The Treasury

2014 Briefings to Incoming Ministers
Information Release

Release Document

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Treasury Report: Briefing for the Incoming Minister for Regulatory Reform

Date:	20 October 2014	**Report No:**	T2014/1732
		File Number:	SH-11-2-7

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Bill English)	For your information	None
Minister for Regulatory Reform (Hon Steven Joyce)	**Read** the attached briefing prior to your meeting with officials from the Treasury and the Ministry of Business, Innovation and Employment **Refer** the attached briefing to the Parliamentary Under-Secretary for Regulatory Reform (David Seymour)	10.15am Wednesday 22 October 2014

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
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Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.

Enclosure: Yes (attached)

Treasury Report: Briefing for the Incoming Minister for Regulatory Reform

Purpose of Report

1. On Wednesday 22 October you are meeting with officials from the Treasury and the Ministry of Business, Innovation and Employment in your capacity as Minister for Regulatory Reform.

2. As background for that discussion, the attached briefing sets out:

   - the current focus of the regulatory management system and its key tools and requirements

   - the conclusions of the Productivity Commission on the current condition of the regulatory system and their recommendations for improvement, and

   - officials' views on the main opportunities to lift regulatory performance.

3. There are three broad areas of focus in improving the quality of regulation, ensuring:

   - the quality of regulation at its introduction – the focus of the Regulatory Impact Analysis regime is to assess whether a regulatory solution is required and ensure the proposed solution delivers the highest net benefit; the translation of the policy into regulation also has an impact on how effective the regulation is in achieving its objectives

   - existing regulation is appropriately maintained and repaired so it remains fit for purpose, including addressing regulation that is poorly designed – regulatory agencies have identified that it is difficult to obtain the necessary House time to attend to regulatory maintenance, and

   - superfluous or ineffective regulation is identified and removed or replaced.

4. To progress regulatory reform the Regulatory Review Programme was established in 2009 [CAB Min (09) 6/5A] to review a small group of priority regulatory areas, based primarily on the likely impact on productivity. The Business Growth Agenda also provides a good mechanism for identifying policy issues that need addressing to improve productivity and the economy's competitiveness.

5. Twenty-four reviews that have been completed as part of the Regulatory Review Programme and only three reviews remain on the programme [3] the RMA (phase 2) review and occupational health and safety. [3]

   We are in the process of refreshing the Regulatory Review Programme and will provide advice on possible areas to add to the programme before Christmas.

6. For our initial meeting on your Regulatory Reform portfolio we suggest a high level discussion and below are some suggested areas for discussion.

- Understanding your objectives for the regulatory reform portfolio and the extent to which the briefing material covers these objectives.
- How can Treasury and MBIE best support you to achieve these objectives?
- Any points from the briefing material that you would like clarification on or would like to discuss further.
- Key opportunities to lift regulatory performance.
- Are there opportunities to use the Business Growth Agenda to drive regulatory improvement?

Recommended Action

We recommend that you:

a **read** the attached briefing prior to your meeting with officials from the Treasury and the Ministry of Business, Innovation and Employment on Wednesday 22 October 2014, and

b **refer** the attached briefing to the Parliamentary Under-Secretary for Regulatory Reform (David Seymour).

Refer/not referred.

