenue to have regulatory impact analysis undertaken, possibly of very complex, significant, and controversial regulatory proposals.
 - 17 It is not expected that the agency will be resourced to engage in extensive promotion of public understanding of productivity related matters. The sorts of activities anticipated are analogous to the speeches that Gary Banks (Chair of the APC) gives quite regularly on productivity related matters, although publishing its own research is also expected to contribute to this function.
 - 18 The agency will require a research capacity to build and maintain its knowledge base in areas relevant to its mandate and future inquiries. It will be able to publish research studies.

Independence

- 19 We propose that the agency is an Independent Crown Entity (ICE). Independence has been identified as a critical attribute of the agency. The features of an ICE that influenced this judgment are: the greater security of tenure of Commissioners (board members of ICEs are appointed by the Governor General and can only be removed on very limited grounds), and the fact that they are not able to be directed by the government to have regard to Government policy.
- 20 However, the agency must also produce advice that is policy relevant as well as credible and independent. An agency that is seen as ideological, unbalanced or

impractical in its advice is not likely to be successful. The tone of the agency will largely be set by the Commissioners, and hence appointing the right people is critical. A close relationship with the APC at senior levels may also help the agency to 'calibrate' its approach, as the APC is considered to have got the balance right.

Commissioners

- 21 We propose that the agency is headed by 3-4 Commissioners, one of whom would be Chair. While the Commissioners would be part-time, a full-time Chair may be desirable. There is also provision to appoint Associate Commissioners.
- 22 The structure of Commissioners and associate Commissioners is consistent with the APC (which has a full-time Chair). Associate Commissioners are likely to be appointed as required because of their specialist expertise to contribute to particular inquiries or reviews. Commissioners act in both a governance role and lead inquiries, but the inquiry team will also have a leader at the staff level.

Powers

- 23 In addition to the usual powers of a natural person, we propose that the statute provide that the agency is a Government department for the purposes of the Statistics Act 1975, as this will facilitate access to statistics.

Work programme

- 24 We propose that the government determines the work programme for the agency, and it would only undertake inquiries, reviews and regulatory impact analysis on the basis of a reference from the government.
- 25 The principle is that the government would direct the agency what to inquire into, but not direct it in relation to its recommendations. There would be an annual work programme, developed through input from departments and advice from the agency itself. The work programme would be made public.
- 26 We propose that the Minister of Finance be the responsible Minister and Treasury the responsible department (in Australia this is the Treasurer and Treasury). The responsible department would coordinate and advise on the work programme and terms of reference. The responsible Minister would issue the terms of reference in conjunction with the relevant portfolio Minister and, in the case of reviews of regulatory regimes, the Minister for Regulatory Reform. It is envisaged that the relevant portfolio department would have a role in determining the terms of reference. The terms of reference would also be made public.
- 27 The Ministry of Agriculture and Forestry agrees that the majority of the programme should be directed by Ministers but considers that the Commission should have some ability to pursue its own research/evaluation agenda. While this differs from the Australian model the NZ context is slightly different. New Zealand has a very limited number of independent 'think tanks' looking at the New Zealand economy in any depth and MAF believe one with some independence would make a significant contribution. MAF recommends that the Commission should have an additional function to 'Hold inquiries into, and report

to the relevant Minister(s) about, productivity related matters that are determined by the agency to warrant investigation'.

Reporting to Government

- 28 We propose that the responsible Minister must table in parliament the Productivity Commission reports pursuant to inquiries and reviews, but there would not be an obligation on the government to respond.
- 29 Officials' on-balance judgment is that the government should not be required to respond to reports. If the work of the agency is valued then the government will have an incentive to respond to reports, and the public nature of the reports will provide an added incentive. In Australia there is a convention that the Government does respond to reports, but there is no statutory obligation to do so.

Trans-Tasman relationship

- 30 We propose that there be provision for trans-Tasman inquiries and studies into Single Economic Market issues.
- 31 Discussions with the APC and Australian Treasury have led to a commitment to cooperate in respect to supporting the establishment of the agency, and cooperation in regard to how issues of mutual interest can be taken forward. This includes aspiring to joint inquiries or studies on future Single Economic Market issues.

