

The Treasury

Regulatory Information Release

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Release Document

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- [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.
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Chair
Cabinet Economic Growth and Infrastructure Committee

REGULATORY SYSTEMS PAPER TWO: IMPROVING NEW ZEALAND'S REGULATORY PERFORMANCE

Proposal

1. This paper proposes new initiatives to improve regulatory performance and the regulatory environment in New Zealand. It is the second of two papers on New Zealand's regulatory systems. The first paper, *'Regulatory Systems Paper One: Update on Reviews and System Performance'*, provides an update on the current state of New Zealand's regulatory systems, including progress on the regulatory review programme.

Executive Summary

2. An efficient and effective regulatory environment is vital for supporting New Zealand's economic performance. The regulatory environment within the broadest sense includes not only the actual legislation and regulations that establish regulatory regimes, but also the fiscal and institutional frameworks which support how the government administers those regimes.¹ Over the past four years we have begun to make progress in implementing new regulatory systems to provide a regulatory environment in New Zealand that is fit-for-purpose and positioned to support economic growth.

3. However, recent experience in New Zealand of significant regulatory failures reminds us that how well government policy is translated into workable legislation, and how well regulatory regimes are monitored, implemented, enforced and maintained is just as important for regulatory performance as the policy design. While recent changes are beginning to embed in the regulatory culture of departments, there is still work to be done to achieve best practice. Change will not take place overnight and it will take time to more consistently achieve best practice.

4. To begin shifting our regulatory regimes into a position where they can achieve best practice, we propose that Cabinet agree to high level expectations for how departments should be designing and implementing regulatory regimes (refer to annex one). The expectations signal the direction we want the regulatory management system to take and the performance we expect, and that we will systematically monitor these expectations through our regulatory monitoring processes. With these changes departments will be explicitly accountable for ensuring that they are meeting Cabinet's regulatory expectations, with appropriate linkages made to the stewardship responsibilities included in the Chief Executive performance management framework.

¹

This paper uses the term 'regulation' in the broadest sense, encompassing the broader regulatory environment as outlined in paragraph two. The term 'legislation' is used when specifically referring to primary, secondary, or tertiary legislation.

5. Translating policy into effective legislation is important for ensuring the success of regulatory regimes. We propose new disclosure requirements for government legislation to indicate the key quality assurance processes that a piece of legislation has been subject to in its development, and to highlight any areas that are likely to raise interest (refer to annex two for the proposed areas for disclosure). Disclosure will be required by legislation and enhanced by additional administrative requirements. This proposal will increase the transparency of regulatory development, leading to greater scrutiny, and over time higher expectations for the preparation of legislation. We will begin implementing this proposal as soon as possible to operate alongside and inform the development and passage of legislation. We will also strengthen the regulatory impact analysis expectations so that departments are better placed to meet the disclosure requirements.

Background

6. Our paper *'Regulatory Systems Paper One: Update on Priorities and Performance'* provides an overview of the recent development of regulatory systems and the information that is available on current performance.

7. Cabinet has previously agreed to the adoption of the Regulatory Standards Bill currently before Parliament [EGL Min (11) 1/10]. This Bill is based on the legislation proposed by the Regulatory Responsibility Taskforce in 2009. The current draft of the Bill is designed to provide regulatory principles to be followed when legislating, and a system for determining compliance with these principles. It is currently before the Commerce Committee for consideration, but no progress has been made since prior to the 2011 general election.

8. Following the 2011 general election the National-ACT Confidence and Supply Agreement included the following commitment:

"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 five)."

Comment

9. This paper proposes further steps to encourage the development and maintenance of effective regulation in New Zealand. It responds to concerns about the performance of regulators and key regulatory regimes by proposing clear expectations for the implementation, monitoring and maintenance of existing regulatory regimes. It also proposes new disclosure requirements and supporting arrangements for the translation of policy into effective, high quality, legislation.