Colin Hall
Manager, Regulatory Quality

Hon Bill English
Minister of Finance

Hon Steven Joyce
Minister for Regulatory Reform

The Regulatory Management System

Key messages

- Regulatory quality matters. Regulation is a key tool that governments use to achieve their policy goals. It helps ensure that markets work fairly and efficiently thereby promoting economic growth, preventing harm to citizens and consumers, and protecting individual rights and the environment. Poor regulation design and practice increases the risk of regulatory failure and the cost of doing business.
- Improving regulatory quality involves ongoing development of systems, capabilities and culture, driven by sustained ministerial and agency engagement and support.
- Since gaining responsibility for the oversight of the regulatory management system in 2008, the Treasury has put in place a number of processes to encourage agencies to improve the formulation of new regulation and the management of the existing stock, and these are continuing to evolve.
- A key development is the 2013 Expectations for Regulatory Stewardship which set out Cabinet's expectation that departments should take a proactive, lifecycle approach to the monitoring and care of their regulatory regimes, including identifying areas suitable for reform. This aims to counter the "set and forget" mindset that has allowed many regulatory failures to materialise before any action is taken.
- Building on Regulatory Stewardship as the foundation of the government's regulatory management system, Treasury is placing greater focus on engaging with regulatory agencies to promote good regulatory governance, capability and performance.
- There are signs that the Expectations for Regulatory Stewardship are being taken seriously, with agencies such as MBIE undertaking significant projects to improve their regulatory systems and capabilities.
- However, the Productivity Commission's recent report *Regulatory Institutions and Practices* painted a picture of a regulatory system where "there is clear room for improvement, in particular around:
  - prioritisation and effectiveness of regulatory effort
  - the capability to support effect regulatory implementation, and
  - the ability of the system to identify and resolve areas of risk and learn from experience".
- While it is important to lift performance on all fronts, we consider the main opportunities are:
  - **A more systematic approach to the prioritisation of policy effort and the legislative programme**. We think this provides one of the best opportunities to improve the effectiveness of regulatory reform and help achieve the Government's policy objectives. We are working with departments, DPMC and PCO to develop options to assist Ministerial prioritisation of regulation but strong Ministerial leadership will be necessary to achieve success.
  - **Embedding the Expectations for Regulatory Stewardship and continuing to support agencies in discharging their regulatory stewardship roles**. This includes promoting good practice, working more closely with agencies to come to a view of key priorities for regulatory reform and raising stakeholder awareness through appropriate transparency mechanisms.
  - **Improving the capability and performance of regulators** to ensure regulators are able to operate responsive, risk-based regulation in an environment that is constantly changing. A group of regulatory practice leaders are in the process of developing a proposal for regulatory CEs to build stronger regulatory practice, culture, leadership and capability.

What's upcoming...

- Discuss with officials options for taking a more systematic prioritisation approach to the planning and prioritisation of regulation.
- Consider the proposed Government response to the recommendations of the Productivity Commission on Regulatory Institutions and Practices.
- Advice from Treasury on key regulatory priorities for reform (in conjunction with the major regulatory agencies).
- A decision on the reinstatement of:

  (a) the Legislation Amendment Bill (this Bill, introduced in 2014 legislates for the Disclosure requirements and re-enacts and amends the Interpretation Act), and

  (b) the Regulatory Standards Bill (this Bill, introduced in 2011, would require certification of legislation against principles of responsible regulation and monitoring by the courts).
- Agree to the release of the 2013-14 Best Practice Regulation: Principles and Assessments.

Your roles in the regulatory management system

Regulatory role	Minister for Regulatory Reform	Minister in charge of the Business Growth Agenda	Minister: • for Economic Development • of Science and Innovation • for Tertiary Education, Skills and Employment	Minister responsible for MBIE
Nature of the role	Responsible for the oversight and development of the regulatory management system in order to support the government's desire for robust, high quality regulation.	Regulation is a major tool through which the Government delivers its Business Growth Agenda.	Responsible for a range of regulatory regimes in these portfolios, including the Research, Science and Technology Act and parts of the Education Act 1989.	Ownership minister of one of the most significant regulatory agencies, with primary responsibility for designing and overseeing at least 16 regulatory systems.
Lead agency	Treasury	MBIE	MBIE, Ministry of Education	MBIE
Comment	Focus is on operating and improving the performance of the wider system. In doing this Treasury works closely with major regulatory policy agencies, and with MBIE in particular. Treasury's main focus is on the stewardship of the regulatory management system and the impact of regulatory frameworks on the performance of the economy, while MBIE's key interest is on the impact of regulation on business performance and on designing regulatory approaches that achieve their objectives while facilitating business growth. MBIE and Treasury also have an interest in regulatory coherence (i.e. ensuring international regulatory regimes work well together so firms can operate effectively across borders), promoted through international regulatory cooperation activities.	This role provides an opportunity to more actively prioritise regulatory activities across portfolios which relate to the Business Growth Agenda. See slide 9 for related options to improve prioritisation.		Focus is on MBIE's performance and capability to deliver its regulatory objectives. The objective of MBIE's Regulatory Systems Programme is to ensure it has appropriate capability and individual regimes work effectively. See slide 5 for more information on MBIE's regulatory systems programme.

