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Regulatory Institutions and Practices Inquiry  
New Zealand Productivity Commission  
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Kia ora

**Submission on the draft report on regulatory institutions and practices**

Congratulations on your draft report which contains a very comprehensive analysis of the regulatory/compliance sector.

Please accept my apologies for not putting in a submission during your earlier process. I was on an extended period of travel overseas at the time.

Generally speaking, I agree with the Productivity Commission's analysis. I do, however, wish to comment on a small number of matters in the report. These are set out in the attached submission.

Yours sincerely

# **Submission by Graeme Aitken**

**on**

## **the draft report on regulatory institutions and practices**

### **My background**

Over a career spanning 35 years, I have been involved in all aspects of the regulatory compliance sector. My experience includes:

- Frontline investigation experience as a Commerce Commission investigator/team leader.
- Extensive involvement over a long period in the design of legislative frameworks, including various pieces of regulatory/compliance legislation.
- Conducting reviews of regulatory/compliance organisations and preparing organisational development strategies to implement the outcomes of those reviews.
- Participation in some activities organised by the CCCP.

In addition, I have several periods working for the State Services Commission and have a sound understanding of machinery of government and the history of the quest for “joined up” and “whole of government” approaches to solving the problems of the world.

If it would be of assistance, I would be happy to be a sounding board as the Productivity Commission develops its final report. I wish to make it clear that, in making this offer, I am not touting for business – I am just making an offer to contribute without charge to a process that I consider to be important.

I should advise that the CCCP has engaged me to assist with preparing a business case for future arrangements that the CCCP considers appropriate, in light of the analysis and recommendations in the Productivity Commission’s final report. Whilst making that clear, I emphasise that this is my submission and reflects my thinking – members of the CCCP may have different views.

### **Overall view of the draft report**

Generally speaking, I agree with the Productivity Commission’s analysis. In particular, I think the analysis of the current system is accurate and the identification of areas for improvement is generally on the mark. I do, however, wish to comment on a small number of matters in the report, as set out below.

### **Communities of practice, workforce capability, and Ministerial leadership**

#### *What the draft report says*

Chapters 11, 12 and 16 of the draft report cover a variety of matters. The aspects of those chapters I wish to comment on are:

- Recognition of the value of communities of practice and recommendations for formal recognition and part funding of those communities/networks (chapter 11).
- Recognition of the need for more capability building (chapter 12).
- Recognition of the lack of strategic leadership of the regulatory/compliance system overall and recommendations for having a Minister (with effective institutional support) responsible for the overall regulatory/compliance system (chapter 16).

#### *Inter-related issues in the draft report*

As stated above, I generally agree with the analysis and diagnosis in the draft report – and that includes the analysis and diagnosis in these chapters. However, I have a few comments to make on some specific matters, including how the three matters in the paragraph above hang together in the draft report.

I see these three matters as being inter – related parts of a package comprised of strategic leadership for the regulatory/compliance system overall, co-ordination, leadership and capability building for the operational level via communities of practice, and capability building via formal training (or assessment) and qualifications. The report does not tie these things together – rather, chapters 11, 12 and 16 read like they were written by different authors and never quite connected up.

I think that these things should be looked at holistically and tied together so that:

- There is Ministerial leadership of the regulatory/compliance system at a strategic level, backed by resourcing in an appropriate government department.
- There is leadership and capability building, via communities of practice, to promote improvements at the operational level. This needs to be linked with the strategic level – suggesting the same Minister/government department should have the overview/leadership of both.
- This in turn should be seen as part of capability building generally. This is because formal training and qualifications are part of a continuum of capability building activities which also include capability building via communities of practice, guides and case studies etc – all are part of the same continuum.

#### *Communities of practice*

The draft report’s commentary regarding communities of practice refers to existing networks and recommends formal recognition and partial funding as a way of strengthening communities of practice. The draft report recommends this in preference to a functional leadership model. There are a number of points to be made here.

First, the public management model that has been in place and developed since the 1980s emphasises that each department/agency has responsibility for achieving its own specified objectives. Whilst this public management model has many strengths, it has also generated significant issues regarding the ability and/or inclination of departments and agencies to work together to achieve wider objectives and/or to work together on common issues such as compatible IT arrangements, leveraging combined volume to get more cost effective procurement, and capability building for common skill sets.

Ministers, the State Services Commission, Treasury and others have all been involved over the last 20 years in promoting “inter-agency” and “joined up” and “whole of

government” activities, with varying levels of success or failure. To me, the lesson of these various endeavours have been that voluntarism hasn’t been a success. Where departments and agencies have been given the choice, they tend to make sympathetic noises about “whole of government” but then just “stick to their knitting”. Their SOIs and associated service or other agreements tend to drive them in that direction and, in addition, no single agency has sufficient interest to carry the load to deliver what may be a benefit to range of agencies.

Indeed, I would observe that voluntarism has not necessarily worked even within particular departments. One department that I have worked with has a number of regulatory/compliance roles spread across different parts of the department. The department has not been able to make a community of practice work within the department. Why? Because there is a lack of mandate and leadership for that community of practice, there is no separate/dedicated funding for it and none of the individual regulatory/compliance actors had enough to gain by investing the energy in what would generate a benefit for each of the actors.

What has worked has been where there has been a strong direction given (e.g. by Cabinet) and/or a department has a strong mandate to lead, and adequate and separate funding/resources have been allocated to the leadership and co-ordination role. This overcomes the problem that, whilst there is a big collective benefit but to be had, none of the separate components parts has enough interest to carry the load on behalf of everyone else.