Setting expectations for departmental stewardship of regulation

10. The implementation and administration of regulatory regimes is crucial to regulatory performance – poor administrative decisions can undermine even the best designed regulatory frameworks. Recent experience reminds us of this. Yet most of our administrative expectations and requirements intended to support the delivery of effective regulation are targeted at the policy development phase. We have begun to put in place systems which require departments to better plan for proposals for regulatory change and to scan their regulatory stock for areas that require review, or are redundant; but we still do not have strong management expectations and systems to support and give us assurance about the ongoing operation of existing regulation. We tend to have a "set and forget" mindset to regulation.

11. The ongoing, practical responsibility for oversight of regulation rests with government departments (every piece of legislation has a designated administering department). However, nowhere do we clearly state the general responsibilities that go with that departmental stewardship role, distinct from any regulatory functions that the legislation may explicitly grant or impose.

12. A regulatory regime should deliver a stream of net benefits to New Zealand over time – and should be managed with that idea in mind. We have begun to make improvements in our regulatory management systems, but our departments still do not, in general, systematically apply basic good management principles and practices to the regulatory regimes that they administer. This is a clear and longstanding gap in our state sector management arrangements.

13. To address this gap in our regulatory management system we propose that Cabinet endorse an initial set of expectations for the stewardship of our existing legislation and associated regulatory regimes. The expectations outline at a high level how departments should be thinking about designing and implementing regulatory regimes and their stewardship responsibilities in administering those regimes. They are a starting point which signals the direction we want to take to improve regulatory management in New Zealand. The proposed expectations are outlined in annex one.

14. These expectations are not new ideas. However, they have never been systematically outlined and monitored. Departments undertaking good regulatory practice should already be doing these things, although we suspect that few departments are currently doing so in any systematic way.

15. We will be looking for departmental chief executives to ensure that their departments are giving effect to the expectations. Central agencies will be monitoring progress, and feeding this into departmental performance conversations. At this initial point, the expectations are necessarily cast at a high level. They set a direction of travel for lifting the regulatory performance of departments. We recognise that it is likely to take departments some time to develop a more systematic, comprehensive, life-cycle approach to the management of existing regulation, particularly under resource pressures. It will require revised capabilities, frameworks and information systems.

16. We will be asking the Treasury to help us progressively develop more specific stewardship expectations and guidance covering key aspects of the regulatory management life-cycle. This will be done in close consultation with major regulatory departments. International practice in this area is also still evolving, so we are also going to have to learn from emerging experience what specific approaches appear to have the most promise. We recognise that this may require the tailoring of expectations in different areas to sector-specific circumstances.