Size

- 32 We propose establishing an agency that has 3-4 Commissioners and supported by an establishment of approximately 21 FTEs.
- 33 The agency will be of a comparable size to the VCEC, which is seen to have critical mass.

Administrative and analytical support

- 34 We propose that the Commission initially obtain its analytical and administrative support from Treasury. Establishing the Commission as an ICE will allow the agency to employ its own staff (while still sharing back-office support with another agency) at some time in the future, if required.
- 35 Two options for the provision of analytical and administrative support to the proposed Productivity Commission are considered to be viable:
- 36 Option 1: An ICE that shares back-office support services with (or obtains those services from) another agency, which could be Treasury. Back-office services include HR, IT, finance and legal. Analytical staff are employed by the Commission.
- 37 Option 2: An ICE that enters into an arrangement with Treasury to provide both analytical support and back-office services. Other than the Commissioners, who are appointed by the Governor General, all staff are formally employed by or

seconded to the Treasury, but there would be protocols between Treasury and the Commission which protect its independence.

38 Option 2 is similar to the model that operates in Victoria with the (VCEC), which is supported by the Victorian Department of Treasury and Finance, and the provision of support by the Ministry of Justice to the Waitangi Tribunal.

39 The following table summarises the relative costs and benefits of the two options.

	ICE with shared back office services (option 1)	ICE which contracts to Treasury for both analytical support and back-office services (option 2)
Benefits	Provides a greater assurance that the Productivity Commission will be perceived as independent.	Most consistent with the Government's goal of reducing the proliferation of public sector agencies (through obtaining more of its support from an existing agency). May facilitate the establishment of the Commission, as it will be able to draw on an existing institution rather than starting from scratch. There will also be clear accountability to the Secretary to the Treasury to deliver on establishment.
Costs/risks	While achieving some economies through shared services the Commission will still be seen as a new public sector agency.	A potentially significant risk that in some quarters the Commission will be seen to be influenced by Treasury, thus undermining its reputation for independence. Effectively another function for Treasury that will need to be absorbed. It will represent an increase in Treasury's staffing cap of approximately 21 FTEs.

40 Establishment and ongoing costs of the Productivity Commission are similar in both cases as both assume sharing of back office services. If any agency, including Treasury, provides back office services, there is likely to be an increase in their total FTEs.

41 The judgment on which option to select primarily depends on how much weight is put on the Government's objective of reducing the proliferation of public sector agencies, and managing the establishment risks that can arise with a new agency, relative to the risk to the perceived independence of the Commission.

42 With Option 2 there is some risk around perceived independence. However, some features of the Commission help manage this risk:

- Establishing the agency as an ICE is intended to secure the independence of the agency. This gives Commissioners security of tenure (the threshold for removal is very high) and the Minister is not able to direct the entity to have regard to or give effect to Government policy;

- Requiring public inquiries, and publishing both the terms of reference and final reports (the APC is also required to publish draft reports) is intended to contribute to transparency;
 - The appointment of Commissioners who have a high level of credibility is a key implementation strategy (It is also likely that the staff that support the Commission will include secondees from other departments and staff that are new to Treasury, reducing the perception of a 'Treasury-only' Commission); and
 - As with the VCEC the relationship between the Commission and Treasury will be defined in such a way that the independence of the Commission is clear. The VCEC and Victorian Department of Treasury and Finance (DTF) have a comprehensive Framework Agreement which has as its basis: *'the underlying principle that the analysis, advice and other work of the VCEC and VCEC secretariat is clearly independent of the DTF. On administrative matters the VCEC Secretariat is supported like all other outputs in DTF.'*
- 43 While the risk to the perception of independence is relevant to selecting between the two options, we consider that there is a material benefit drawing on the infrastructure and strengths of Treasury during the establishment phase of the Commission. We consider that there are adequate safeguards to protect the independence of the Commission.
- 44 Once the Commission is up and running the establishment risk no longer exists, and at some time in the future a case may be made that the Commission should employ its own staff (while still sharing back-office services with another agency). Establishing the Commission as an ICE will give the agency the required legislative ability to do so.

Analysis

- 45 The substantive analysis of a Productivity Commission and risk assessment is contained in the attached Regulatory Impact Statement and summarised in the Executive Summary.

