

# The Treasury

## Release of 2011 Briefings to Incoming Ministers

### Release Document

February 2011

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## Treasury Report: Regulatory Quality and Treasury - Introductory Briefing

<b>Date:</b>	21 December 2011	<b>Report No:</b>	T2011/2565
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### Action Sought

	<b>Action Sought</b>	<b>Deadline</b>
Minister of Finance (Hon Bill English)	<b>Note</b> the contents of the report	Not Applicable
Minister for Regulatory Reform (Hon John Banks)	<b>Read</b> before meeting with Treasury <b>Advise</b> areas where further briefing would be desirable	Before meeting with Treasury (meeting date and time to be advised)

### Contact for Telephone Discussion (if required)

<b>Name</b>	<b>Position</b>	<b>Telephone</b>	<b>1st Contact</b>
Kirsty Flannagan	Manager, Regulatory Quality	[1]	✓
[1]			

### Minister of Finance's Office Actions (if required)

None.
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**Enclosure:** Yes (attached)

## Regulatory Quality and Treasury - Introductory Briefing Introductory Briefing

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### Executive Summary

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This report is to support initial engagement over your priorities and Treasury's Regulatory Quality Team's focus and proposed work programme. We can provide further information and meet with you to discuss the topics introduced in this report.

The Regulatory Reform portfolio will be supported primarily within Treasury but there is an overlap with the Ministry of Economic Development (MED) business regulation roles, including Small Businesses.

The Regulatory Quality Team (RQT) lead the Treasury's work on regulation and will provide support to you in your role as Minister for Regulatory Reform. RQT's major areas of work in 2012 are expected to relate to:

- ongoing operation of the *Regulatory Impact Analysis (RIA) regime*, including support for agency capability building. The RIA regime provides standards for proposals that contain regulatory options and RQT provides quality assurance over significant regulatory proposals against these standards
- support for policy design and for passage of the Regulatory Standards Bill as part of the National-ACT confidence and supply agreement
- refining and building on Regulatory Best Practice principles and assessments, which provide an overall picture of the health of New Zealand's regulatory regimes and environment
- the next stage of Regulatory Scans and Regulatory Plans. RQT provides guidance and assessment over departmental scans of their stock of regulation and the plans departments make to keep their regulation up-to-date and fit for purpose, and
- refreshing:
  - the Government's Regulatory Reform Programme, which sets out the major reviews of regulatory regimes that are being carried out, and
  - potentially the Government Statement on Regulation, which is a statement released on 17 August 2009 setting out the overall approach the government intends to take to regulation.

We think your immediate priorities may include:

- a Cabinet discussion in February 2012 on regulatory priorities [2], and

- progressing the Regulatory Standards Bill – including bidding for a place on the 2012 legislative programme for this and some other regulation-related Bills.

### Recommended Action

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We recommend that you **indicate** areas where further briefing would be of value to you:

	Yes	No
Regulatory Standards Bill options and work programme		
Regulatory Reform Priorities		
Regulatory Quality Team (RQT) work programme		
Regulatory Impact Analysis (RIA) regime – agency obligations and Treasury roles		
Best Practice Regulation – principles and assessments		
Regulatory Scanning and Planning processes and lessons		

Kirsty Flannagan  
**Manager, Regulatory Quality**

Hon John Banks  
**Minister for Regulatory Reform**

# Treasury Report: Regulatory Quality and Treasury - Introductory Briefing – Introductory Briefing

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## Purpose of Report

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1. This report is to provide an introductory briefing on:
  - the current arrangements for undertaking work on regulatory reform and the regulatory quality work programme within Treasury, and
  - options for taking forward regulatory reform aspects of the Confidence and Supply Agreement between the National and ACT parties.

## Analysis

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### The Big Picture

2. Regulatory quality is an important part of providing a competitive and stable domestic business environment, which is necessary to improve New Zealand's economic performance. There is a balance between actions designed to work through improving the regulatory system, and those intended to achieve specific regulatory priorities.
3. Clear overall regulatory goals, maintained over time, matter because of the difficulty of obtaining a clear line of sight from Ministers overall goals to the coalface where regulators enforce requirements on the regulated community, including firms (Annex A). Ministers can influence the coalface but the instruments available are high level and take time to work. Those instruments include accountability and performance management mechanisms built into the public sector management system, and interfaces with local government. Evidence from Performance Improvement Framework (PIF) reviews to date illustrates the challenges ahead.

