

The Treasury

Regulatory Information Release

April 2013

Release Document

www.treasury.govt.nz/economy/regulatory/inforeleases

Key to sections of the Official Information Act 1982 under which information has been withheld.

Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

- [1] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials.
- [2] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice.
- [3] 9(2)(d) - avoid prejudice to the substantial economic interests of New Zealand.
- [4] 6(a) - to prevent prejudice to the security or defence of New Zealand or the international relations of the government.
- [5] Information is out of scope or not relevant.

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, a [3] appearing where information has been withheld in a release document refers to section 9(2)(f)(iv).

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.



Cabinet

CAB Min (13) 6/2B

Copy No:

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Regulatory Systems: Improving New Zealand's Regulatory Performance

Portfolios: Finance / Regulatory Reform

On 4 March 2013, following reference from the Cabinet Committee on State Sector Reform and Expenditure Control, Cabinet:

Regulatory performance expectations and reporting requirements

- 1 **agreed** that regulatory departments be required to give effect to the regulatory expectations outlined in Annex One attached to this minute;
- 2 **directed** the Treasury to:
 - 2.1 work with departments to support implementation of the expectations, and provide guidance as required;
 - 2.2 monitor and report annually from 2014 to the Minister of Finance and the Minister for Regulatory Reform on the expectations themselves and any necessary changes, and provide appropriate guidance;
 - 2.3 consider whether it is appropriate to vary the level or timing of the expectations, or reporting requirements, between departments;
- 3 **authorised** the Minister of Finance and the Minister for Regulatory Reform to vary the level or timing of the expectations, or reporting requirements, between departments;
- 4 **directed** the Treasury to continue to report annually to the Minister of Finance and the Minister for Regulatory Reform, in consultation with relevant agencies where appropriate, on:
 - 4.1 the Regulatory Review Programme;
 - 4.2 the level and quality of compliance with regulatory impact analysis requirements;
 - 4.3 the capabilities and systems of regulatory departments;
 - 4.4 the performance of regulatory regimes against best practice principles;
 - 4.5 trends in agency performance on regulatory implementation;

- 5 **invited** the Minister of Finance and the Minister for Regulatory Reform to provide the report referred to in paragraph 4 above to Cabinet if they consider it to be useful;
- 6 **rescinded** the existing requirement for the Treasury, in consultation with relevant agencies, to report to Cabinet on the progress of the Regulatory Review Programme at six-monthly intervals [EGI Min (12) 8/1];
- 7 **agreed** that Ministers will no longer be required to certify compliance with the *Government Statement on Regulation: Better Regulation, Less Regulation*;

Improving the translation of policy into effective legislation

- 8 **agreed** to legislate to require the government to disclose key features of all legislation, substantive Supplementary Order Papers (where a change affects the original disclosure), and disallowable instruments that are produced by the government;
- 9 **agreed** that the disclosure requirements will only apply to legislation produced by the government;
- 10 **agreed** that only disallowable instruments drafted by the Parliamentary Counsel Office within the meaning of section 38 of the Legislation Act 2012 will be covered by the disclosure requirements;
- 11 **agreed** to legislate to require basic disclosures for primary legislation, as outlined below:
- 11.1 a general statement of the policy that the legislation seeks to achieve (disclosure area one in Annex Two attached to this minute);
 - 11.2 the disclosure of the existence of particular quality assurance products where they exist (and where they can be located) (disclosure area two in Annex Two);
 - 11.3 disclosure of processes followed, or the nature and extent of the action taken (if any) to meet an existing expectation, where no particular quality assurance product exists (disclosure areas three and four in Annex Two);
 - 11.4 an indication of particular features in the regulatory instrument (disclosure areas five and six in Annex Two);
- 12 **agreed** to legislate to require disclosure for disallowable instruments (as defined in paragraph 10), as outlined below:
- 12.1 a general statement of the policy that the disallowable instrument seeks to achieve (disclosure area one in Annex Two);
 - 12.2 the disclosure of the existence of particular quality assurance products where they exist (and where they can be located) (disclosure area two, except for assessing consistency with the New Zealand Bill of Rights Act 1990, in Annex Two);

- 12.3 descriptions of the nature and extent of the action taken (if any) to meet an existing expectation where no particular quality assurance process or product exists (disclosure area four in Annex Two, testing of draft legislation and consultation only);
- 13 **agreed** that, for the avoidance of doubt, legislation be drafted so as not to limit the disclosure of additional information to that referred to in paragraphs 11 and 12 above;
- 14 **agreed** that the following legislative instruments be excluded from the disclosure requirement for all government Bills:
- 14.1 Imprest Supply and Appropriation Bills;
- 14.2 Statutes Amendment Bills;
- 14.3 Regulatory Reform (Repeal) Bills;
- 14.4 Subordinate Legislation (Confirmation and Validation) Bills;
- 14.5 Revision Bills;
- 15 **agreed** that the proposed legislation bind the Crown;
- 16 **agreed** that failure to meet the disclosure requirements will not affect the validity of any legislation;
- 17 **agreed** that paragraphs 8 to 16 above be implemented through an amendment to the Legislation Act 2012;
- 18 **invited** the Attorney-General and the Minister for Regulatory Reform to issue drafting instructions to the Parliamentary Counsel Office to give effect to the proposals;
- 19 **authorised** the Minister of Finance, the Attorney-General and the Minister for Regulatory Reform to make decisions on any minor and technical policy decisions that may arise during the drafting process;
- 20 **agreed** that the disclosure requirement outlined in paragraph 11 above be enhanced administratively by requiring the disclosure of additional information as outlined below:
- 20.1 describing outstanding issues where they occur (disclosure areas three and four (external consultation only) in Annex Two);
- 20.2 justifying provisions which depart from usual legislative practice (disclosure areas five and six in Annex Two);
- 20.3 highlighting particular areas of the policy for consideration (disclosure area seven in Annex Two);
- 21 **directed** the Treasury to prepare guidance to support the implementation of the disclosure requirements to be required by legislation, and outlining the requirements for extended disclosure;
- 22 **directed** the Treasury to begin administratively implementing the disclosure requirements as soon as possible to operate alongside and inform the development and passage of legislation;

- 23 **authorised** the Minister of Finance and the Minister for Regulatory Reform to approve the extended requirements for disclosure;
- 24 **agreed** that the disclosure required by paragraphs 11, 12 and 20 above be prepared in a disclosure statement to be attached to legislation when it is submitted to the Cabinet Legislation Committee for approval;
- 25 **agreed** that a disclosure statement be released publicly when legislation is either introduced to Parliament or promulgated, as applicable;
- 26 **agreed** that the legislation referred to in paragraph 17 above be brought into force by Order in Council to ensure a clear transition between the administrative period and commencement of the legislation;
- 27 **agreed** that an independent review of the operation of the proposed disclosure requirements be conducted within five years of their implementation;

Additional measures to support effective translation of policy into legislation

- 28 **directed** the Treasury to revise the regulatory impact analysis requirements to support the proposed disclosure requirements, including more explicit expectations on:
 - 28.1 implementation plans and risks;
 - 28.2 identifying costs or possible economic losses;
 - 28.3 likely levels of compliance and enforcement;
- 29 **noted** that the Minister of Finance and the Minister for Regulatory Reform will work with the Minister of Justice to re-examine the role that the Legislation Design Committee could play in supporting the effective translation of policy into legislation.