Implications for other agencies

- 46 The establishment of a Productivity Commission has implications for agencies that currently provide productivity-related policy advice. The Commission will consider specified policy issues that fall within the purview of such departments to assist decision-making by Ministers in these policy areas. However, the Commission would not substitute for the core policy advice role of the departments and its success would be dependent on these departments having capacity to implement any Government policy resulting from the Commission reports.

Consultation

47. The following agencies have been consulted: Treasury, Ministry of Economic Development, Department of Labour, Ministry of Research, Science and Technology, Ministry of Transport, State Services Commission, Inland Revenue Department, Ministry of Agriculture and Forestry, New Zealand Food Safety

Authority, Statistics New Zealand, Ministry for the Environment, Ministry of Fisheries, Ministry of Foreign Affairs and Trade, Ministry of Education, Te Puni Kokiri, Department of Building and Housing, Ministry of Social Development, Ministry of Health, Ministry of Justice, Department of Internal Affairs, New Zealand Customs Service, Land Information New Zealand, Department of Conservation, Ministry of Culture and Heritage, Ministry of Pacific Island Affairs, Ministry of Women's Affairs. The following agencies have been consulted on the funding proposal: New Zealand Housing Corporation, New Zealand Transport Agency, New Zealand Tourism Board, New Zealand Trade and Enterprise, Tertiary Education Commission, Accident Compensation Corporation. The Department of Prime Minister and Cabinet has been informed.

48. Discussions were held with a small number of New Zealand senior public servants, current and past politicians and informed commentators from consultancies and academia. Discussions were also held with the APC, VCEC and Australian Treasury.
49. A number of departments commented on the options for the provision of analytical and administrative support to the Commission. On balance Treasury favours Option 2 (Treasury providing full support), with a legislative ability to move to option 1, as it considers that the benefits associated with reducing the proliferation of public sector agencies and facilitating the establishment of the Commission are important, and the risks are manageable.
50. SSC's preliminary view is that option 2 is the preferred option if the perceptions around independence can be managed. However, SSC would support both options being presented in the Cabinet paper to allow fuller debate.
51. MED considers that both options are viable, but on balance favours Option 1 as it provides greater assurance that the Commission will be perceived as independent. Given that actual and perceived independence is critical to the credibility of the Commission and its ability to deliver on its purpose, this is considered to outweigh any risks in relation to the perception of public sector proliferation. MED considers there is a potentially significant risk that Option 2, a Commission serviced and staffed by Treasury officials, will be seen to be influenced by Treasury, thus undermining its reputation for independence. Other agencies that support option 1 include: DoL, MoRST, Fisheries, MoH, NZFSA.

Timing

52. It is proposed that, subject to the legislative process, the Productivity Commission Act will be passed by December 2010. The Commission would be established by 1 April 2011, and receive its first referrals from the Government at that time. The Commission would commence its first inquiries or reviews prior to the 2011 election, but report after the election.

Financial Implications

53. A budget for the agency is provided below. This assumes that the required legislation will be passed by the end of calendar year 2010, and the agency commences two inquiries prior to the election, but reporting post-election.

	2010/11	2011/12	2012/13	2013/14	2014/15
Establishment costs and commencement of inquiries/reviews*	\$1.960 m				
2 inquiries/reviews/yr		\$4.901 m			
3 inquiries/reviews/yr			\$5.260 m	\$5.260 m	\$5.260 m

*A capital injection of \$0.5 million is also required. The capital injection will be met from a funding switch between the operational funding savings from the various agencies and a capital injection for the new agency.

54. We propose funding come from existing baselines of agencies from which the Government currently receives public and private sector productivity-related policy advice and those agencies/Crown Entities whose delivery has a significant influence on productivity.
55. The Government already funds a very significant amount of productivity-related policy advice across the public sector as a whole, including a range of advice on regulatory regimes and 'value for money' initiatives. It seems reasonable to redirect a relatively small percentage of that funding to an alternative source of advice which has considerable potential for providing new ideas to improve New Zealand's productivity performance.
56. Twenty-eight agencies including Crown Entities have been identified. Some agencies have a bigger role than others in productivity-related advice, and will therefore provide proportionately more funding. The details are provided in the recommendations.