Treasury's regulatory role

Treasury has responsibility for exercising strategic oversight over the regulatory management system to maintain and enhance the quality of regulation. This role was transferred to Treasury in 2008 given its role as a central agency with a focus on state sector performance and its focus on the performance of the economy as a whole in achieving the government's objectives.
The Regulatory Quality team sits within Treasury's Growth and Public Services portfolio and comprises 8 people.

System Oversight

Current areas of focus include:

- developing a Government response to the Productivity Commission inquiry into regulatory institutions and practices
- improving the regulatory planning and prioritisation processes to increase effectiveness, achieve better integration with wider state sector management processes and reduce resource implications for regulatory policy agencies
- refreshing the Regulatory Review Programme to identify key regulatory priorities for reform
- putting a greater focus on engagement, support and partnership with key regulatory agencies to improve regulatory quality.

Regulatory Impact Analysis (RIA)

Oversight of the Regulatory Impact Analysis regime, including:

- maintaining and further strengthening the regime
- designing and delivering guidance, training and other support to regulatory policy agencies to help ensure they have the capacity to deliver high quality regulatory outcomes
- provide quality assurance of Regulatory Impact Statements for regulatory proposals likely to have a significant impact or risk
- undertaking periodic evaluations on the quality of regulatory impact analysis to provide guidance to agencies and inform improvements to the RIA regime.

Good regulation is both important and challenging

The design, delivery and maintenance of regulation matters...

Regulation is a multi-stage, cyclical process which involves many players, including Ministers, policy agencies, regulatory bodies, the courts and the citizens and businesses subject to regulation. If regulation is used when it is not needed, is poorly designed or poorly delivered, or is not kept fit for purpose, then it can fail to achieve policy objectives, have unintended consequences that harm the wellbeing of New Zealanders, impose significant costs on businesses or the community, and require significant government resources to fix problems.

... while New Zealand has traditionally rated well on international measures of the quality of regulation...

For example New Zealand ranked: 13th out of 148 countries in the 2013/14 World Economic Forum Global Competitiveness Index on Burden of Government Regulation; and

3rd out of 189 economies in the 2014 World Bank Ease of Doing Business survey.

.... domestic evidence suggests that our regulatory regimes are not performing as well as they could be...

"Two-thirds of regulator chief executives reported they had to work with legislation that is outdated or not fit-for-purpose" – *Regulatory Institutions and Practices*, New Zealand Productivity Commission

[3]

[3]

Current issues on the Regulatory Review Programme

- The Government's Regulatory Review Programme is a programme of priority reviews on which the Finance and Regulatory Reform Ministers are consulted on the terms of reference and provided periodic updates on progress. The Programme includes both reviews which are underway and areas of regulation that are being considered for either review or reform - "on watching brief".
- Twenty-four reviews have been completed to date as part of the Regulatory Review Programme and the reviews currently on the programme are:
  - [3]
  - RMA (phase 2) review (the RMA System Reform Bill and freshwater reform)
  - health and safety at work.
- [3]
- The Regulatory Review Programme was originally established in 2009 to identify and remove inefficient and superfluous regulation. The selection of reviews was informed by a cross-government review of regulatory quality in 2007-08 and from public feedback on regulation of concern.
- No new issues have been added to the Regulatory Review Programme since 2012. Treasury, working closely with regulatory agencies, will provide you with advice later this year on key priorities for regulatory reform, and with advice on improvements that could be made to the process for identifying and progressing reviews on the Regulatory Review Programme.

The evolving nature of the regulatory management system

Approaches to the management of regulation in New Zealand – and worldwide – are evolving and experimental

The regulatory management system refers to the institutions, principles and processes through which regulations are made, implemented, enforced and reviewed. Its performance is determined by a number of pressures, checks and constraints. The complexity of the system means the impacts of changes to the system are difficult to predict and difficult to measure.

