

Submission concerning the New Zealand
Productivity Commission Regulatory institutions
and practices Draft Report of March 2014

Submitted by Kevin Currie | Director | Paradox Consulting Ltd

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1. Introduction

- 1.1 This submission is made in response to the Productivity Commission Draft Report on regulatory institutions and practices of March 2014 [the Draft Report].
- 1.2 This submission is made in support of regulatory institution consolidation.
- 1.3 This submission is focused on consideration of the advantages and disadvantages of regulatory institutional consolidation canvassed in the Draft Report.
- 1.4 In this submission I argue that regulatory institutional consolidation offers a pathway for greater effectiveness and efficiency of regulatory institutions and has the potential to address many of the issues raised in the Draft Report.
- 1.5 Much of this submission is based on personal experiences and insights gained during 30 years working in a range of regulatory compliance environments including, New Zealand Police, private Investigation, general legal practice, and regulatory compliance in the electricity sector.

2. Perspective

- 2.1 There are too many regulatory institutions in New Zealand. The effect of too many regulatory institutions contributes, in my view, significantly to the issues identified in the Draft Report and undermines the effectiveness and efficiency of regulatory compliance practice in New Zealand.
- 2.2 This submission addresses a single issue considered in the Draft Report, Chapter 5 under the heading of Regulatory independence and institutional form. My focus is on consolidation of regulatory institutions considered at pages 119 – 125 of the Draft Report.

3. An argument for consolidation of regulatory institutions

- 3.1 I contend that consolidation of regulatory institutions ought to be further investigated as potentially offering advantages of effectiveness and efficiency over current regulatory institutional arrangements.
- 3.2 By consolidating regulatory institutions whether those that currently operate as small stand alone institutions or those operating as an operational unit within a large government department and creating a small number of large regulatory institutions that focus only on regulatory compliance I submit that many of the issues raised in the Draft Report would be mitigated.
- 3.3 New Zealand is a small country, which in itself provides unique advantages and disadvantages from a regulatory compliance perspective. The smallness means that we have to operate with constrained resourcing. The smaller the regulatory agency the more constrained the operating environment. Trade offs are made and as a result regulatory enforcement gaps are created and those who are minded to do so exploit those gaps. My argument is that larger regulatory compliance focused institutions operating nationally would go a long way toward closing regulatory compliance gaps through utilisation of a larger resourcing pool, removing compliance duplication and producing consistency in the application of regulatory practice.
- 3.4 I contend that regulatory institutional consolidation would make the regulatory system simpler to operate.
- 3.5 There is an international trend towards consolidation of regulatory institutions and the Draft Report references a number of reports supporting this trend. This signals that there is some value in this approach.
- 3.6 The Draft Report canvases a number of benefits and disadvantages for consolidation. Benefits include greater efficiency arising from economies of scale and scope, reduced administrative burdens inconsistency or complexity for regulated entities, independence, and greater policy focus and connection with operations. I submit that these are sufficient reasons to explore the consolidation pathway. However several perceived disadvantages canvased in the Draft Report appear to stand as a barrier to exploring that pathway. The purpose of this submission is to provide counter arguments to the disadvantages presented in the Draft Report at pp. 121- 122 and in doing so perhaps persuade further investigation of this option.

3.7 The Draft Report at pages 121 – 122 lists six perceived disadvantages. Set out below I have attempted to capture the essence of the stated disadvantages and offer an alternative view in order to persuade further investigation of the consolidation option.

3.7.1 Loss of focus

The argument here is that multi-sector or multi-regime agencies may focus less on some industries or regimes than single sector regulators, and be less effective.

I contend that any risk of a multi-sector or multi-regime agency losing focus can be mitigated through role clarity, reporting, monitoring and evaluation. If loss of focus is a know risk then mitigation strategies can be put in place to manage that risk.

An investigation of regulatory institutions where consolidation has taken place would inform us as to whether this is a valid issue and of sufficient weight to prevent consideration of the agency consolidation option.

3.7.2 Loss of perspective

The argument here is that the regulation of certain types of rare but catastrophic risks can be at risk from loss of focus within a consolidated agency.

My interpretation of the Health & Safety example referenced in the Draft Report is that regulatory objectives, those with a low likelihood of occurrence but with catastrophic outcomes, did suffer from a dilution of attention because it was just one of the responsibilities of a department with many responsibilities. The primary responsibility of the department referred to in this example was not that of regulatory compliance.

Today we still have regulatory compliance objectives situated within large government institutions where the primary objective of the institution is not regulatory compliance. It is possible that dilution of focus continues to occur in varying degrees across the regulatory compliance environment because of this.

I submit that the issue of loss of perspective is less likely to occur within a consolidated regulatory institution where regulatory compliance is the institutions only objective.

An investigation of regulatory institutions where consolidation has taken place may inform us as to how the issue of perspective is managed or might be managed where consolidation has taken place.

3.7.3 Loss of institutional support

This point argues that where regulation is only one of many areas of activity the regulatory compliance business can fail to get leadership attention because of competing priorities.

I agree with this point. It is clearly an argument that challenges the current state of some regulatory compliance institutional arrangements in New Zealand. It does not argue against consolidation of regulatory compliance institutions but argues against regulatory compliance being embedded in organisations where regulation is only one of many areas of activity.

3.7.4 Less accountability

This point is concerned about issues of accountability and role clarity.

I maintain that issues of accountability, responsibility and role clarity would be best addressed through the consolidation of regulatory institutions that only focus on regulatory compliance.

Poor role clarity has been identified and considered as an issue with current regulatory institutional arrangements [see Draft Report, Chapter 4 - Role Clarity] and potential solutions have been proposed. Those solutions could equally apply to multi-sector and or multi-regime agencies thus mitigating this perceived risk if the regulatory institutional consolidation path was adopted.

3.7.5 Loss of capability

The argument here is that large regulatory institutions have an issue with attracting and retaining the sector specific expertise needed for regulatory compliance work.

I suspect that the issue of capability retention is an issue for any regulatory compliance institution and is not solely dependent on institutional structure.

Chapter 12 of the Draft Report considers capability issues and a number of recommendations have been made that would effectively capture and mitigate this issue.

I submit that the loss of capability issue is not a disadvantage of sufficient weight to prevent further investigation of the regulatory compliance consolidation option.

3.7.5 Cost and disruption

The argument here is that amalgamation or mergers involve their own costs and unintended consequences and that any consolidation of regulatory compliance institutions might best be achieved through the transfer of functions and delegation of responsibilities.

It therefore appears that there is a potential consolidation pathway option, one involving the transfer of functions and delegation of responsibilities, available for further investigation.

Again an investigation of regulatory institutions where consolidation has taken place would inform us as to the best approach.

4. Conclusion

The Productivity Commission, Draft Report on Regulatory institutions and practices, March 2014 identified a raft of issues. This submission focuses on one single issue – that of regulatory compliance institutional consolidation.

I understand that the aim of the Productivity Commission investigation of regulatory institutions and practices is to improve design and operation of regulatory regimes over time and ultimately improve regulatory outcomes. In my view those objectives would be advanced by further investigation and consideration of the option to consolidate regulatory compliance institutions.

Kevin Currie