Human Rights

57. This paper has no human rights implications.

Legislative Implications

58. A Bill is required to implement the proposal outlined in this paper. A bid has been made for the New Zealand Productivity Bill to be included in the 2010 legislation programme, with a category 2 priority (to be passed in 2010). It is anticipated that the Bill would be introduced in late May 2010, with a Select Committee report back in September 2010 and the Bill being passed in December 2010. It is recommended that the Bill contain a provision that the Act be binding on the Crown.

Regulatory Impact Analysis

Regulatory Impact Analysis requirements

59. Since the present policy proposal requires a Cabinet decision to establish a statutory body the Regulatory Impact Analysis (RIA) requirements apply. A RIS has been prepared and is attached.

Quality of the analysis

60. An interim internal Treasury RIA panel reviewed the Regulatory Impact Statement (RIS) prepared by Treasury and the associated supporting material. In the panel's view, the information and analysis summarised in the RIS meets the quality assurance criteria.

Consistency with Government Statement on Regulation

61. We have considered the analysis and advice of officials, as summarised in the attached Regulatory Impact Statement and we are satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the proposals recommended in this paper:
- are required in the public interest;
 - will deliver the highest net benefits of the practical options available, and
 - are consistent with our commitments in the Government Statement 'Better Regulation, Less Regulation'.

Publicity

62. We propose to issue a press release announcing that the Government has decided to establish the Productivity Commission. The Minister of Finance will also write to the Australian Treasurer advising him of the decision.

Recommendations

63. We recommend that the Committee:

1. agree to establish a New Zealand Productivity Commission.
2. agree that the purpose of the Commission is to improve productivity in both the public and private sectors in a way that is directed at supporting the overall well-being of New Zealanders.
3. agree that the functions of the Commission (subject to drafting) should be:

On referral by the Responsible Minister, in conjunction with the relevant portfolio Minister and, in the case of reviews of regulatory regimes, the Minister for Regulatory Reform, to:

- Hold inquiries into, and report to the referring Minister(s) about, productivity-related matters that are referred to it by the Minister;

- Conduct *ex post* reviews of regulatory regimes;
- Conduct reviews of the efficiency and effectiveness of regulatory agencies; and
- Undertake *ex ante* regulatory impact analysis for a small number of specific regulatory proposals.

On its own initiative, to:

- Undertake and publish its own research into productivity-related matters to build its institutional knowledge and, as such, support its inquiry and reviews functions; and
- Promote public understanding of matters relating to productivity.

4. agree the Commission should not have the provision to hold a limited number of inquiries into, and report to the relevant Minister(s) about, productivity related matters that are determined by the agency to warrant investigation.

Or

5. agree (MAF recommendation) the Commission should have the provision to hold a limited number of inquiries into, and report to the relevant Minister(s) about, productivity related matters that are determined by the agency to warrant investigation.
6. agree that the Commission is headed by 3-4 Commissioners, and is supported by an establishment of approximately 21 FTEs.
7. agree that provision should also be made to appoint Associate Commissioners.
8. agree that the Commission is an Independent Crown Entity (ICE).
9. agree that the annual work programme of the Commission and terms of reference of inquiries/reviews must be made public.
10. agree that the Commission is expected to consult widely when undertaking inquiries, reviews and regulatory impact analyses.
11. agree that the Commission be allowed to determine its own procedures and may publish its reports and research, subject to any constraints in the terms of reference, which may specify the scope of the inquiry, procedures that the Commission must follow, and the date by which the Commission must submit its report.
12. agree that the Commission has the capacity to undertake joint inquiries or studies with the Australian Productivity Commission.