17. These expectations are consistent with, and will complement, other initiatives including:

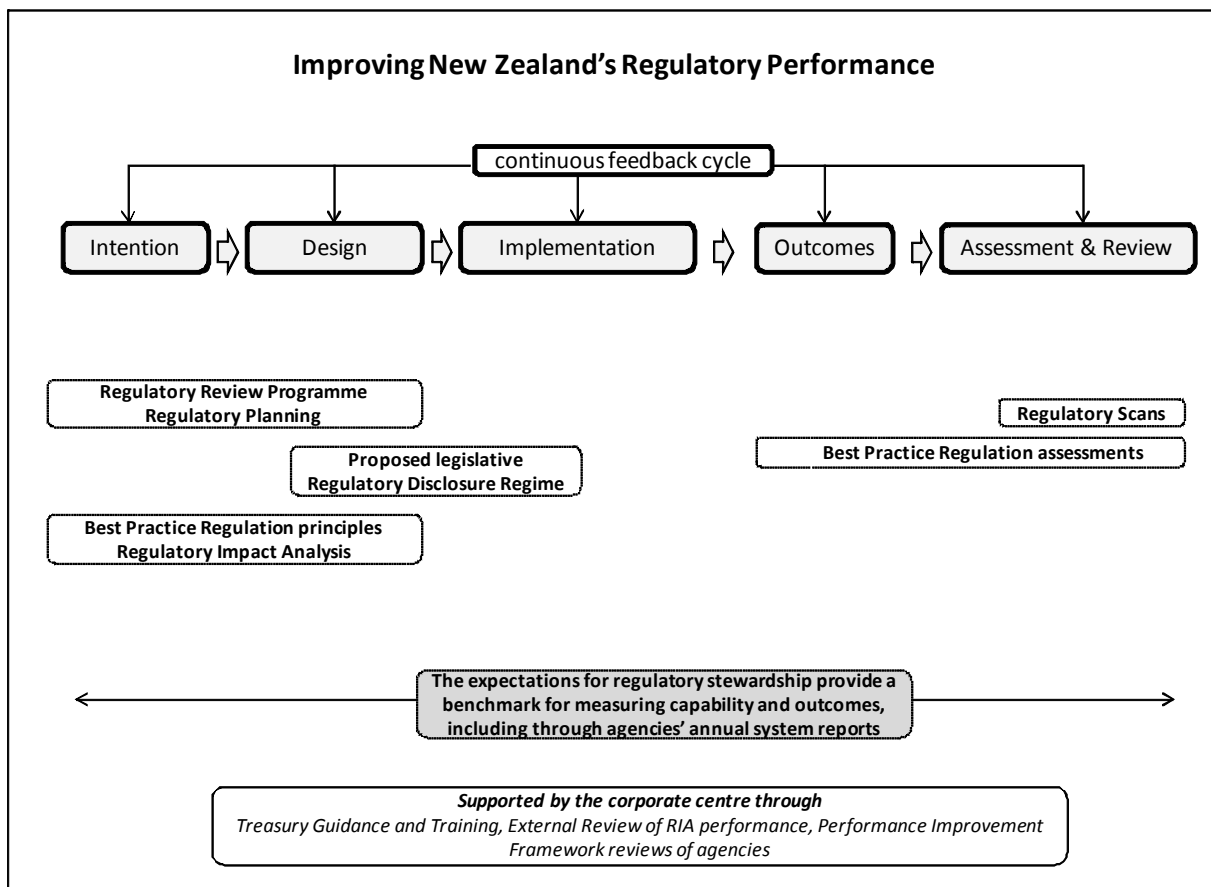
- the ongoing development of the Performance Improvement Framework which is providing an opportunity to update and expand the regulatory component of this important assessment tool during 2013
- the Better Public Services reform agenda – particularly a greater results focus and changes to performance reporting requirements – which opens up an opportunity to integrate regulatory management frameworks and processes within wider state sector management thinking and practice,

- changes proposed to the State Sector Act 1988 in the State Sector and Public Finance Reform Bill currently before Parliament – which will recognise that Chief Executives have explicit stewardship responsibilities that include the legislation that their departments administer; and
- the Business Facing Services cluster (Better Public Services Result 9) which provides the opportunity to better inform and engage New Zealand businesses in the development, implementation, administration, enforcement, monitoring and review of regulatory requirements that significantly impact on business.

18. The Treasury will report us annually on the progress of departments in giving effect to the expectations from 2014, and will continue to report on the broader performance of our regulatory management systems, including:

- the regulatory review programme
- the level and quality of compliance with regulatory impact analysis requirements
- the capabilities and systems of regulatory departments
- performance of regulatory regimes against best practice principles, and
- trends in agency performance on regulatory implementation.

19. The diagram below outlines aspects for regulatory design and review in New Zealand. It illustrates how the expectations for regulatory stewardship will fit within existing systems.



20. The proposed regulatory performance expectations will replace the expectations outlined in the Government Statement on Regulation: Better Regulation, Less Regulation. The statement has served its purpose in setting expectations for how we will regulate, but the proposals in this paper will create broader expectations on departments. As such, we propose that Ministers will no longer be required to certify compliance with the commitments in the government statement in papers containing regulatory proposals.

Improving the translation of policy into effective, robust legislation

Disclosure relating to government legislation

21. The translation of policy into effective legislation is crucial to the operational success of our regulatory regimes. There are some concerns, particularly from business organisations, that far too much legislation is the result of undue haste, poor quality processes and inadequate scrutiny. This was the genesis of the Regulatory Standards Bill which is currently before Parliament. However, instead of progressing this Bill we propose that the government be more transparent about the key quality assurance processes our legislation has gone through, and about unusual or significant features of that legislation that deserve particular scrutiny. A full list of the indicators proposed for disclosure is outlined in annex two.