The evolution of New Zealand's regulatory management system

1998

- Regulatory impact analysis (RIA) requirements introduced and administered by the Ministry of Commerce (later MED).

2008

- Responsibility for overseeing the RIA requirements is transferred from MED to the Treasury and Treasury becomes the lead agency for strategic oversight and co-ordination of the regulatory quality assurance system.
- The Regulatory Reform Ministerial portfolio is established.

2009

- The Government Statement on Regulation: "Better Regulation, Less Regulation" is released.
- RIA processes and standards are tightened.
- The first requirements for managing the stock of existing regulation – regulatory plans and regulatory scans - are introduced.
- The Regulatory Review Programme is established.

2012

- Best Practice Regulation Principles and Assessments are released.

2013

- Amendments to the State Sector Act in 2013 introduced a statutory duty of "stewardship" for departmental chief executives that explicitly includes "stewardship of the legislation administered by the department".
- To support this, Cabinet introduced the initial Expectations for Regulatory Stewardship which ask departments to adopt a proactive, lifecycle approach to the monitoring and care of their regulatory regimes. This stewardship duty has also been incorporated into the *Performance Improvement Framework,* used to review the performance of state sector agencies.
- Cabinet introduces departmental Disclosure requirements for government legislation, implemented administratively.

2014

- Building on Regulatory Stewardship as the foundation of the government's regulatory management system, Treasury is now placing greater focus on engagement, support and partnership with key regulatory agencies to improve regulatory stewardship.
- This includes :
  - identifying and promoting good practice
  - building our capability and understanding of practical issues associated with running a regulatory system, and
  - working more closely with regulatory agencies to understand the health of regulatory regimes and agencies, and come to a view on key priorities for regulatory reform.

Alternative approaches to regulatory management

- A number of other jurisdictions, including Australia and the United Kingdom have placed much more emphasis on **de-regulation and removing red-tape** than we have to date.
- Our concern with target setting approaches such as red-tape challenges is that they are **high cost, vulnerable to gaming**, and it is **not clear they bring about the lasting culture change** in the use and management of regulation that is ultimately needed**.**
- At this point we consider there is greater gain in supporting agencies to move away from a "set and forget" approach and to adopt a systematic, lifecycle approach to the stewardship of their regulation, alongside targeted reviews in areas of particular regulatory concern.
- However, we will continue to keep approaches being tried in other jurisdictions under review.

The Expectations of Regulatory Stewardship
- The foundation of the government's regulatory management system

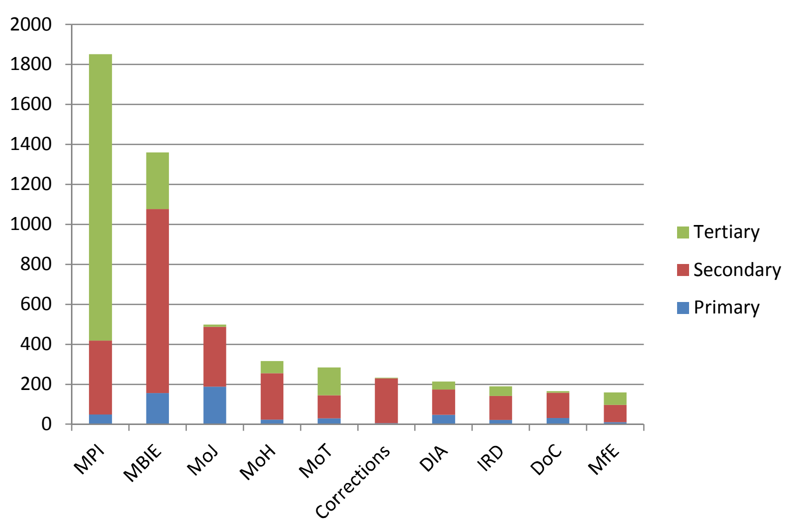
The expectations of regulatory stewardship are that departments will:

- 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
  - ➢ 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
- ensure that where regulatory functions are undertaken outside departments, appropriate monitoring and accountability arrangements are maintained, which reflect the above expectations.