13. agree that reports produced by the Commission pursuant to a referral must be tabled in the House, but the government is not required to respond to them.
14. agree that the Commission will be a Government agency for the purpose of the Statistics Act 1975.
15. note that the Official Information Act 1982 applies to the Commission.
16. agree that the Minister of Finance is the responsible Minister and the Treasury is the responsible department.
17. note that there are two options for the provision of support to the Commission:
 - a. Employing its own analytical staff but sharing back office services with another agency.
 - b. Entering into an arrangement with Treasury to provide both analytical and back-office services.
18. note that agencies have different views on which option should be preferred, with some agencies holding a strong view that the Treasury support option will undermine the independence of the Commission.
19. agree the Commission be required to obtain its analytical and administrative support from Treasury.
20. note that establishing the Commission as an ICE will allow the agency to employ its own staff (while still sharing back-office support with another agency) at some time in the future, subject to the agreement of the government.
21. note that a Bill is required to establish the Commission.
22. invite the Minister of Finance to instruct the Parliamentary Counsel Office to draft the necessary Bill to establish the Commission as outlined in this paper.
23. authorise the Minister of Finance and the Minister for Regulatory Reform to take decisions on minor policy issues that arise as the Bill is drafted.
24. agree that the establishment and operating costs of the agency will be met by reductions to direct Crown funding of the following departments and Crown Entities, with no impact on the government's operating balance:

Agency	Contribution		
	10/11	11/12	12/13 and outyears
Treasury	\$237,000	\$467,000	\$500,000
Ministry of Economic Development	\$237,000	\$467,000	\$500,000
Department of Labour	\$236,000	\$467,000	\$500,000
Ministry of Agriculture and Forestry	\$70,000	\$140,000	\$150,400
Ministry of Transport	\$70,000	\$140,000	\$150,400
Ministry of Foreign Affairs and Trade	\$70,000	\$140,000	\$150,400
Ministry of Research, Science and Technology	\$70,000	\$140,000	\$150,400
Ministry for the Environment	\$70,000	\$140,000	\$150,400
Statistics New Zealand	\$70,000	\$140,000	\$150,400
Inland Revenue Department	\$70,000	\$140,000	\$150,400
Te Puni Kōkiri	\$70,000	\$140,000	\$150,400
Ministry of Fisheries	\$70,000	\$140,000	\$150,400
Ministry of Education	\$70,000	\$140,000	\$150,400
State Services Commission	\$70,000	\$140,000	\$150,400
Department of Building and Housing	\$70,000	\$140,000	\$150,400
Ministry of Social Development	\$70,000	\$140,000	\$150,400
Ministry of Health	\$70,000	\$140,000	\$150,400
Justice Sector (Justice, Courts, Corrections, Police)	\$70,000	\$140,000	\$150,400
Department of Internal Affairs	\$70,000	\$140,000	\$150,400
New Zealand Customs Service	\$70,000	\$140,000	\$150,400
New Zealand Food Safety Authority	\$70,000	\$140,000	\$150,400
Land Information New Zealand	\$70,000	\$140,000	\$150,400
Housing Corporation	\$70,000	\$140,000	\$150,400
New Zealand Transport Agency	\$70,000	\$140,000	\$150,400
Tourism Board	\$70,000	\$140,000	\$150,400
New Zealand Trade and Enterprise	\$70,000	\$140,000	\$150,400
Tertiary Education Commission	\$70,000	\$140,000	\$150,400
Accident Compensation Corporation	\$70,000	\$140,000	\$150,400
Total	\$2.460m	\$4.901m	\$5.260m

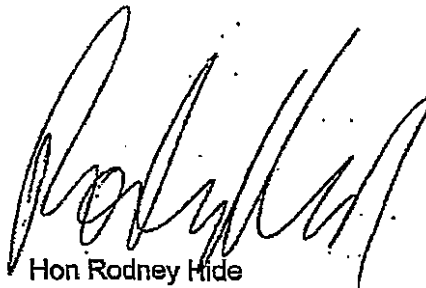
25. note that the following agencies are still considering the funding proposal: NZHC, NZTA, Tourism Board.
26. note that the following agencies have argued that because of their relatively small size and/or pressures on their baselines and implications for outputs, they should contribute at a lower rate: DoL, NZFSA, LINZ. Customs would also prefer a greater differentiation based on size but accepts the proposed level of contribution. Statistics NZ and NZTE would prefer to make a contribution of their expertise rather than direct funding.
27. agree that the technical details of these transfers and the necessary changes to appropriations will be addressed as part of the Baseline Alignment Proposals due from each Vote Minister on 8 March.
28. note that the final approval of the technical changes to the identified baselines in recommendation 24 above will be approved in the Budget 2010 Cabinet paper.



