

The Treasury

Productivity Commission Report on Regulatory Institutions and Practices Information Release

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No information has been withheld from this release document.

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

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Date: 1 July 2014

To: Minister for Regulatory Reform
(Hon Bill English)

Deadline: Before 11.30am, Wednesday 2 July

Aide Memoire: Productivity Commission Final Report: Regulatory Institutions and Practices

Purpose

This Aide Memoire has been prepared for your meeting with the Productivity Commission at 11.30am on Wednesday 2 July. At this meeting the Productivity Commission will introduce its final report "Regulatory Institutions and Practices", which was commissioned last July. This follows the interim report which the Commission published and presented to you on Thursday 13 March. The report is to be published on 16 July.

The contents of this Aide Memoire have been discussed with the State Services Commission (SSC) and the Ministry of Business, Innovation and Employment (MBIE) and a copy has been provided to MBIE for use in briefing its Ministers.

Overview

Officials have not yet fully studied the report. This briefing provides you with our initial perspective on the report and provides possible speaking points for your meeting with the Commission.

We will provide you with further and fuller advice on the recommendations and seek your and other Ministers' views as part of the process of assembling a Government response to the report.

We will work with your office on a possible media release to accompany the release of the report and on the timing of a formal Government response.

The Productivity Commission's inquiry

The Productivity Commission's inquiry was commissioned in part to inform the further evolution of the regulatory management system. Further to the publication of their interim report in March, they met with officials from several Departments including Treasury, SSC and MBIE as well as other stakeholders and received over 100 written submissions, including from Treasury/SSC, MBIE, the Department of Internal Affairs, the Ministry of Justice, the Ministry for Primary Industries, the Ministry of Transport and fourteen regulatory agencies.

Broadly the report finds that:

- few of the current checks, constraints and rules designed to encourage better regulation are binding; most controls are self-imposed, depend on self-enforcement and may be over-ridden by constraints such as limited resources and Parliamentary time
- there is scope to delegate more rule-making powers, provided these powers are appropriately defined and controlled
- there is room for improvement in managing the existing stock of regulation, including a clearer focus on reviews that have the largest probable benefits
- greater support is needed to bring about the capability and professionalisation of the regulatory workforce, including through more systematic networking and leadership appointments, and
- the system needs clearer leadership and a more active centre which would both ensure that departments carry out their responsibilities fully and thoroughly, and identify opportunities for coordination and sharing of experience.

Recommendations are fewer and more tightly focused than in the interim report. A key focus is to enhance the leadership of regulatory management at both a Ministerial and corporate centre level. The report calls for increased resources to be applied to a range of areas including the Legislative Advisory Committee, Treasury, regulatory communities, a new head of profession function and the Office of the Ombudsman. Notably, the Commission recommend:

- a further review, this time focusing on the process of producing and vetting the quality of legislative proposals and the role of other actors in the regulatory system such as Parliament and the Law Commission
- better guidance on regulatory practice and on the appointment of regulator leadership
- stronger requirements for consultation before new legislation is introduced
- a more systematic approach to the allocation of primary and secondary legislation
- greater formalisation of Departmental monitoring responsibilities and the use of regulatory peer review in extending PIF processes to regulators

- a more strategic approach to managing the stock of regulation, and
- a stronger role for Treasury including providing intellectual leadership.

In general, we would agree with much of the thrust of the Commission's report and many of its recommendations. However, notwithstanding there is room to improve the workings of the regulatory management system, in our view as the system evolves we are seeing many positive developments occurring in regulatory agencies. In developing the formal Government response we will need to consider which of the Commission's recommendations will clearly lead to an improvement in the regulatory management system but also not hinder the improvements already flowing from the system's evolution.

Possible talking points

- What are the main areas where the Commission has changed or developed its views from those in the interim report?
- What does the Commission consider are the priority issues across the range of recommendations?
- Based on the submissions and their interviews with stakeholders, which actions are most likely to lead to benefits and be broadly supported?
- The Commission reports that regimes are outdated, unfit-for-purpose, duplicative or inconsistent; can they identify and prioritise these?
- Are there particular types of regulation which the Commission thinks are more suitable to regulators being provided with broader rule-making powers?
- The Commission focuses strongly on monitoring and oversight of regulators. What is the evidence that this is a major factor in driving regulatory performance?
- The Commission recommends significant additional resource be applied to various parts of the system – how clear is it that the additional resources will make a material improvement to the system?
- Where might the capability be found to provide the intellectual leadership role envisaged by the Commission - from academia, for example, or from the existing regulatory community?
- How does the proposed “strategy report that sets out the medium-term objectives that the Government is seeking to achieve through the regulatory system” differ from the regulatory stewardship expectations already in place on the one hand, and the Government's stated objectives on the other?

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