Examples of strong direction and/or mandate and/or separate funding are:

- The ICT, procurement and finance and property “functional leadership” initiatives. Departments/agencies didn’t get engaged until they were directed to.
- The State Services Commission and others operating certain networks. For example, when I was at SSC, we ran a community of practice for the HR and industrial relations community. A community of practice made sense but it didn’t occur until SSC co-ordinated it, as part of its role as mandated leader of the State sector employment relations system. Individual agencies had a big interest in participating but none in carrying the load of organising for all.
- SSC is currently promoting the development of “continuous improvement” capability across the State sector. This arises out of SSC’s mandated role as leader/co-ordinator on machinery of government. The project is separately funded.

Second, the draft report suggests that it would be lower cost to formally recognise existing networks than to operate a “functional leadership” model. I don’t think that is correct. Whatever the mechanism selected, there will be a need for dedicated funding.

Third, and I may be wrong about this, but even if mandate and funding was given to a cluster of departments/agencies such as the CCCP, I don’t think the government is in the business of handing over funding to a loose network with no legal personality. Rather, it might provide funding to the CCCP via a government department, whose chief executive would then be accountable for the spend. So, I don’t really see how the “existing network” model would hold any advantages over having a designated chief executive as a “functional leader” (who might convene a reference group of sector players to advise on direction and spend).

In saying all this, I want to make it clear that I am not wedded to any particular mechanism for providing leadership and co-ordination etc. I just disagree with the draft report's conclusions that the "existing network" model would be cheaper than the "functional leader" model. Also, as stated above, I don't think that the voluntarism advocated (as part of this model) in the draft report will work.

Fourth, the report suggests that agencies will be more committed if they voluntarily contribute funding. Really? I am aware of this as a theory – but where is the evidence for this in the context of the issues we are considering? If the theory is reflected in the reality, why has the functional leadership model been put in place, why does SSC and others operate certain networks, and why is SSC running a centrally funded process to promote continuous improvement. Why hasn't the invisible hand inclined the agencies to chip in and do these things voluntarily?

My experience of government is that departments/agencies are generally reluctant to fund discretionary activities, but that they will happily support initiatives that have specific/discrete funding - because there is a benefit to be had and they can participate without having to make trade off decisions about their budget.

#### *Workforce capability*

The draft report cites the survey of 23 chief executives with only 5 agreeing that there were significant capability gaps whilst 10 disagreed and 8 sat on the fence – and then poses the view of inadequate capability in the PSA survey.

My observations are that:

- Only a small number of regulatory compliance agencies have the desired level of focus on capability development.
- Some agencies need very specific skill sets (e.g. financial/accounting) and can employ the specific skills in.
- The Police effectively do a lot of training for the sector in the sense that many agencies employ in investigative skills (former police officers).
- Many if not most regulatory/compliance agencies are very focused on their own legislation. They tend to be weak in the generic competencies – because they see knowledge of their own legislation and industry as being more important than, for example, well developed investigative or intelligence skills.
- Many regulatory/compliance agencies see their job as securing compliance with the law. They tend to respond to complaints. Whilst they may or may not have the ability to apply a responsive model (the compliance pyramid), often they do not understand or embrace a risk based approach, nor will they seek to develop the capability to gather the intelligence and do the analysis necessary to support a risk based approach.

I note also the points in chapter 12 of the draft report about the need to clarify roles and responsibilities, in particular between the CCCP and the ITO, the Skills Organisation. I comment as follows:

- It is the ITO's role to develop the qualifications and define the competencies that make up the qualification. In this regard, the existence of a forum such as the CCCP should be a godsend for the ITO in terms of getting thoughtful sector input – so the

CCCP has a role as a facilitator and conveyor/advisor of collective input from a significant proportion of the sector.

- The previous ITO, Learning State, developed the existing qualifications – no doubt with the active involvement of the CCCP and others in the sector. This is hopefully what should be happening with the new qualifications being developed by the current ITO, the Skills Organisation.
- The CCCP is not (or if it is should not be) a training provider. Having said that, many agencies do some of their own training and they may do this jointly with one or more other agencies – and the CCCP or other clusters of agencies may well provide a forum for these agencies to identify potential joint approaches.

One question – the draft report suggests that the ITO will develop new qualifications by the end of 2014. Will this actually happen within that timeframe? It may pay to check prior to finalising the final report.

### **My views on what is needed**

The need to strengthen leadership in the regulatory/compliance sector and the need to strengthen capability requires action on three inter-related fronts:

- Ministerial leadership of the system at a strategic level, backed by resources located in an appropriate entity.
- Leadership and capability building via communities of practice for the operational level, with the leadership/co-ordination role performed by a mandated entity with proper resourcing.
- Capability building within a continuum that includes capability building via formal training and qualifications, via learning on the job, and via communities of practice (sharing of knowledge, production of guides and case studies, etc).

The cleanest option would be for the same Minister and entity to have the oversight of both of the leadership roles. This then suggests a department, though there may be other options.

A modestly resourced function within a department would promote:

- A view across the regulatory compliance sector, including government departments, Crown agencies/entities, and local government.
- Flexibility on the creation of networks (communities of practice), with the potential for a variety of clusters and sub clusters to embrace the fact that all/most/many agencies will have common interests on some issues, whilst a small number will have interests in one or more discrete areas e.g. safety, or environmental protection, or serious criminal activity, etc.
- An integrated approach to promoting capability development, including an ability to provide or co-ordinate well informed sector input into the work of the ITO, the Skills Organisation.
- A well informed approach to advising the relevant Minister on strategic issues regarding the regulatory/compliance system overall.

Where would the CCCP fit in all of this? Well, it would either morph into or be superceded by some sort of advisory panel for the chief executive of the relevant department.

### **Concluding comments**

Thank you for the opportunity to provide this submission. I am happy to meet with Productivity Commission staff to discuss the points made and elaborate further on them. Also, as stated above, I would be happy to be a sounding board as the Commission develops its final report.