Hon Bill English
Minister of Finance

Date signed:

17/2/10



Hon Rodney Hide
Minister for Regulatory Reform

Date signed:

17/2/10

Annex 1: Examples of Inquiries and studies

Australian Productivity Commission

Annual Review of Regulatory Burdens on Business (Current)

Australian and New Zealand Competition and Consumer Protection Regimes (Involved NZ)

Bilateral and Regional Trade Agreements (Current)

Chemicals and Plastics Regulation

Consumer Policy Framework and Consumer Product Safety (Involved NZ)

Disability Care and Support (Forthcoming)

Economic Impacts of Migration and Population Growth

Energy Efficiency

International Comparisons of the Resourcing of Universities and the Management of those Resources

International Telecommunications Market Regulation

Review the Mutual Recognition Agreement and Trans-Tasman Mutual Recognition Arrangement (Involved NZ)

Review of National Competition Policy Arrangements

Road and Rail Freight Infrastructure Pricing

Public support for science and innovation in Australia

Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety (Involved NZ)

Victorian Competition and Efficiency Commission

Inquiry into Regulatory Impediments in the Financial Services Sector (current)

Inquiry into Streamlining Local Government Regulation (current)

Inquiry into Environmental Regulation in Victoria

Inquiry into managing transport congestion

Regulatory Impact Statement

Title of Proposal

Establishment of New Zealand Productivity Commission

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Treasury.

It provides an analysis of options to establish an independent source of advice to the government on productivity-related issues in both the public and private sectors.

The need for the government to receive advice on productivity-related matters is not questioned. The question is whether one source of that advice should be a new agency that is statutorily independent. The RIS addresses this critical question, while at the same time summarising the overall costs and benefits of a new agency.

The design and analysis of the preferred option has also been significantly influenced by the design and performance of the Australian Productivity Commission (APC), and Victorian Competition and Efficiency Commission (VCEC) which was in turn modelled on the APC. The APC is regarded as best-practice internationally and provides an appropriate benchmark for a New Zealand agency.

The decision to establish a Productivity Commission is one that requires judgment, as many of the benefits and costs are not quantifiable. The full analysis, of which this document provides a summary, will be made publicly available.

Peter Mumford, Principal Advisor, The Treasury

Status quo and problem definition

Currently the Government seeks advice on productivity-related matters from Government departments and, from time to time taskforces, commissions of inquiry and international organisations such as the OECD. These sources of advice are in turn informed by expert bodies, including consultants and academic institutions. Free and frank advice from Government departments, and contestable advice generally, is seen by many to contribute to good quality policy outcomes.

Notwithstanding these sources of advice, analysis by Treasury and the Ministry of Economic Development has concluded that current institutional arrangements leave a gap for a new and independent institution with specialised internal investigative capacity and a mandate to actively survey the views of a range of stakeholders, to undertake inquiries, and significant *ex post* reviews of regulatory regimes. On the basis of this conclusion Cabinet agreed that officials undertake the detailed design, analysis and costing of a possible agency to carry such inquiries and reviews.

The case for such an agency is made in the context of New Zealand's current economic challenges. These include: regulatory settings that are believed to be constraining investment and limiting productivity growth; R&D expenditure that is below the OECD average; future limits on resource use in relation to freshwater supply, marine space, fisheries, and the assimilative capacity of the atmosphere, soil, waterways and groundwater; relative low rates of participation in education and training amongst some population groups (eg, some age groups, socioeconomic groups, and Māori and Pacific Island peoples); inadequate infrastructure in some areas, and; low domestic savings and shallow equity and bond markets.

New Zealand needs to significantly improve its economic performance through addressing constraints and exploiting opportunities. The economic measure of performance is productivity, directed to the overall well-being of New Zealanders. Given the complex challenges facing New Zealand the government must have access to a wide range of new ideas that potentially challenge the status quo. These ideas need to be supported by widely consulted and evidence-based analysis that is credible to both the government and external stakeholders, often on different sides of a policy issue. MMP has increased the complexity of the decision-making environment in this regard.