There is some way to go before all major regulatory agencies are able to meet the stewardship expectations

- In 2013 Treasury undertook an initial assessment of how well placed agencies are to meet the stewardship expectations, based on their descriptions of their regulatory systems.
- We found significant variation in agencies' regulatory management systems and capabilities, including between the major regulatory departments.
- For example, Inland Revenue stands out for its well-developed, systematic approach, while the systems and capabilities of some other departments are still developing.
- The inter-connected areas **of policy oversight, monitoring outcomes and evaluation and review** are where departments systems are currently **most in need of development.**
- The **PIF Reviews** have regularly highlighted that departments have a patchy understanding of whether regimes are achieving their purpose, **and incomplete systems for monitoring and evaluating regimes** and for feeding this information through to improve performance.
- Weaknesses in a department's evidence base flow through into its regulatory impact analysis, with **departments still not consistently delivering good quality analysis.**

The major regulatory agencies, based on the volume of the legislative instruments they administer



However some major regulatory agencies are taking steps to strengthen their regulatory management capabilities.

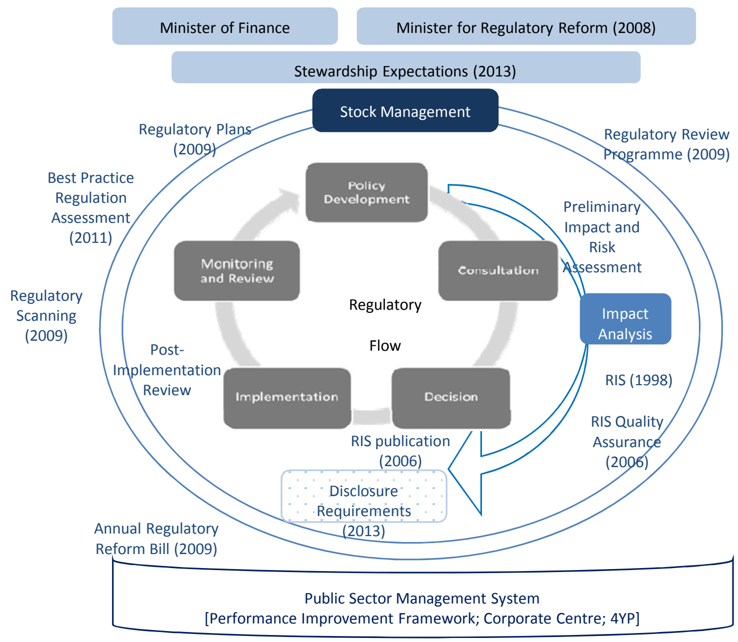
- For example, MBIE's ***Regulatory Systems* programme** aims to ensure that MBIE has robust processes to know whether the regulatory systems it is responsible for are performing well, by:
  - ➢ systematically identifying the best elements of regulatory practice from individual regulatory systems, and extending those practices across all the regulatory systems that it is responsible for, and
  - ➢ applying robust processes to identify and respond to opportunities to improve regulatory system performance and risks.
- This includes :
  - ➢ undertaking assessments of all MBIE's regulatory systems and looking across assessments to identify any cross-cutting issues
  - ➢ trialling a new approach of setting expectations for the performance of regulatory systems (regulatory system statement of intent/charter), and
  - ➢ using Regulatory Systems Bills to provide a regular vehicle for regulatory maintenance and repairs.
- Treasury is participating in this project at a governance and project team level.
- We consider there is potential for this approach to be adapted and used by other regulatory agencies.

The tools and requirements of the regulatory management system aim to assist agencies in carrying out their stewardship role

How are 4 Year Plans used for regulatory planning?	For the first time in 2014, we are trialling using 4 Year Plans as the principal vehicle for a discussion between agencies, Ministers and central agencies on the agency/sector regulatory priorities and the tradeoffs and resources necessary to achieve them.
Current status	Following this trial we will report to you on the future of the current requirement for agencies to produce Annual Portfolio Regulatory Plans and Departmental Review Plans.

What is the Regulatory Review Programme	A programme of important reviews on which the Minister for Regulatory Reform and Minister of Finance receive progress updates.
What is its purpose?	Established in 2009 with the purpose of identifying and removing inefficient and superfluous regulation.
Current Status	No new reviews have been added to the programme since 2012. Treasury will provide advice later this year on the process and content of the Regulatory Review Programme.