*PIF Reviews assess agency performance in delivering government priorities and core business activities, as well as their capability to do so in future. Ratings range from green=strong to red=weak. Below are the results to date for two elements of capability strongly linked to regulatory performance.*

PIF Results	MFAT	DOC	TPK	LINZ	NZTA	NZTE	TSY	MSD	IRD	MOE	MWA	MPIA	SNZ	CLO	
Review	Orange	Orange	Orange	Red	Green	Green	Green	Orange	Green	Green	Green	Green	Red	Green	Orange
Regulatory impact	Grey	Green	Orange	Green	Orange	Grey	Green	Grey	Green	Green	Grey	Grey	Grey	Grey	Grey

4. PIF reviews have highlighted inadequacies in agency evaluation and review capabilities. International rankings of the regulatory environment show a relative decline for New Zealand (although the regulatory environment remains sound). Our basic regulation standards are high: but there are concerns about performance in designing and delivering key regulatory regimes consistently and in a manner that supports competition and growth.

5. There is a solid foundation in place for ensuring the quality of new regulation through the operation of the Regulatory Impact Analysis (RIA) regime. Agency performance is improving and a community of interest growing based on the value of RIA to agencies.

*Cabinet's Regulatory Impact Analysis (RIA) requirements apply to policy processes - RIA is used for the structured exploration of options to address policy issues. Agencies embarking on policy work with potential regulatory implications should complete a Preliminary Impact and Risk Assessment (PIRA) and engage with Treasury to confirm if RIA requirements apply and whether the proposal is significant.*

*Significant proposals require Regulatory Impact Analysis Team (RIAT) involvement while agencies themselves provide quality assurance for other proposals. Agencies are also encouraged to use the RIA framework to analyse proposals without regulatory implications.*

*When regulatory proposals go to Cabinet a Regulatory Impact Statement (RIS) outlining the RIA undertaken is attached. The RIS provides a summary of the agency's best advice to their Minister and to Cabinet on the problem, objectives, identification and analysis of the full range of practical options, and information on implementation arrangements. The RIS and attached disclosure statement is the responsibility of the agency, while the paper focuses on the Minister's proposal. Ministers certify whether a proposal is consistent with the Government Statement on Regulation. The paper will include a statement by RIAT or the agency on the adequacy of the RIS – whether it meets/does not meet/partially meets the RIA quality assurance criteria.*

*All RISs must be published and the link included in the Explanatory Note to Bills. Any significant proposal not meeting RIA requirements requires a post-implementation review.*

6. Future system work is envisaged as embedding norms through:

- promoting principles of *best practice regulation* backed up by *regime assessments* (Annex D)

*A set of principles has been developed based on international practice and consultation. These are intended to serve both as a test for new regulatory proposals and a diagnosis tool for possible problems with existing regimes. An assessment process has been used to refine the principles and obtain an initial "heat map" of New Zealand's regulatory regimes.*

- improving regulatory scanning and planning, and adding a medium term perspective

*Regulatory scans have been used to build up a complete set of primary (statute), secondary (statutory regulation) and tertiary (other) regulation, identifying responsible agencies and whether review is underway or proposed.*