22. Disclosure would be required in areas that indicate that the legislation has been developed with sufficient quality checks to maintain a high standard, and which indicate the quality of the legislation itself. The areas proposed for disclosure fall into the following categories:

- important background information (such as published reviews or evaluations that informed the policy development) (disclosure area one in annex two)
- key quality assurance products that have been produced, processes that have been undertaken, or expectations that have been met (such as the preparation of a regulatory impact statement or external consultation that may have been undertaken) (disclosure areas three to four in annex two), and
- significant or unusual features that may be contained in the legislation (such as provisions conferring the power to make delegated legislation or those having retrospective effect) (disclosure areas five to seven in annex two).

23. The disclosure of this information is expected to have the following effects:

- create greater transparency and understanding of the quality assurance processes undertaken by the government in the development of its proposals for legislation
- highlight any areas of the legislation that are unusual, inconsistent with indicators of good legislation, and likely to raise discussion
- support Parliament's role as a guardian and promoter of good regulatory policy, and
- over time the matters highlighted in the disclosure will gain greater scrutiny and encourage a higher standard for the preparation of legislation (by creating new norms for the quality of legislation).

24. We propose to signal our commitment to making robust legislation through making a basic core set of disclosures a legislative requirement. While legislation is not necessarily required to implement this proposal, legislation will lift the profile of the proposal with the public and government agencies and enhance compliance compared with an ordinary

administrative requirement. It will also deliver on the commitment in the 2011 National-ACT Confidence and Supply Agreement to develop a proposal based on Treasury's preferred option five proposal for a Regulatory Standards Bill. The proposal represents a more credible and enduring commitment to regulatory quality than implementing the proposal without legislation. No further progress is proposed on the Regulatory Standards Bill which is currently before Parliament.

25. The disclosure requirements will consist of a basic set of disclosures to be included in legislation, and an extended set of disclosures to be mandated administratively which will complement the legislative requirements. The required disclosures will vary, but will broadly focus on the areas outlined below.

26. The basic disclosures will focus on the existence of important information relating to the legislation, including:

- 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)
- descriptions 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);and
- indications of particular provisions in a regulatory instrument that may be of interest (disclosure areas five and six in annex two).

The legislatively required disclosure will indicate where there may be possible issues with the legislation rather than providing any detail, requiring the reader of the disclosure to investigate further.

27. The extended disclosures will draw attention to good practice and require further information about the matter in question. This will include requiring departments to provide further information:

- describing outstanding issues where they occur (disclosure areas three and four in annex two)
- justifying provisions which depart from usual legislative practice (disclosure areas five and six in annex two), and
- highlighting particular areas of the policy (disclosure area seven in annex two).

The information provided through the extended disclosures will mean that more of the information that is likely to be of interest would be provided in the disclosure statement rather than requiring the reader to investigate further.

28. We propose that extended disclosure requirements be made through the preparation of guidance by the Treasury, with assistance from the Parliamentary Counsel Office. This guidance will not only detail the administrative requirements for the extended disclosures, but will also outline the general expectations for the preparation of the disclosure statement and guidance on how to prepare it. The legislation will be drafted so as not to limit the disclosure of additional information to that required by the legislation. This will also mean that new areas for disclosure could be trialled in the future to improve and strengthen the proposal.

29. All of the disclosures outlined in annex two will apply to all government bills introduced to Parliament (with limited exceptions outlined below) and substantive government supplementary order papers (where a change affects the original disclosure). Only disclosure areas one (excluding assessing consistency with the New Zealand Bill of Rights Act), two and four (testing of draft legislation and consultation only) will apply to disallowable instruments that are drafted by the Parliamentary Counsel Office within the meaning of section 38 of the Legislation Act 2012. A disclosure statement fulfilling the requirements will be required to be attached to any legislative instrument (outlined above and below) covered by the proposal when it is submitted to the Cabinet Legislation Committee for approval, and will be publicly available when that legislative instrument is either introduced to Parliament or promulgated.

30. We propose that only the following limited exceptions apply to the disclosure requirements for government Bills: Imprest Supply and Appropriation Bills, Statutes Amendment Bills, Regulatory Reform (Repeal) Bills, Subordinate Legislation (Confirmation and Validation) Bills and Revision Bills (a new vehicle created by the Legislation Act 2012).