What is Regulatory Impact Analysis (RIA)?	RIA is a framework that encourages a systematic, evidence-based approach to policy development.
When is RIA required?	A Regulatory Impact Statement (RIS) outlining the RIA is attached to all regulatory proposals considered by Cabinet (unless an exemption applies). It summarises the agency's best advice on the problem, objectives, identification and analysis of the full range of practical options , as well as information on implementation arrangements.
What is the purpose of a RIS?	To ensure that regulatory proposals are subject to careful and robust analysis, and that this analysis is available to inform decisions on those proposals.
Who checks the quality of the RIS?	Most policy proposals are assessed by in-house RIA panels while significant policy proposals require assessment by Treasury's Regulatory Impact Analysis Team (RIAT). This Quality Assessment is also included in the Cabinet Paper. Significant RISs that do not meet the RIA requirements require a post-implementation review.
Who sees the RIS?	In addition to being attached to Cabinet papers, RISs are made public once a Bill is introduced, or a regulation is gazetted.



What is regulatory scanning?	Regulatory policy agencies are required to put in place scanning systems to regularly and systematically evaluate their existing "stock" of regulation.
What is its purpose?	To assist agencies to identify opportunities for reform or further review.

When is a departmental disclosure statement required?	All government Bills (with limited exemptions) and all "substantive" government SOPs must be accompanied by a disclosure statement when considered by LEG and when introduced to the House.
What is a departmental disclosure statement?	A disclosure statement for a Bill contains: - important background material and policy analysis relating to the Bill - details of any quality assurance work that has been undertaken to test the content of the Bill, and - information about any significant or unusual provisions that the Bill may contain.
What is its purpose?	To improve the quality of legislation by increasing attention given to key determinants of quality by - those responsible for preparing the legislation - MPs and the public when they scrutinise legislation.
How did disclosure statements come about?	Disclosure statements arose out of Treasury's consideration of a range of alternative options for Regulatory Standards legislation. They were introduced administratively in mid 2013 and legislation to embed the practice (the Legislation Amendment Bill) is currently awaiting its first reading.

What are the Best Practice Regulation Principles and Assessments	Developed by Treasury in 2011, the six "best practice" principles are that regulation should be: proportionate; certain and predictable; flexible and durable; transparent; growth-compatible; and capably administered. 56 regulatory regimes were assessed against these principles, by Treasury in discussion with responsible Departments, in 2011 – 12. These assessments have recently been updated and are ready for release.
What is its purpose?	To provide a high level overview of the quality of regulatory regimes in New Zealand and draw attention to areas which may be in need of particular focus.
Current status	2013/14 assessments are ready to be published.

"Clear room for improvement"
The Productivity Commission's view on the current state of the regulatory system

"Regulation does not get the attention and care that it deserves. More energy and focus will be required from across the New Zealand public sector and political system to improve the quality of regulation and ensure it supports the wellbeing of New Zealanders." **– New Zealand Productivity Commission**

The Productivity Commission Views on the Overall State of the NZ Regulatory System

The New Zealand Productivity Commission released its final report *Regulatory Institutions and Practices* in July 2014. It awaits a government response.

- The Commission's report described regulation as the **"Cinderella of government powers ....** When regulation fails, the effects can be severe ... But despite these risks, regulation does not get the attention and care that it deserves".
- "This report has reviewed the components of the **system** and has found **deficiencies** in each of them alongside **a surprising complacency** about how the system as a whole is performing. **Insufficient, and in some cases declining, resources** are being committed to matters of regulatory design and review. The designers and implementers of regulation face **escalating expectations, complexity, and challenge".**

"The assessment *[of how well the regulatory system is currently performing]* led to four conclusions:

- the regulatory system struggles to deliver proportionate and necessary rules because of **weaknesses in the policy and RIA processes** (which were not adequately testing proposals for new regulation), **heavy reliance on statute** and limited **Parliamentary** time
- the system does not seem to effectively prioritise its efforts, due to the **patchy implementation** of some regulatory management tools (eg, regulatory scans and plans) and **weak central leadership**
- resourcing of implementation is a concern, with **inadequate capability of regulatory agencies** a contributor to regulatory failures
- **weak review and evaluation cultures and monitoring practices,** and the culture of some regulators, inhibit the ability of the system to identify issues and learn from experience".