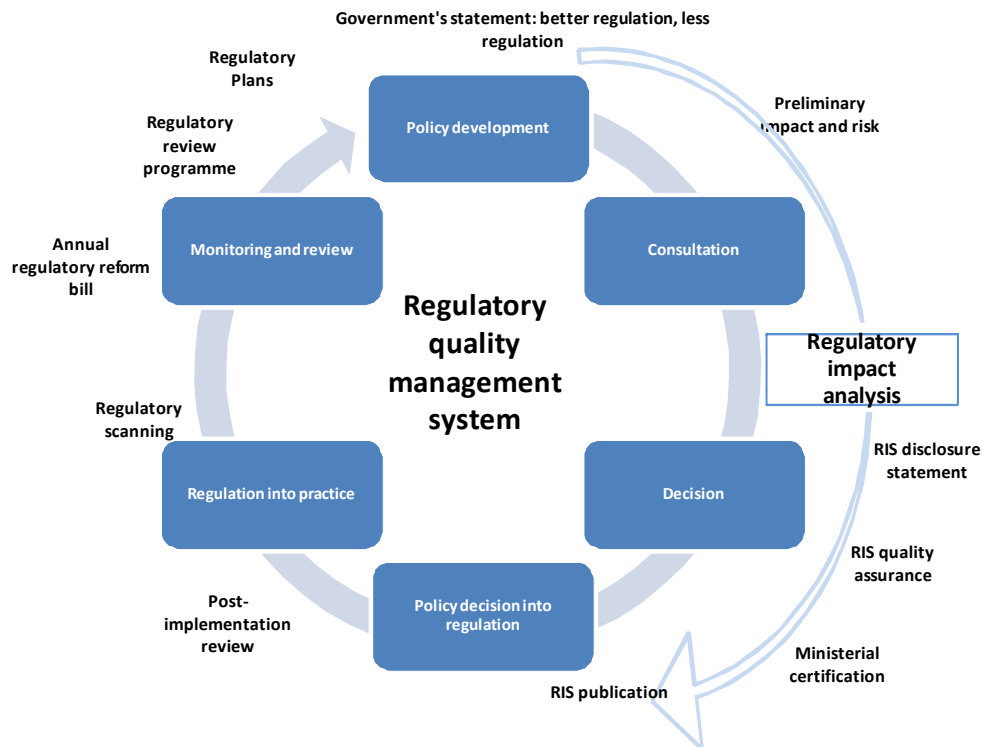
*Annual regulatory plans cover the actions agencies propose to take in the next year, and a new medium term plan is now being introduced to give a higher level view of what is intended over the next 2-3 years.*

- building regulatory goals into Chief Executive and agency performance expectations, and
- supporting departments to develop and share best practice.

### **Treasury – Regulatory Quality Team (RQT)**

7. The Regulatory Quality Team within Treasury is managed by Kirsty Flannagan who reports to Vicky Robertson, Deputy Secretary, Growth & Public Services. The team is split across:

- the Regulatory Impact Analysis Team (RIAT) is responsible for the **Regulatory Impact Statement (RIS)** regime. This work includes:
  - provision of guidance and training for agencies
  - review of “significant” RISs and provision of quality assessments for cabinet papers
  - monitoring compliance with obligations to prepare and publish RISs, and
  - supporting APEC efforts to build countries’ regulatory capability.
- the Quality (“Q”) Team handles work programmes aimed at building regulatory system capability and supporting regulatory prioritisation across government, including:
  - advising on the **Regulatory Standards Bill**
  - supporting agencies in RIA, capability building, undertaking annual **scans** of their regulatory regimes, and developing annual and medium-term regulatory **plans**
  - defining **best practice regulation** principles for regulation and undertaking assessments of regimes against those principles (Annex D)
  - supporting cross-government mechanisms such as the **Government Statement on Regulation** and monitoring of the **Regulatory Reform Programme**
  - supporting work on trans-Tasman institutions and the Trans Pacific Partnership, and
  - longer term work on regulatory systems, monitoring and cross-cutting issues, including input to the New Zealand Law Foundation Regulatory Reform Project.



8. RQT's proposed medium term focus is around:

- emphasising medium term planning and capability through plans and scans, and the Regulatory Review Programme
- focusing agency engagement, best practice regulation follow-up and RIS reviews on:
  - regulation with significant potential impacts on growth, and
  - major regulatory agencies responsible for such regulation and for leading sectors
- investigating how to evaluate and address regulator capability in general, and the assessment of total regulatory costs/burden in particular
- cross-cutting regulatory matters such as outcome-based regulation, and specific active issues; e.g. disaster risk management (mine safety and building weather-tightness and earthquake resistance) and occupational regulation (health professionals and teachers).

9. One means by which we will manage resource constraints will be through leveraging work on priority regimes and with priority regulatory agencies. Connecting other agencies and individuals within and outside government will be critical to maximising our impact and achieving buy-in.



## **Ministry of Economic Development Role**

10. The Regulatory Reform Team in the Ministry of Economic Development (Manager Lis Cowey) works to strengthen the quality of the Ministry's regulatory policy advice and its implementation to improve operation of regulatory regimes affecting business. It works in collaboration with the Treasury Regulatory Quality team, and leads projects to deliver strategic regulatory improvements in areas that cut across more than one regulatory regime, both within portfolios administered by the Ministry and with other government agencies.

