

# New Zealand

**1. In which areas of structural reforms have the most significant progress been made in your economy in the past five years? Please describe in what way you think the progress has been significant? Any structural reform activity can be included here, and does not necessarily need to be restricted to the five LAISR themes.**

## Regulatory Reform

Although New Zealand rates well on some international measures of regulatory quality and the ease of doing business<sup>21</sup>, the combination of a significant amount of new regulation in recent years and improvements in other economies means that many economies are catching up to, or surpassing, us in international indices of regulatory impact and competitiveness. The pace of new legislation and regulation has increased, and the quality, pace and implementation of some of this new regulation has been uneven.

There is also an ongoing need to improve existing regulation, including assessing whether it is still required and in what form, in the light of experience of how it is working in practice, new evidence and knowledge of the impact of regulation on economic performance, and the development of new approaches to regulating which achieve societal outcomes at least cost.

With this in mind, in June 2008 the previous government took several decisions to strengthen New Zealand's regulatory quality management system, and to put in place a more strategic approach to managing the impact of regulation on economic performance. This included assigning responsibility for New Zealand's regulatory quality management system to the Treasury, and expanding its role into three areas:

- Regulatory impact analysis (previously undertaken by the Ministry of Economic Development)
- Responsibility for setting a prioritised regulatory review work programme and coordinating across government agencies to deliver on this programme
- Strategic co-ordination of the regulatory quality management system.

Part of the rationale for assigning these roles to Treasury was the view that its role as one of the three "central agencies" in the New Zealand state sector provides it with a broad and strategic perspective, enabling it to make connections across policy areas and facilitating early engagement in the policy development process.

In November 2008 there was a change in government and this has resulted in a renewed focus on regulatory reform (encompassing improvements to the regulatory quality management system, the overall regulatory environment, and specific regulatory frameworks). Regulatory reform is one of six policy drivers that form the core of the current government's economic programme. Amongst other things the new government has:

- Established a new Ministerial portfolio for Regulatory Reform

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<sup>21</sup> See, for example, the World Bank's *Doing Business 2010: Reforming through Difficult Times*.

- Commenced reviews of major regulatory regimes (Air Quality Standards, Building Act, Consumer Law, Electricity institutional arrangements, Employment Relations Act, Food Act, Foreshore and Seabed Act, Holidays Act, Overseas Investment Act, Resource Management, Securities Act, Telecommunications Act, Weathertight Homes Resolution Services Act, Climate Change Response Act and Dairy Restructuring (Raw Milk) Regulations) and a programme of work to cut unnecessary red tape on business
- Established an annual Regulatory Reform Bill, which will provide a regular opportunity to reduce unnecessary red tape for business.

New Zealand has recently made several further enhancements to already existing policies, rules and institutions to help ensure effective and efficient regulation. These include the release on 17 August 2009 by the Minister of Finance and Minister for Regulatory Reform of a Government Statement on Regulation: Better Regulation, Less Regulation. The Statement is backed up by a number of supporting measures, including:

- systematic and ongoing regulatory scanning by departments to identify regulation that is, or may be, unnecessary, ineffective, or excessively costly
- annual regulatory plans of all known and anticipated proposals to introduce, amend, repeal or review legislation
- enhancements to the regulatory impact analysis (RIA) regime
- regular reporting on how the government is meeting the commitments in the Statement.

Further structural and other reforms are underway, or are under consideration include:

- the possible enactment of Regulatory Responsibility Act aimed at increasing accountability and transparency around law making by putting principles of responsible law making into legislation
- legislation has been introduced to establish a New Zealand Productivity Commission.

Further information on New Zealand's regulatory quality management system, and its regulatory reform agenda, can be found on the Treasury's website: <http://www.treasury.govt.nz/economy/regulation>.

## **Public Sector Governance**

New Zealand has made significant progress toward improving the accountability and transparency of the public sector regime over the last five years. New Zealand, at the request of Ministers and the Parliament, reviewed the accountability documents that underpin its public sector regime. The Review of Accountability Documents (RoADS) was about focusing accountability documents better on the needs of Ministers and Parliament.

Ministers and the Parliament felt the existing arrangements were burdensome and did not provide adequate information to allow informed judgement on the performance of the public sector. Parliament and Ministers in particular felt they were not getting the right information in the right forms, and performance documents were not helping the situation. Some problems identified by key users included: that the documents were seen as too long and difficult to engage with; there was duplication between documents; poor reporting of non-financial performance information; and the documents often focused on style rather than content.

Under RoADs the structural changes to accountability documents were implemented as part of the Budget 2008. The focus now is on improving the quality of the material in the accountability documents. One direct benefit of the review has been to reduce the amount of reporting material needed by Parliament.