31. The proposed legislation will bind the Crown. As this proposal is intended to increase transparency around the production of legislation in order to encourage higher regulatory quality (rather than to enforce strict requirements), failure to adequately meet the disclosure requirements will not affect the validity of any legislation. Enforcement of the quality of disclosure statements will be through the increasing expectations of those with an interest in legislative matters.

32. While the legislation is being developed and progressed through Parliament we will begin to administratively implement this proposal alongside the passage of legislation to ensure its effectiveness. This will allow us to achieve immediate change, but also to test the workability of the disclosures before they are enshrined in legislation. Any lessons learnt during this period will be used to inform the final form of the legislation. If the extended disclosures prove resilient during this initial operation of the proposal they may be able to be included in the final legislation. The legislation will be brought into force by Order in Council to ensure a clear transition between the administrative period and commencement of the legislation, and allow any outstanding implementation issues to be addressed.

33. We also propose that an independent review of the operation of the proposed disclosure requirements be conducted within five years of their implementation. The purpose of the review would be to determine whether the new arrangements are fit-for-purpose and cost effective, and whether amendments or additional measures may be desirable to further improve regulatory quality.

Additional measures to support effective translation of policy into legislation

34. We propose strengthening the existing regulatory impact analysis requirements to support the disclosure requirements outlined above. Setting stronger regulatory impact analysis expectations will increase the value of the analysis in assisting the scrutiny of legislative proposals. Stronger expectations could also reinforce the importance of some of the areas proposed for disclosure so that they are more likely to get greater attention before disclosure is required.

35. For example, raising expectations about reporting on implementation plans and risks could encourage departments to think earlier about how they are going to test any legislative proposals to ensure that they are workable. More explicit expectations around identifying costs or possible economic losses, and likely levels of compliance and enforcement, would align with the proposed disclosure of the key impacts of the policy in the legislation.

36. The Legislation Design Committee was established to provide high level input on design, instrument choice, and implementation issues for significant or complicated legislative projects at an early stage of development. Its role was purely advisory, and did not cover policy. It has recently fallen into abeyance. We propose to work with the Minister of Justice to re-examine the role that the Committee could play in supporting the effective translation of policy into legislation.

Risks

37. The regulatory expectations proposed should already be being followed by departments in their development, implementation, and administration of their regulatory stock. However, there is a risk that establishing new systems to monitor the performance of departments against these expectations will be difficult alongside other expectations being implemented through initiatives such as Better Public Services, or the requirements of four-year plans. Given the significant regulation undertaken by the government, and its potentially far reaching effects, we expect that departments will prioritise their work to ensure they are meeting Cabinet's expectations.

38. Legislating for a set of mandatory disclosures runs the risk of locking in particular disclosures that do not work in some circumstances or impose unnecessary cost. For this reason we propose to only legislate for a basic set of disclosures. The Treasury has undertaken initial testing of the basic disclosures with the help of other agencies, to ensure they are sufficiently clear, to be confident about including them in legislation. Administratively trialling the extended disclosures will allow these aspects to be tested to ensure that they are workable prior to considering enshrining them in legislation. Another risk of legislating is that there could be unintended consequences arising from the legislative disclosure requirements, such as unexpected judicial interpretation of legislation based on the disclosures or the disclosures being used as part of a judicial review challenge. Expert legal advice will be sought on the possible unintended legal effects and risks of the legislation once draft provisions are available.

39. Our proposal to progress alternative legislation to the current Regulatory Standards Bill is unlikely to gain strong support from key business organisations who prefer that Bill. However, we consider that our revised proposal for legislation in the regulatory quality area is likely to find wider acceptance and not run into the same constitutional concerns that the current Bill has encountered. It strikes a better balance for influencing regulatory standards within current constitutional structures and government processes.

Conclusion

40. The changes proposed in this paper will provide the next evolution of the regulatory management system in New Zealand. They will support the continued establishment of systems that support the robust administration and monitoring of regulatory regimes, and the integration of these systems into the public sector management framework. These new initiatives will specifically seek to address concerns about the implementation and administration of regulatory regimes, and the translation of policy into legislation. Combined with the existing regulatory systems which we have already established they will begin to address all aspects of the regulatory life cycle, supporting the development and administration of legislation that is fit for purpose and growth supporting.