## **Supporting the Minister of Finance and Minister for Regulatory Reform**

11. There will be a number of practical issues to be resolved regarding how Ministers and their offices work together, how Treasury supports them, and interactions between the Regulatory Reform and Small Business portfolios. The Small Business portfolio will be supported by MED. Issues to be resolved include:
  - the handling of Ministerial correspondence, Parliamentary Questions and media inquiries
  - commissioning Treasury advice and submitting cabinet papers on regulatory quality
  - addressing compliance of cabinet papers with RIA requirements
  - engaging with the New Zealand Productivity Commission, and
  - resourcing within Vote: Finance.
12. These issues will need to be worked through between your office and the office of the Minister of Finance. Treasury will support that process as required.

## **Immediate Priorities**

13. We think your immediate priorities may include:
  - in February 2012, we propose that you and the Minister of Finance submit a paper to Cabinet framing the regulatory agenda for the coming year.  
[2]
    - report on revised Best Practice Regulation principles and assessment results and relevant Performance Improvement Framework system results
    - note progress on RIA, scans and the new medium term approach to plans
    - if desired, refresh the Government Statement on Regulation, and
  - progressing the Regulatory Standards Bill – including bidding for a place on the 2012 legislative programme for this and some other regulation-related Bills.

## February Cabinet Discussion – Regulatory Priorities

14. The Government Statement on Regulation on 17 August 2009 made commitments to “introduce new regulation only when we are satisfied that it is required, reasonable, and robust” and “review existing regulation in order to identify and remove requirements that are unnecessary, ineffective or excessively costly.” The statement balanced system improvements with a targeted reform programme, and also supported an annual Regulatory Reform Bill.
15. The system work is continuing, with the Best Practice regulation work and the upgrading of planning and scanning requirements (to a medium term and regime focus) as the latest examples.
16. The reform programme has continued but the focus is likely to shift to a set of reform priorities (regulatory and otherwise) [2]  
The wider strategic priorities discussion at Cabinet in February 2012 will help set a quality regulatory reform programme. The SEG-REG (the Senior Executives Group – Regulation) Chief Executives may seek to engage with you and the Minister of Finance before that Cabinet discussion. The specific regimes that may be prioritised for regulatory reform are mostly pervasive, including:
  - the RMA, along with a set of natural resource related regimes (freshwater, marine and chemical & biological risk management)
  - labour markets (ACC, minimum wage and occupational regulation);
  - housing supply
  - innovation, intellectual property and standards, and
  - the Overseas Investment Act.
17. The key agencies are the Ministry of Economic Development, Ministry of Agriculture and Forestry, Ministry for the Environment, and the Departments of Labour and Internal Affairs.

## Regulatory Standards Bill - Policy

18. The National-ACT Confidence and Supply agreement included the commitment that “The Regulatory Standards Bill will be included in the continuance motion for the new Parliament, and the Minister for Regulatory Reform will work closely with the Minister of Finance to achieve a mutually agreed outcome, based on the Treasury’s preferred option (option 5), for enacting within the next 12 months.”
19. Option 5 has two core components:
  - A requirement that explanatory notes for bills and regulations (which currently do not have explanatory notes) specify certain information and answer certain questions, e.g. “Does this piece of legislation take or impair property rights?”
  - Increased emphasis on Parliament’s role in regulatory quality via standing orders changes and increased support for Parliament in carrying out that role.

20. There are a number of policy choices still to be made. Some of the most significant ones are:
- What matters should be disclosed in explanatory notes? Should requirements for bills and regulations be different?
  - Should we have a specialist select committee looking at legislative quality matters? If yes, should it be an expanded Regulations Review Committee or a separate standalone committee?
  - What form of increased analytical support is appropriate? In particular, is there a case for a new Officer of Parliament?
21. Since some of these options involve Standing Orders changes, they are within the exclusive responsibility of Parliament. We will therefore work closely with the Office of the Clerk in developing and testing options.
22. Treasury's Option 5 also outlined a number of supporting measures to bolster the two core components, e.g. a 5-yearly report on regulatory quality from the Attorney-General and the reinvention of the Cabinet Legislation Committee as a substantive check on regulatory quality.

