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### **New Hope for Better and Less Regulation**

A potentially important announcement by the government last month has not been widely reported.

It took the form of a Government Statement on Regulation, which was released with an accompanying Cabinet paper.

It marks a major departure from the practice of the last government, which unleashed a barrage of poor quality regulation on the business sector and the wider community.

As the Statement notes, bad regulation hinders individual freedom, innovation and productivity. The re-regulation of the economy in recent years was a major factor behind the slump in productivity growth.

The Cabinet paper, submitted by Bill English as minister of finance and Rodney Hide as minister for regulatory reform, rightly states that mediocre policies won't overcome our disadvantages of size and location and that "New Zealand will need to offer a better regulatory environment than our OECD peers."

The government has made two key commitments in the Statement:

- "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."

There are several important features of the new regime.

Regulation is only to be adopted when a problem cannot be adequately addressed through private arrangements and a regulatory solution is required in the public interest.

Ministers and government agencies must satisfy themselves that the benefits of a preferred regulatory option exceed the costs and will deliver the highest level of net benefit of all the practical regulatory options available. This suggests a much stronger role for cost benefit analysis than under previous arrangements.

A process is also established for reviewing all existing regulation.

There is a strong injunction against proposals that impair private property rights and market competition, and that override fundamental common law rights (such as compensation for takings of property).

Thus the last government's actions on Telecom unbundling and Auckland airport would have faced higher hurdles had the regime been in place.

Similarly, the kiwifruit export monopoly, the union monopoly on collective bargaining, the ACC monopoly on accident insurance and monopoly liquor licensing trusts should face tough scrutiny when the relevant acts are reviewed.

The Cabinet paper indicates that a particularly strong case needs to be made for any new regulatory proposals that impose additional substantive costs on business during the current economic recession.

This ought to apply to climate change measures and financial adviser regulations, for example.

Key mechanisms in the regime are the requirements for government agencies to certify the quality of a regulatory impact statement supporting proposals; for the Regulatory Impact Analysis Team of the Treasury to assess economically significant RISs; and for the sponsoring minister to affirm that proposals are consistent with the government Statement.

The reference to "government agencies" rather than "government departments" suggests that organisations like the Reserve Bank, the Commerce Commission and the Law Commission will be expected to adopt similar disciplines when making regulatory proposals.

The test of the value of the new regime, which is to apply from 2 November 2009, will of course lie in its implementation.

There are already some warning signals about the strength of the government's commitment to stricter disciplines. A proposal that the minister of finance and the minister of regulatory reform should be consulted before proposals go to Cabinet was not adopted. A requirement that the regime be reviewed three months after implementation was not in the Cabinet paper.

The Law Commission has recently produced a particularly weak discussion paper on liquor regulation and has stated in consultations that it does not intend to undertake any cost benefit analysis in making its final recommendations. It will need to be brought into line.

Nevertheless, it is pleasing that the government has nailed its colours to the mast by saying in the Statement that it will "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."

Business organisations and others must be active in insisting that the new regime is adhered to.

It is also pleasing that the Cabinet paper speaks positively of the next step in the government's programme to deliver better and less regulation, namely consideration of a Regulatory Responsibility Act.

Recognising the limitations of the RIS process, all the main national business organisations have been supportive of a stronger 'regulatory constitution' along the lines of the Reserve Bank Act and the former Fiscal Responsibility Act.

The report of the Regulatory Responsibility Taskforce chaired by former Treasury secretary Graham Scott, which is due at the end of this month, and the government's response to it will be awaited with great interest.

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