While Government departments provide productivity-related policy advice, in reality they are not unfettered in the preparation and delivery of such advice. They are influenced by Ministerial preferences and government policy frameworks, and in some cases the immediate demands of the day crowd out or limit the effort they might otherwise make into forward looking evidence-based policy. In effect, departments cannot be expected to consistently act as independently as an agency that is given statutory independence.

A plausible alternative to government departments is *ad hoc* bodies such as taskforces. While such bodies have their place, their temporary nature makes it harder for them to support the accumulation of knowledge over time. In addition, they are less likely to have at their foundation a methodology that (a) is capable of replication, thus reducing the costs of having to develop a new methodology each time an inquiry or review is required (b) has been accepted by the government, departments and external stakeholders as producing high quality analysis, and (c) provides the focus of building and maintaining analytical capability.

Objectives

The desired Government outcome is an alternative source of credible policy advice on opportunities to improve significantly New Zealand's productivity performance that are highly complex and potentially controversial (there is a diversity of views and interests on the issue held

by influential stakeholders). The new body should improve the net quality of advice available to decision-makers.

The agency that provides such advice needs to be persuasive, and this is associated with independence, relevance to the government's policy agenda, and competence. These criteria reflect the Australian objectives and experience with the APC and VCEC.

Regulatory impact analysis

Options

Having regard to the problem definition which is associated with constraints on the main alternative sources of advice, government departments and *ad hoc* bodies, a single option has been analysed, but there are alternative ways in which that option can be configured.

The option is an independent agency which has as its purpose the improvement of productivity in both the public and private sectors in a way that is directed at supporting the overall well-being of New Zealanders.

The scope of the agency will include, but will not be limited to: enterprise (tax, regulation and competition), skills, innovation, infrastructure, natural resources, investment, international connectedness, and public sector productivity.

The functions of the agency will be to:

Primary

- Hold inquiries into, and report to the Minister about, productivity related matters that are referred to it by the Minister (there would be provision for joint work with the APC into productivity related matters);
- Conduct *ex post* reviews of regulatory regimes;
- Conduct one-off reviews of the efficiency and effectiveness of regulatory agencies; and
- Undertake *ex ante* regulatory impact analysis (RIA) for specific regulatory proposals.

Secondary

- Undertake and publish its own research into productivity-related matters to build its institutional knowledge and, as such, support its inquiry and reviews functions; and
- Promote public understanding of matters relating to productivity.

The agency would be headed by 3-4 part-time Commissioners, one of whom would be Chair, and there is also provision to appoint Associate Commissioners. The Commission would be supported by a staff of approximately 21 FTEs. This equates to an annual budget of about \$5 million.

The government would determine the work programme for the agency, and it would only undertake inquiries, reviews and RIA on the basis of a reference from the government. The work programme would be made public, as would the terms of reference. The responsible Minister would be required to table agency reports pursuant to inquiries and reviews, but there would not be an obligation on the government to respond.

The agency would be an Independent Crown Entity (ICE). There a number of ways in which support for the agency can be configured. Because different configurations have implications for

perceived independence, and independence has been identified as a key criterion, the options and analysis have been included in the RIS.

Analysis

The evidence that an independent, relevant and competent agency with the purpose and functions described above, will provide an alternative source of credible policy advice on opportunities to significantly improve New Zealand's productivity performance comes from both the Australian experience with the APC and VCEC, and domestic consultation.

Both the APC and VCEC assess their performance by reference to the number of recommendations they make that are accepted by the Federal and State Governments. These show that many recommendations are accepted. However, this is not the only assessment criteria that the APC and VCEC apply. They also judge their success on the basis of whether their contribution to the debate on complex and controversial issues has contributed to the quality of the debate, even if their recommendations are not accepted.

A dimension to this is whether they generate repeat business from the Governments i.e. if the governments continue to give them complex and controversial inquiries this indicates that they are valued as avenues for having such issues analysed and debated. On both the reputational and repeat business measures the APC and VCEC illustrate positive performance.

As documented in the full analysis, there is evidence of the potential value of an analogous organisation in New Zealand in the form of statements of latent demand by New Zealand decision-makers and by those who understand the policy-making process in New Zealand.

While consultation both in Australia and domestically confirmed the normative proposition that there is a gap for an agency of the type that exists in Australia and proposed for New Zealand, the risks were also highlighted. The remainder of this analysis identifies the risks and how the design and implementation of the agency is planned to manage them.