### **Regulatory Standards Bill - Parliamentary process**

23. The Confidence and Supply Agreement provides that the current Regulatory Standards Bill will be reinstated. The implication is that the current draft will be replaced by a revised draft based on Option 5. The 12 month timeframe is ambitious but achievable. An indicative timetable is:

<b>Action</b>	<b>Timeframe</b>
Continuance motion at the first sitting of the new Parliament (will revert to Commerce Committee)	December 2011
Treasury carries out policy work and Ministers determine preferred policy options;	January 2012 – April 2012
Ministers make policy decisions on final form of RSB, Cabinet paper agreed by Cabinet	Early May 2012
Revised RSB drafted by PCO, signed off by LEG Committee	May 2012
Either submit SOP to Commerce Committee or get a member of the Committee to move an amendment	June 2012
Commerce Committee invites comments on the amended RSB (we assume the Committee will invite submissions on the Bill as it will be significantly different)	June 2012
Treasury supports the Commerce Committee in addressing submissions	August – September 2012

Commerce Committee reports back to the House with an amended RSB	October 2012
RSB enacted	December 2012

24. There are some other regulation-related Bills currently in the House that you are likely to want to progress. The Regulation Reform Bill is intended to provide relatively minor tidy-ups to legislation. And the Regulation Reform (Repeals) Bill revokes old or spent legislation. These Bills are currently awaiting their second reading. The Ministry of Economic Development has led the work on these Bills to date and will be providing administrative support for their final stages.
25. While they are aimed at reducing compliance costs on firms, these Bills have taken up a high level of resource (both official and Parliamentary) for what we consider to be relatively low benefits i.e. the actual compliance burden reduction from them is quite low. We would like to discuss with you the best ways to progress further legislative changes aimed at compliance-cost reductions.

## Attachments

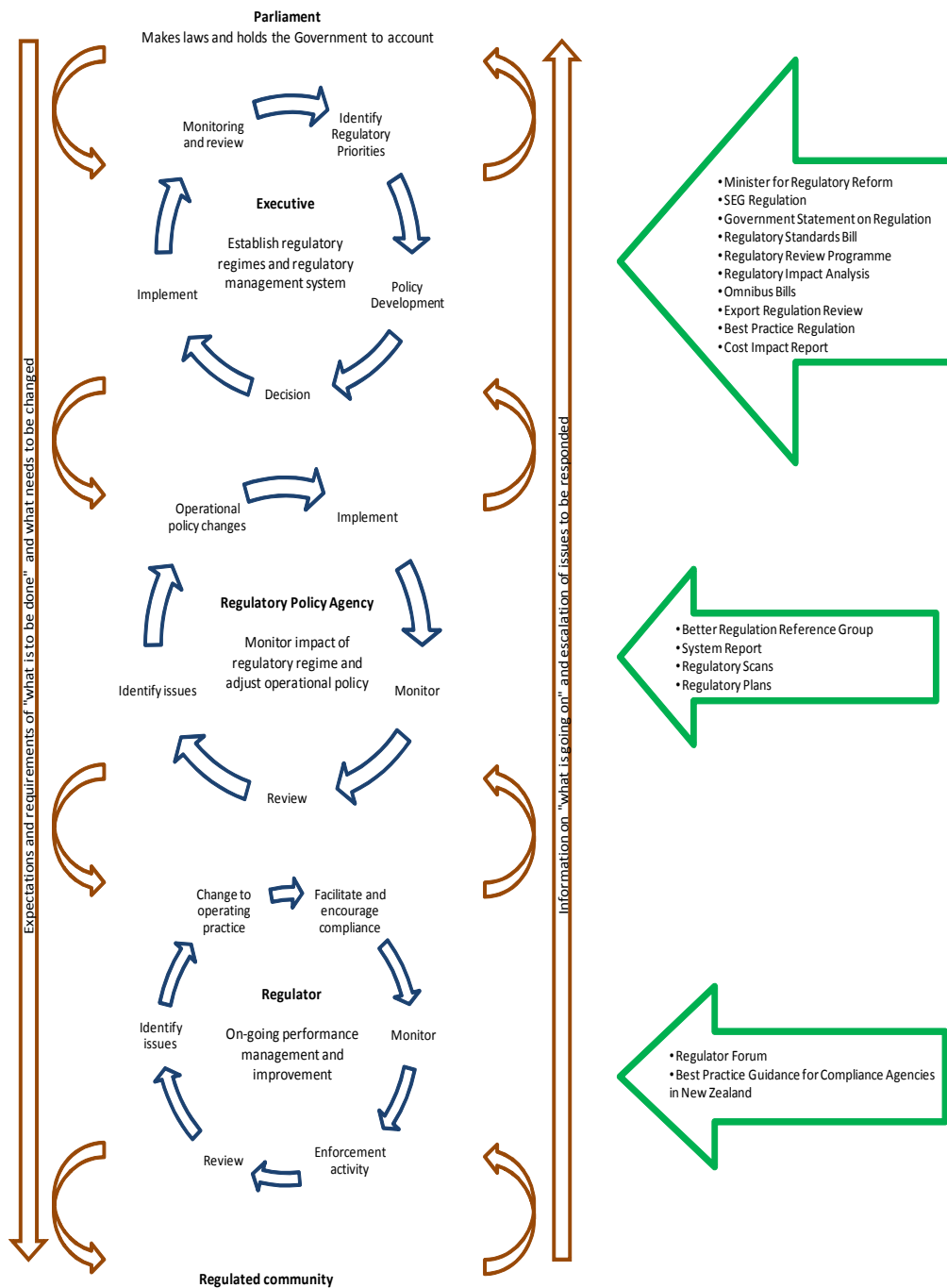
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Annex A: the Regulatory System