Since then, the public sector has made a number of other complementary changes that increase the focus on supporting delivering better, smarter frontline public services funded primarily from within public agencies' existing operating baselines as part of the government's commitment to rebalance and strengthen the economy.

- Central agencies have implemented a Performance Improvement Framework (PIF) where agencies are reviewed against predetermined criteria, with the results and action plans coming out of the process being published. The first reviews will be published in September. Early evidence suggests PIF is likely to be an effective tool for lifting agency performance. <http://www.ssc.govt.nz/pif>
- The Better Administrative and Support Services (BASS) programme has completed an initial investigation comparing the cost and quality of administrative and support functions of 14 state sector departments against international benchmarks. The programme is preparing for Phase Two which will involve working on quick wins, the roll out of high level measurement across a broader group of agencies, and the development of a business case to identify and assess options for realising cost saving and quality improvement goals.
- Over the last two years there have been changes in the approach to capital asset management including the application of new standards, gateway assurance and information requirements to inform decision making so Ministers will have early engagement on options, assurance that appropriate business case preparation has been done, and clear, consistent preparation of information. For more information see <http://www.infrastructure.govt.nz/publications/betterbusinesscases> and <http://www.dpmc.govt.nz/cabinet/circulars/co10/2.html>.

## Competition Policy

In September 2008, the regulatory control provisions of the Commerce Act were amended. These amendments significantly improved the law relating to the regulation of monopolies with the aim of improving incentives on regulated firms to invest and innovate while protecting consumers from monopoly pricing and poor service quality.

The changes include generic provisions that enable price and quality control to be imposed where competition is limited. In addition, it provides for the regulation of electricity lines, gas pipeline services and airports and includes transitional provisions for these sectors. Key amendments include:

- the addition of a purpose statement specific to Part 4 clarifying the importance of incentives for regulated businesses to invest;
- the integration of the tests for determining *whether* and *how* to regulate goods or services and measures to streamline the inquiry and implementation processes of regulation;
- a requirement that the Commerce Commission sets 'input methodologies' for the regulatory rules, processes, and requirements that apply to regulated businesses; and

- allowing fit-for-purpose regulation to meet the circumstances of specific suppliers and sectors. The forms of regulation that may be applied are information disclosure, a negotiate/arbitrate regime, or default/customised price-quality regulation;

Proposed amendments to the competition legislation include the Commerce Commission (International Cooperation, and Fees) Bill. The Bill was introduced to Parliament in 2008 and is currently being considered by a Parliamentary select committee. It provides for enhanced cooperation between the Commerce Commission and its overseas counterparts, allowing the Commission to share confidential information or use its statutory powers to assist overseas regulators, subject to certain criteria and safeguards. Also, the Ministry of Economic Development released a discussion document on the penalty regime for cartel conduct in January 2010, considering whether criminalisation of cartels would be appropriate in the New Zealand context.

### **Corporate Governance**

Over the last five years, New Zealand has reformed its insolvency law, implemented a Limited Partnerships Act and commenced reviews of the financial reporting framework and the regulation of auditors. These reforms are making a significant contribution to an efficient and robust corporate regulatory environment that does not unnecessarily impose burdens on business.

**2. Describe examples of successful reforms and lessons learned in your economy in implementing structural reforms in the five LAISR areas. Please indicate relevant websites or other reference material, preferably those written in English.**

The main examples of regulatory reform and public sector governance reform are outlined above.

The lesson that has emerged from New Zealand's experience with both regulatory and public sector reforms is that commitment to reform needs to be continuous - the regulatory quality management system and public sector governance system should be under constant review. It is also important from time to time to step back and revisit and revitalise the respective overall approaches. Without this focus on continuous improvement and periodic "revitalisation" it's entirely possible that systems and practices can become ossified and irrelevant.

This is particularly important in the regulatory area given ongoing pressures for more regulation, especially in times of heightened fiscal constraint.

More information on New Zealand's regulatory management system and public sector can be found on the New Zealand Treasury website at the following links:

<http://www.treasury.govt.nz/economy/regulation>

<http://www.treasury.govt.nz/statesector>

### **Corporate Governance**

*Insolvency Law:* The Insolvency Act 2006, Companies Amendment Act 2006 and Insolvency (Cross-border) Act 2006 were enacted in November 2006. The main features of the reforms were:

- to introduce a business rehabilitation regime based on the Australian voluntary administration provisions;
- to address the phoenix company problem by introducing further criminal penalties and restrictions on the re-use of insolvent company names by company directors;
- to provide a mechanism to enable streamlined procedures to be implemented under the UNCITRAL Model Law for Cross-Border Insolvency;
- to implement an alternative to the current bankruptcy procedure for insolvent individuals with no realisable assets.

