

## **More Urgency Needed on Regulatory Reform**

In its report last year, the 2025 Taskforce said that overseas research suggested that “as much as a third of the income gap to Australia could be closed if we were able to move New Zealand to world best practice across all the major areas of regulation”.

So the stakes for better regulation are high. However, regulatory burdens have been increasing. Between 2000 and 2009, over 68,000 pages of legislation was passed, strangling businesses and citizens in red tape.

It is true that New Zealand scores well in some international surveys such as the World Bank’s *Doing Business* report. But this focuses mainly on developing country issues such as the time it takes to set up a business and access to credit.

It does not cover problematic areas of New Zealand regulation such as the Resource Management Act and regulation of network industries, and only partially covers employment law. (New Zealand scores poorly in surveys for the restrictiveness of hiring and firing regulations.)

The government has stressed the importance of regulatory reform. It got off to an energetic start with a February 2009 Cabinet Paper entitled ‘Regulatory Review Programme: Immediate Removal of Inefficient and Superfluous Regulation’ (available on the Treasury website).

This contained 13 measures which were approved. A few have been progressed, such as the relaxation of restrictions on heavy vehicles, but there has been little follow-through on others.

A case in point is the agreement by Cabinet to remove restrictions on pharmacy ownership (which, among other things, would allow supermarkets to own and operate pharmacies with qualified staff, as is commonplace overseas).

The 2025 Taskforce commented that “It remains something of a mystery ... what the economic case is for the restriction that allows only qualified pharmacists to own pharmacies”, and its removal was supported by the Ministry of Health, the Treasury and all other relevant departments.

It was intended that this initial ‘low-hanging fruit’ exercise would be followed by similar instalments, but little appears to have happened.

In August last year the government committed itself to improving the quality of regulation in a document ‘Government Statement on Regulation: Better Regulation, Less Regulation’.

This contained many sound principles. It said, for example, that there had to be “a particularly strong case” for regulations that impaired property rights or market competition. It is hard to see how statutory monopolies such as ACC or Zespri could pass this test.

The Statement requires government departments to identify regulations for repeal or review, affirms the need for proper regulatory impact analysis (as required by the Cabinet Manual) and asks New Zealanders to hold the government to account for regulatory performance.

To date, however, the Government Statement has yielded few improvements. One indicator is information on the Treasury website on the adequacy of regulatory impact statements as assessed by its Regulatory Impact Analysis team.

Out of 57 such RISs, nearly half (27) were assessed as not fully meeting requirements. The RIS on the emissions trading legislation, probably the most economically important regulatory measure introduced by the government, was certified as inadequate – a truly shocking indictment of regulatory policy.

In some cases the Cabinet Manual is simply being ignored. There was no RIS accompanying the Cabinet decision to reclassify pseudoephedrine, which ruled out other – possibly better – ways of addressing the problem. Will the select committee currently considering the subsequent bill hold the government to account for this failure by rejecting the bill?

Progress in other areas is excruciatingly slow.

The government has had the report of the Regulatory Responsibility Taskforce for over a year but has not acted on it. This is a first class report which recommends a bill that would extend to the regulatory area the kind of disciplines that apply to monetary and fiscal policy.

Because current disciplines are clearly not working, this would be a worthwhile, if modest, step. It would codify a set of well-established regulatory principles, require certification against them, and allow courts to highlight instances of incompatibility. Unlike in Australia, however, courts would not be able to strike down legislation.

All the major business organisations strongly support the Regulatory Responsibility Act proposed by the Taskforce.

The government has also been sitting on the report of the group charged with reviewing the ACC monopoly since the middle of this year.

It has made progress with some regulatory reviews covering employment law, the electricity industry, the Telecommunications Service Obligations, capital market regulations and aspects of the RMA (although some Phase 2 reviews have been weak).

It is also establishing a Productivity Commission (with multi-party support).

This would be well placed to investigate regulation recommended for review by the 2025 Taskforce such as the inclusion of property rights in the New Zealand Bill of Rights Act, water allocation regulation (following on from the recent Land and Water Forum report) the Commerce Act and the Zespri monopoly.

Overall, the regulatory reform scorecard is, 'could do much better'. The pace of regulatory reform needs to be accelerated as part of any credible 'catching Australia' strategy.

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