Annex B: Government Statement on Regulation: Better Regulation, Less Regulation

Annex C: Best Practice Regulation Principles and Assessments

# Annex A: the Regulatory System



**Self regulation:**  
Industry developed and enforced regulation. Can be as a result of government influence

**Co-regulation:**  
Industry devised regulatory arrangements linked with government regulation

**Quasi-regulation:**  
Industry and/or government guidelines that are not formal regulations but "soft law"

**Explicit regulation:**  
Response of the regulated will range from active compliance through to active challenge, depending on skill and will of the regulated, and response of the regulator

## Annex B: Government Statement on Regulation: Better Regulation, Less Regulation

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Every day New Zealanders are affected by regulation in a myriad of ways. We look to regulation to help ensure we live safer lives, get treated fairly, protect and manage our environment, have a competitive and efficient economy, and much more.

But regulation also has costs and can have unintended effects. Outdated, poorly conceived and poorly implemented regulation can significantly hinder individual freedom, innovation, and productivity. Reducing the burden imposed by such regulation will help unshackle our economy and give New Zealanders more ability to shape and improve their own lives.

New Zealand needs to offer a better policy environment than can be found elsewhere if we are to overcome the economic disadvantages of our small size and geographical isolation, and attract and retain increasingly mobile talent, skills, capital, technology and entrepreneurship.

This is why improving the quality of regulation is a priority for this government. We believe that better regulation, and less regulation, is essential to assist New Zealand to become more internationally competitive and a more attractive place to live and do business.

### ***Our Commitments***

**We will introduce new regulation only when we are satisfied that it is required, reasonable, and robust.**

**We will review existing regulation in order to identify and remove requirements that are unnecessary, ineffective or excessively costly.**

### ***How We Will Deliver on These Commitments***

We have already:

- Begun a programme of reviews of the effectiveness of important regulatory regimes, particularly those that have a significant impact on productivity
- Committed to introduce an annual Regulatory Reform Bill to make it quicker and easier to remove or simplify unnecessary, ineffective or excessively costly requirements in primary legislation, and
- Established an independent expert Regulatory Taskforce to investigate the case for, and form of, a Regulatory Responsibility Bill.