Evidence Cited by the Commission that Points to System-wide Issues

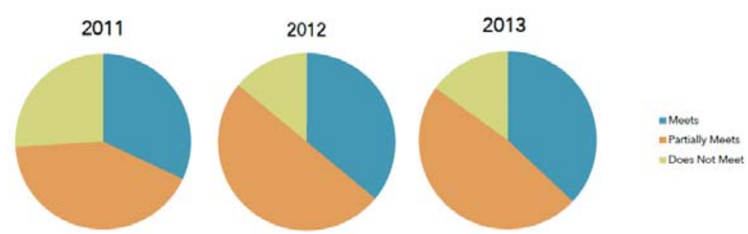
"In 2009-2014, NZ produced almost four times more statutes than the UK".

"Only 10% of the businesses surveyed believed that regulatory requirements in NZ were rarely or never contradictory or incompatible with each other".

"Only 23% of the 1,526 businesses surveyed agreed or strongly agreed that regulatory staff are skilled and knowledgeable, and [only] 25% agreed or strongly agreed that regulators understand the issues facing your organisation".

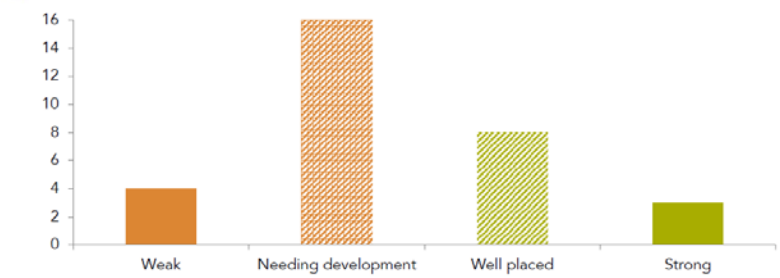
"Fewer than ¼ of central government regulatory workers agree that the management systems in this organisation encourage people to challenge poor practice".

"Fewer than ¼ of regulatory chief executives agree that formal monitoring of regulatory functions by other agencies improves the quality of regulation".



Source: NZIER, 2011, Castalia, 2012; 2013.

The percentage of RIS's meeting Cabinet's quality assurance standards



Source: Analysis of 31 Performance Improvement Framework reviews of government agencies. Reviews are available at www.ssc.govt.nz/pif-reports-announcements

Performance Improvement Framework assessment of how well 31 government agencies monitor, measure and review their policies, programmes and services

The Productivity Commission's recommendations and next steps

The Commission's key recommendations

The following is an extract from a presentation to the recent ANZSOG Annual Conference by the Commision's Chair, Murray Sherwin

"The 44 recommendations in our final report ….. can be broadly grouped into **four main themes**.

The first theme is stronger ownership and leadership from the centre. A senior Minister in Cabinet needs to be given responsibility for the regulatory system. Their job would involve identifying areas of risk in the system, setting priorities or objectives to raise its performance, and allocating tasks to achieve those objectives. To carry out this role, the Minister would need more active support from central agencies, and we recommended an **expanded and more prominent role for the Treasury** in regulatory policy and management.

The second theme is a greater focus on improving the quality of legislation. If New Zealand is to continue basing its regulatory regimes heavily on primary legislation, it's important we get its design right. The Commission recommended **a review of the quality checks and processes surrounding the preparation of laws,** including RIA and external review by bodies such as the Law Commission. We also believed that **more use of exposure drafts of Bills** – as often occurs in Australia – would help identify and iron out problems in draft legislation. And we saw a case for looking back over existing statutes to check whether **the right balance** had been struck in allocating tasks and powers **between primary and secondary legislation.**

The third theme is greater professionalisation of the regulatory workforce. A great deal of valuable effort has been put into building capability by senior regulatory leaders, but this has depended on the dedication and professionalism of individuals. Our view was that these efforts needed to be given greater support from the government, and made a permanent part of the public sector landscape. We recommended that **the government clarify and strengthen its expectations on regulators to develop their staff** and to work with other regulatory agencies in building their capability. Although each regulatory agency and task is different, there are a number of common activities, challenges and themes across the system. Given these commonalities, the Commission believed that there was room to **appoint a 'head of profession'** to provide intellectual leadership and promote good practice for the regulatory workforce.