The risk to independence: Independence is seen as critical, and this includes perceived independence. Establishing the agency as an ICE is intended to secure the independence of the agency. This gives Commissioners security of tenure (the threshold for removal is very high) and the Minister is not able to direct the entity to have regard to or give effect to government policy. Requiring public inquiries, and publishing both the terms of reference and final reports (the APC is also required to publish draft reports) is intended to contribute to transparency. The appointment of Commissioners who have a high level of credibility is a key implementation strategy.

In relation to perceived independence, the way support is configured may have an influence..

Option	Sub-options	Costs and benefits
Stand-alone agency		Benefits: seen to be a fully independent agency. Costs: because of size and novelty may not be seen as an attractive place to work.
Shared services	Treasury	Benefits: cost savings in the order of \$200,000.
	Other policy agency	Costs: low risk that agency will be seen to be influenced by thinking of agency with whom it shares services, if a policy agency.
	Non-policy agency	
Shared services and co-location	Treasury or other policy agency	Benefits: co-location may contribute to capability through facilitating 'communities of interest' between analysts. Costs: low-medium risk that agency will be seen to be influenced by thinking of policy agency.
	Non-policy agency	Benefits and costs – nil (beyond sharing services)
Shared services, co-location and staff employed by host agency	Treasury or other policy agency	Benefits: large host agency may make the NZPC a more attractive employer. Co-location may contribute to capability through facilitating 'communities of interest' between analysts. Contributes to the government's objective of reducing proliferation of public sector bodies. Costs: medium-high risk that agency will be seen to be influenced by thinking of policy agency. Risk drops to medium if the NZPC is not co-located.
Independent function within an existing agency	Treasury or other policy agency	Benefits: as for previous option. Costs: high risk that agency will be perceived be influenced by thinking of policy agency.

Risk to relevance: If the analysis undertaken by the agency is not considered by the government to be relevant then the agency will not be effective, or seen to be effective, by either the government or stakeholders. Requiring the agency to undertake inquiries only by way of reference from the government, and terms of reference which highlight the government's particular questions, is intended to ensure that agency only does what the government values.

Commissioners will need to exercise a critical judgement when making recommendations on how far to push a policy approach. The Australian commentators noted that the agency should avoid being seen as 'ideological'. While the NZPC would be able to undertake its own research and promote public understanding of productivity-related matters, it could not do this in a manner that is inconsistent with the principle that the government directs the Commission on what policy work it should undertake.

Risk to competence: The agency must have critical mass and the correct skill sets critical for competence. The size of the proposed agency has been benchmarked against the VCEC as a comparable body that has achieved critical mass. The agency will need to attract and retain competent staff. The Commission will need to be funded to offer competitive salaries. It is also expected that there will be a high level of cooperation between the agency and the APC, and the agency will leverage off the APC's knowledge and experience, as well as engaging in joint work.

Consultation

Discussions were held with a small number of New Zealand senior public servants, current and past politicians and informed commentators from consultancies and academia. Discussions were also held with the APC, VCEC and Australian Treasury.

The purpose of the domestic consultation was not intended to represent a comprehensive survey of all of those who have knowledge of, or interest in, the issue, but rather to test key propositions in relation to the problem definition, benefits and risks that were identified through the Australian experience. The consultation confirmed the Australian experience, and it was judged that further consultation in New Zealand would quickly reach diminishing returns.

Conclusions and recommendations

The analysis that has been undertaken concludes that the expected benefits of a NZPC are likely to significantly exceed the expected costs. The benefits are associated with an independent source of advice to the government on ways to improve New Zealand's productivity performance, generated by a specialist body that develops its advice through rigorous, transparent, community-wide processes. This conclusion is subject to implementation and design risks associated with perceived independence, relevance and competence. Strategies have been developed to manage these risks and these have been reflected in the design.

Implementation

The agency would be established by statute. An implementation unit would be established and would have responsibility for putting in place the physical infrastructure and administrative arrangements, and running the appointments process.

Monitoring, evaluation and review

The agency will be subject to ongoing monitoring by the Treasury.

A five year review of the agency is proposed.