Consultation

41. This paper was prepared by the Treasury. The following departments were consulted on the contents of this paper and provided comment on the paper: the Department of Corrections, the Department of Internal Affairs, the Inland Revenue Department, Land Information New Zealand, the Ministry for Culture and Heritage, the Ministry of Education,

the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the Ministry of Social Development, the New Zealand Customs Service, the New Zealand Police, the Parliamentary Counsel Office, the State Services Commission, and Te Puni Kokiri.

42. The following departments were consulted on the contents of this paper and had no comment: the Canterbury Earthquake Recovery Authority, the Crown Law Office, the Department of Conservation, the Education Review Office, the Government Communications Security Bureau, the Ministry of Defence, the Ministry for the Environment, the Ministry of Health, the Ministry of Pacific Island Affairs, the Ministry of Transport, the Ministry of Women's Affairs, the New Zealand Defence Force, the New Zealand Security Intelligence Service, the Office of the Clerk of the House of Representatives, the Serious Fraud Office, and Statistics New Zealand. The Department of Prime Minister and Cabinet was informed.

43. A number of departments have noted that the proposals contained in this paper will add additional resourcing pressures. In the absence of additional funding to implement the proposals in this paper it will take some departments more time to prepare regulatory advice in order to adequately meet the requirements proposed in this paper. Alternatively, departments will need to undertake greater prioritisation which may result in fewer regulatory reform/improvement processes being undertaken.

Parliamentary Counsel Office comment

44. Our comment about the proposals relates largely to the cost implications for the Parliamentary Counsel Office. If the Parliamentary Counsel Office is to provide general administrative guidance to agencies on the new disclosure obligations, with some specific guidance on the more complex matters, and if agencies comply fully, we estimate extra costs in the region of between \$214,000 and \$286,000 for additional staffing and associated operating costs. If agencies cannot fully support the requirements, which may be for their own resourcing reasons, our costs will be significantly greater. There may be in addition, depending on how the disclosure material is required to be published, a one-off information technology capital cost of between \$400,000 and \$800,000 with associated ongoing depreciation of between \$80,000 and \$160,000 per annum for five years. We propose to report to the Attorney-General on the financial implications of these prior to the Bill being submitted to the Cabinet Legislation Committee for approval when the proposals have been fully fleshed out in legislative form.

45. In view of the far reaching and novel nature of the proposals, we support trialling the proposals administratively for at least six months before any new legislation is passed. This would provide worthwhile information about how the regime might operate in practice and ensure that the legislation passed is as workable as possible.

Treasury response

46. The Treasury consider that the role required of the Parliamentary Counsel Office under the disclosure proposal will be narrower than anticipated above. However, the proposed administrative period prior to enactment of legislation will allow the actual resourcing implications of the regulatory standards proposal to be tested. If it proves during this period that the proposal results in resourcing pressures for the Parliamentary Counsel Office that cannot be met within existing funding, these pressures can be discussed through prioritisation discussions and the preparation of a Four-Year Plan in 2014. The transition between the administrative period and commencement of the legislation will also allow any resourcing pressures to be discussed. Additionally, the Treasury will work with the Parliamentary Counsel Office, and departments, to find a solution to publishing the disclosure statements without the need for additional funding.

Financial Implications

48. This paper has no direct financial implications. However, as noted in paragraph 43, the proposals in this paper will have resource implications for some departments. We expect that any compliance costs of the proposals will be incremental. If individual departments ultimately identify resource pressures arising from the implementation of these proposals, they should be prioritised and addressed through the development of Four-Year Plans.

Human Rights

49. The proposals outlined in this paper appear to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final view on the legislative proposals will be prepared when draft legislation is vetted by Ministry of Justice for consistency with the New Zealand Bill of Rights Act 1990.

Legislative Implications

50. The proposed disclosure requirements for new legislation will require legislative change. We propose that this proposal be implemented through an amendment to the Legislation Act 2012, rather than as a standalone Act (as the current Regulatory Standards Bill is drafted). The policy of improving regulatory standards fits closely with the purpose of the Legislation Act which is to improve the law relating to the production and publication of legislation. It would also fit with the principle of that Act of consolidating the law relating to the production of legislation into one piece of legislation and would signal an enduring commitment to regulatory standards.