We will also be looking for significant changes in the approach both Ministers and government agencies take to regulation. To this end we will:

- Resist the temptation or pressure to take a regulatory decision until we have considered the evidence, advice and consultation feedback, and fully satisfied ourselves that:
  - the problem cannot be adequately addressed through private arrangements and a regulatory solution is required in the public interest
  - all practical options for addressing the problem have been considered
  - the benefits of the preferred option not only exceed the costs (taking account of all relevant considerations) but will deliver the highest level of net benefit of the practical regulatory options available

- the proposed obligations or entitlements are clear, easily understood and conform as far as possible to established legislative principles and best practice formulations, and
- implementation issues, costs and risks have been fully assessed and addressed.
- Require there to be a particularly strong case made for any regulatory proposals that are likely to:
  - impose additional costs on business during the current economic recession
  - impair private property rights, market competition, or the incentives on businesses to innovate and invest, or
  - override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee guidelines)
- Ensure that Cabinet's requirements for assuring regulatory quality are treated as an integral part of policy development, and built into the policy process from the beginning
- Ensure that all government agencies are fully aware of the commitments set out in this statement and understand the importance that the government attaches to them
- Expect a culture from government agencies that:
  - recognises the importance of productivity in enhancing New Zealand's economic performance
  - respects the value of individual autonomy and responsibility
  - does not see regulation as the first resort for problem solving
  - provides fearless advice on whether a regulatory proposal is consistent with this policy statement and meets appropriate standards of impact analysis and consultation; and
  - continually looks for opportunities to make existing regulation more effective, easier to access and understand, and easier and less costly to comply with
- Require greater accountability from government agencies for the quality of the regulatory analysis they undertake, and for the consequences of poor implementation, and
- Encourage New Zealanders to hold us to account where they believe we have regulated in a way that is inconsistent with the commitments in this statement.

## Annex C: Best Practice Regulation Principles and Assessments

<i>Attribute</i>	<i>Principle</i>	<i>Indicators</i>
<b>Growth-focused</b>	<b>Economic objectives are given an appropriate weighting relative to other specified objectives</b>	<ol style="list-style-type: none"> <li>1. Identifying and justifying trade-offs between economic and other objectives is an explicit part of decision-making</li> <li>2. The need for firms to take long term investment decisions is taken into account in regulatory regimes where appropriate</li> <li>3. Open and competitive domestic and international markets including minimising barriers to, and maximising net benefit from, cross-border flows, are explicit objectives</li> </ol>
<b>Proportional</b>	<b>The burden of rules and their enforcement should be proportionate to the benefits that are expected to result</b>	<ol style="list-style-type: none"> <li>1. A risk-based, cost-benefit framework is in place for both rule making and enforcement</li> <li>2. There is an empirical foundation to regulatory judgements</li> </ol>
<b>Flexible</b>	<b>Regulated entities should have scope to adopt least cost and innovative approaches to meeting legal obligations.</b>	<ol style="list-style-type: none"> <li>1. The underlying regulatory approach is principles or performance-based, and policies and procedures are in place to ensure that it is administered flexibly</li> <li>2. Non-regulatory measures, including self-regulation, are used wherever possible</li> <li>3. Decisions are reassessed at regular intervals and when new information comes to hand</li> </ol>
<b>Durable</b>	<b>The regulatory system has the capacity to evolve to respond to changing circumstances</b>	<ol style="list-style-type: none"> <li>1. Feedback systems are in place to assess how the law is working in practice including well-developed performance measurement and clear reporting</li> <li>2. The regulatory regime is up-to-date with technological and market change, and evolving societal expectations</li> </ol>
<b>Certain And Predictable</b>	<b>Regulated entities have certainty as to their legal obligations, and the regulatory regime provides predictability over time.</b>	<ol style="list-style-type: none"> <li>1. Safe harbours are available and/or regulated entities have access to authoritative advice</li> <li>2. Decision-making criteria are clear and provide certainty of process</li> <li>3. The need for firms to take long term investment decisions is taken into account in regulatory regimes where appropriate</li> <li>4. There is consistency between multiple regulatory regimes that impact on single regulated entities where appropriate</li> </ol>
<b>Transparent and accountable</b>	<b>Rules development, implementation and enforcement should be transparent.</b>	<ol style="list-style-type: none"> <li>1. Regulators must be able to justify decisions and be subject to public scrutiny</li> </ol>
<b>Capable regulators</b>	<b>The regulator has the people and systems necessary to operate an efficient and effective regulatory regime</b>	<ol style="list-style-type: none"> <li>1. Capacity assessments are undertaken at regular intervals and subject to independent input and/or review</li> </ol>



[2]