New Zealand is currently working with Australia to further streamline the law relating to cross-border insolvency between the two jurisdictions. The effectiveness of New Zealand's insolvency regime will be further enhanced by legislation due to be introduced this year to strengthen the provisions in relation to the appointment and replacement of insolvency practitioners. The amendments will provide a greater level of confidence in the skill of such practitioners.

*Limited Partnerships:* New Zealand introduced a new form of legal structure, the limited partnership, to encourage the development of the New Zealand venture capital industry, and encourage domestic and international investment in New Zealand. The Limited Partnerships Act, which enables New Zealand businesses to compete internationally on a level playing field for venture capital funds, came into force in May 2008.

*Audit regulation:* Following the collapse of a significant number of corporations internationally, many governments concluded that self-regulation of the audit profession was no longer appropriate and introduced government regulation, independent oversight or a combination of the two. New Zealand currently relies on self-regulation, but in light of the risk that New Zealand auditors are de-recognised overseas, decisions have been taken to strengthen auditor regulation. Audit standards will be set by a government regulator, and there will be government oversight of the licensing of auditors. The reforms are due to be implemented in 2011.

*Financial reporting:* The review of the New Zealand financial reporting framework aims to achieve a framework that is appropriate for all types of entities and is enduring. The government has made a decision to consolidate all accounting and auditing standards setting responsibilities within a new government standard setting agency. Further issues being considered are whether to remove preparation requirements for small and medium companies, and how to rationalise the reporting requirements in the non-profit sector. Legislation to implement the review is intended to be introduced into Parliament in 2011.

Further information on these reforms can be found on the New Zealand Ministry of Economic development website: <http://www.med.govt.nz>

**3. What in your economy's experience are the keys to the success of reform? (e.g. leadership, institutional framework, communication strategy, consultation process) What are the factors, if any, that impeded reform? What lessons can we learn from your experience?**

The recent changes to New Zealand's regulatory management system are still bedding in, and it will take time to assess the full extent to which they have been successful in lifting the quality of regulation. However, a key lesson learned to date (in addition to the point made above about the need for a focus of continuous improvement and periodic revitalisation) is that ultimately cultural change is essential to the success of regulatory reform efforts.

Changes where appropriate to regulation-making policies, rules, institutions, and incentives, and efforts to build capability in departments, will support this required cultural change, but strong leadership and advocacy from senior Ministers is vital for driving it through.

New Zealand now has both a Minister responsible for regulatory reform, as well as a senior Minister acting as a champion for regulatory quality within Cabinet (the Minister of Finance). We have found that having this Ministerial advocacy can be very effective in encouraging the development – by Ministers and their departments – of regulatory proposals that meet the government's expectations of regulatory quality.

This Ministerial advocacy is also important for embedding and driving a culture of continuous improvement of existing regulation, and ensuring that all possible opportunities for regulatory reform and review are identified and taken forward.

Leadership from within the public sector is also an important factor in successful reform. In the case of RoADs, leadership from the three central agencies in the New Zealand public sector (The Treasury, the State Services Commission and the Department of Prime Minister and Cabinet) was a key factor because of the breadth, depth, and long-term nature of the project. This was especially important since the project has spanned across the 2008 elections.

There is also a need for specialist "centres of excellence" in the public sector, and New Zealand's Ministry of Economic Development provides this in relation to assessing the impacts of regulation on business.

**4. What are the impacts, both positive and negative, of the reform on the economy and the flow of trade and investment? Please provide data or statistics where available.**

It is difficult to measure the direct impact of reforms on the flows of trade and investment, and as such we are unable to provide reliable data or statistics.

However, the aim of the regulatory reform measures is intended to create a better regulatory environment in order to help attract and retain increasingly mobile talent, skills, capital, technology and entrepreneurship, and close the prosperity gap with other economies to which we compare ourselves.

**5. In what ways can APEC better promote structural reform in the region? What would be some possible next steps beyond 2010 based on the achievement of the LAISR process?**

Beyond 2010 APEC should continue its focus on structural reform given its importance to the economic growth of the region. Some steps that could be explored further are whether we could prioritise different aspects of reform and explore them in more detail (e.g. specific areas of regulatory reform) or explore issues that are cross-cutting in nature (e.g. sharing good practices on how to implement reforms). We would also encourage that APEC ensures its structural reform activities beyond 2010 are focused on the needs of its member economies, and the EC should retain its policy focus.