51. The Minister for Regulatory Reform will prepare legislation for Cabinet's consideration by mid 2013. A bid has been prepared seeking priority on the 2013 legislation programme.

Regulatory Impact Analysis

52. The regulatory impact analysis requirements apply to this paper, and a regulatory impact statement is attached. The Treasury Regulatory Impact Analysis Panel reviewed the regulatory impact statement (RIS) prepared by the Treasury and associated supporting material, and agreed that the information and analysis summarised in the RIS meets the quality assurance criteria. It is complete in covering the option laid out in the National-Act Confidence and Supply Agreement; it provides convincing response of, and analysis of, the issues, given the difficulty of measuring the potential behavioural impacts and costs; and

finally, it provides evidence of consultation with affected parties and agencies through several iterations of proposals in a clear and concise manner.

Consistency with the government statement on regulation

53. We have considered the analysis and advice of officials, as summarised in the attached Regulatory Impact Statement and are satisfied that:

- a legislative response is appropriate to give further ongoing support to the goal of improving the quality of legislation
- the proposed legislative response proposed in this paper is likely to be the most effective way to encourage increased scrutiny of legislation, while minimising or limiting risks or costs, and
- the proposals are consistent with our commitments in the Government statement “Better Regulation, Less Regulation”.

Publicity

54. No publicity is planned at this stage. Any future publicity will be managed by the Minister of Finance and the Minister for Regulatory Reform.

Recommendations

55. The Minister of Finance and the Minister for Regulatory Reform recommend that the Committee:

Regulatory performance expectations and reporting requirements

1. **agree** that regulatory departments be required to give effect to the regulatory expectations outlined in annex one;
2. **direct** 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, and
 - 2.3. consider whether it is appropriate to vary the level or timing of the expectations, or reporting requirements, between departments;
3. **authorise** 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. **direct** 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. performance of regulatory regimes against best practice principles, and
- 4.5. trends in agency performance on regulatory implementation;
5. **invite** the Minister of Finance and the Minister for Regulatory Reform to provide the report referred to in recommendation 4 to Cabinet if they consider it to be useful;
6. **revoke** the existing requirement to report to Cabinet six monthly on the Regulatory Review Programme [EGI Min (12) 8/1 refers];
7. **agree** 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. **agree** 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. **agree** that the disclosure requirements will only apply to legislation produced by the government;
10. **agree** 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. **agree** 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)
 - 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), and
 - 11.4. an indication of particular features in the regulatory instrument (disclosure areas five and six in annex two);
12. **agree** to legislate to require disclosure for disallowable instruments (as defined in recommendation 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, in annex two), and
 - 12.3. descriptions of the nature and extent of the action taken (if any) to meet an existing expectations where no particular quality assurance process or product exists (disclosure area four in annex two, testing of draft legislation and consultation only),
13. **agree** that, for the avoidance of doubt, legislation be drafted so as not to limit the disclosure of additional information to that referred to in recommendation 11 and 12;
14. **agree** 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, and
 - 14.5. Revision Bills;
15. **agree** that the proposed legislation bind the Crown
16. **agree** that failure to meet the disclosure requirements will not affect the validity of any legislation
17. **agree** that recommendations 8 to 16 above be implemented through an amendment to the Legislation Act 2012
18. **invite** the Attorney-General and Minister for Regulatory Reform to issue drafting instructions to implement recommendations 8 to 16 above
19. **authorise** the Attorney-General, Minister of Finance and the Minister for Regulatory Reform to make decisions on any minor and technical policy decisions that may arise during the drafting process
20. **agree** that the disclosure requirement outlined in recommendation 11 be enhanced administratively by requiring the disclosure of additional information as outlined:
 - 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), and
 - 20.3. highlighting particular areas of the policy for consideration (disclosure area seven in annex two)

21. **direct** 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. **direct** 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. **authorise** the Minister of Finance and the Minister for Regulatory Reform to approve the extended requirements for disclosure
24. **agree** that the disclosure required by recommendations 11, 12 and 20 be prepared in a disclosure statement to be attached to legislation when it is submitted to the Cabinet Legislation Committee for approval
25. **agree** that a disclosure statement be released publicly when legislation is either introduced to Parliament or promulgated as applicable
26. **agree** that the proposed legislation referred to in recommendation 17 be brought into force by Order in Council to ensure a clear transition between the administrative period and commencement of the legislation
27. **agree** 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. **direct** 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, and
 - 28.3. likely levels of compliance and enforcement;
29. **note** 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.