And the final theme is review and evaluation. We need more of it, and we need to put **more effort into targeting the most important regimes for review**. We also need to **extend the scope of review and evaluation**. Much regulation is implemented and enforced by arms' length bodies, but as I noted earlier, oversight and review of these organisations could be improved. We proposed that **a process of peer review be set up for regulatory agencies**, in which senior leaders from other regulators would assess their performance. This would also have the benefit of helping encourage a 'community of practice' amongst regulators. Finally, there needs to be **greater transparency** about the existing processes being used to promote better regulation".

[3]

Key opportunities to lift regulatory performance

While it is important to lift performance on all fronts, we see the main opportunities as…..

[3]

A more systematic approach to the prioritisation of policy effort and the legislative programme

- We think one of the best opportunities to achieve quick gains in the regulatory space is to take a **more systematic approach to the prioritisation of policy effort and the legislative programme.**
- This is consistent with the approach taken in other areas of government activity such as the tax policy work programme and government spending (the budget process), but **strong Ministerial leadership** and the support of the Leader of the House and the Prime Minister will be necessary to achieve success.
- The consequences of not having systems that enable this prioritisation are significant including; ineffective regulation, unnecessary costs imposed on businesses and the community, inefficient allocation of departmental and PCO resource, extra House time required to fix problems, and an increased risk of significant regulatory failure.
- There are three areas of focus that would assist:
  - in the **short term,** carefully considering current bills before they are carried forward to the next legislative programme
  - in the **medium term,** being more strategic and deliberate about prioritisation of the Government's policy and legislative programmes and introducing a clearer multi-year focus to the planning of the legislative programme
  - in the **longer term,** looking to make greater use of secondary and tertiary legislation.

There are a range of options that could assist with this including:

- using **information about the number of bills that do progress** and the time needed to progress particular bills to inform the setting of the legislative programme
- creating **regulatory maintenance time in the House**, such as through broader use of **extended sitting hours** to progress regulatory maintenance bills (eg the MBIE Regulatory Systems Bill) and allowing the use of omnibus maintenance bills
- having a **small group of senior Ministers** to decide **legislative priorities** (including the Leader of the House)
- **more active prioritisation of the policy pipeline across portfolios,** such as by **broadening the mandate of sector Ministerial groups** (eg the BGA Ministers, Ministerial Committee on Poverty) to do this (supported by advice from sector CEs on policy priorities) or by using **Cabinet Committee chairs and officials committees** to prioritise the policy pipeline.

Improving the quality of regulatory stewardship

- Durable gains ultimately depend on changing agency practice, culture and systems.
- We will continue to **strengthen our focus on engagement, support and partnership** with key regulatory agencies to **improve regulatory stewardship.**
- We are engaging with key regulatory agencies to identify **new areas for regulatory reform** to reinvigorate the Regulatory Review Programme.
- There are also benefits in integrating the regulatory focus into **wider state sector management activity** and **raising stakeholder awareness** of stewardship performance and improving the visibility of regulation.
- We think there is also **value in improving the profile of regulatory management** through the development of **a regulatory strategy**, a **published charter** explaining the central oversight role and **an enhanced web presence** that brings together all the key information, guidance and expectations that agencies need.

Improving the capability and performance of regulators.

- We agree with the Productivity Commission that improving regulator workforce capability is crucial for regulators to be able to be flexible and adaptable and operate responsive, risk-based regulation in light of an environment that is constantly changing. However, this process will take time.
- A group of regulatory leaders are in the process of developing a proposal for **regulatory CEs to build stronger regulatory practice, culture, leadership and capability** led by the regulatory sector itself. We are supportive of this approach as we consider a regulator led approach has the best chance of success.