Hon Bill English
Minister of Finance

Hon John Banks CNZM, QSO
Minister for Regulatory Reform

Date:

Date:

Annex One: Initial Expectations for Regulatory Stewardship

Cabinet expects that departments, in exercising their stewardship role over government regulation, will:

- monitor, and thoroughly assess at appropriate intervals, the performance and condition of their regulatory regimes to ensure they are, and will remain, fit for purpose;
- be able to clearly articulate what those regimes are trying to achieve, what types of costs and other impacts they may impose, and what factors pose the greatest risks to good regulatory performance;
- have processes to use this information to identify and evaluate, and where appropriate report or act on, problems, vulnerabilities and opportunities for improvement in the design and operation of those regimes;
- for the above purposes, maintain an up-to-date database of the legislative instruments for which they have policy responsibility, with oversight roles clearly assigned within the department;
- not propose regulatory change without:
 - clearly identifying the policy or operational problem it needs to address, and undertaking impact analysis to provide assurance that the case for the proposed change is robust, and
 - careful implementation planning, including ensuring that implementation needs inform policy, and providing for appropriate review arrangements;
- maintain a transparent, risk-based compliance and enforcement strategy, including providing accessible, timely information and support to help regulated entities understand and meet their regulatory requirements; and
- ensure that where regulatory functions are undertaken outside departments, appropriate monitoring and accountability arrangements are maintained, which reflect the above expectations.

Notes:

1. For the purposes of these expectations a “regulatory regime” covers all elements required to make regulation function, including (but not limited to):
 - statutory and non-statutory instruments,
 - supporting capabilities and functions (policy, back-office, enforcement and service delivery), and
 - organisational culture.
2. We expect that the expectations themselves will be reviewed annually and adjusted or extended as appropriate.
3. Treasury, working with the Department of Prime Minister and Cabinet and the State Services Commission, will be responsible for that review process, along with guidance and training.
4. Reporting will be integrated as far as possible with existing agency reporting and central agency oversight arrangements, and develop over time alongside the expectations.

Annex Two: Key Features of Legislation Proposed for Disclosure

1. A general statement of the policy that the Bill or disallowable instrument seeks to achieve.
2. Availability of established quality assurance products (plus supporting information):
 - published reviews or evaluations (background information)
 - regulatory impact statement
 - independent assessment of regulatory impact statement
 - international agreement (Treaty) text (background information)
 - national interest analysis for treaties, and
 - advice on consistency with the New Zealand Bill of Rights Act 1990.
3. Nature of established quality assurance processes undertaken (lacking a specific product):
 - consultation with Ministry of Justice on offences, penalties and court jurisdictions, and
 - consultation with Privacy Commissioner on privacy issues.
4. Nature and extent of actions taken to meet existing quality assurance expectations (lacking a specific process or product):
 - testing that draft legislation is robust and complete
 - external consultation
 - consistency with New Zealand's international obligations, and
 - consistency with the principles of the Treaty of Waitangi.
5. Disclosure of significant features or powers conferred by the legislation:
 - conferral of powers to make delegated legislation
 - provision for fees, levies and charges in the nature of a tax, and
 - conferral of significant decision-making powers affecting individuals.
6. Disclosure of "unusual" features warranting careful scrutiny:
 - provisions having retrospective effect
 - conferral of a civil or criminal immunity
 - compulsory acquisition of private property
 - executive powers to amend the effect of an Act
 - creation of strict liability offences, or reversal of the usual onus of proof, and
 - catch-all for other unusual provisions, or features that call for special comment.
7. Disclosure relating to the key impacts of the policy in the legislation:
 - estimates of the major categories of cost, cost savings, or benefits
 - the potential to cause material economic loss to an external party, and
 - estimates of expected levels of compliance, and levels of enforcement activity.