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Towards better local regulation

Summary version of draft report

Towards better local regulation

Summary version of draft report – December 2012

The New Zealand Productivity Commission

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Information on the Productivity Commission can be found on www.productivity.govt.nz or by contacting +64 4 903 5150

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Contents

About the summary version.....	iv
Terms of reference	v
Overview.....	1
1 About this inquiry	5
2 Local government in New Zealand.....	7
3 Diversity across local authorities	8
4 Allocating regulatory responsibilities.....	9
5 The funding of regulation	12
6 The regulation-making system	14
7 Regulation making by central government.....	15
8 Local government cooperation	18
9 Local authorities as regulators	20
10 Local monitoring and enforcement	22
11 The cost impact of local government regulation on businesses.....	24
12 Making resource management decisions, and the role of appeals	26
13 Local regulation and Māori	28
14 Assessing the regulatory performance of local government	30

KEY

Key points

- The key points box summarises the main considerations and findings on each topic.

Q

Questions

F

Findings

R

Recommendations

About the summary version

The inquiry into local government regulatory performance has proven to be a wide and challenging piece of work. The content of this draft report has benefited greatly from constructive and robust feedback on all aspects of the inquiry. The inquiry process so far has involved extensive engagement with interested parties, including around 80 engagement meetings and receipt of nearly 60 submissions on the issues paper. The Commission surveyed councils, and 1500 businesses also responded to a survey about their interaction with councils.

The draft report contains some initial findings and questions for further investigation. The Commission is keen to receive further input from interested parties over the remainder of the inquiry period to help ensure a high-quality final report by 1 May 2013. To see the full version of the draft report, - including information on how to make a submission – please visit our website www.productivity.govt.nz.

Key inquiry dates

Draft report submissions due: 6 March 2013

Final report to Government: 1 May 2013

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Terms of reference

Local Government Regulatory Performance

Context

1. The Government has launched '*Better Local Government*', an eight point reform programme to improve the legislative framework for New Zealand's councils. It will provide better clarity about councils' roles, stronger governance, improved efficiency and more responsible fiscal management. These local government reforms are part of the Government's broader agenda. We are rebalancing the New Zealand economy away from the increased public spending and debt of the previous decade. We are building a more competitive and productive economy. This requires that both central and local government improve the efficiency of delivering public services.
2. Local government, at both regional and territorial level, is involved in many regulatory roles covering, for example, building, resource management, food safety, and alcohol. There is no consistent approach regarding what regulatory functions are most effectively achieved nationally or locally. There is also a concern in local government that functions are allocated to councils without adequate mechanisms for funding. The issue of what is best regulated at the national and local level is also important to the private sector which, through rates, taxes and fees, funds both. There are opportunities to improve New Zealand's productivity through a more efficient regulatory framework.

Scope

3. Having regard to the context outlined above, the Commission is requested to undertake an inquiry into opportunities to improve regulatory performance in local government. For the purposes of this inquiry, the Commission should:

Regulatory Functions of Local Government

- a. identify the nature and extent of key regulatory functions exercised by local government;
- b. perform a stocktake to identify which local government regulatory functions are undertaken on the direction of central government and which are undertaken independently by local government;
- c. develop principles to guide decisions on which regulatory functions are best undertaken by local or central government;
- d. identify functions that are likely to benefit from a reconsideration of the balance of delivery between central and local government, or where central government could improve the way in which it allocates these functions to local government;

Improving Regulatory Performance in Local Government

4. Taking into account the principles developed in point (c) above:
 - e. assess whether there is significant variation in the way local government implements its regulatory responsibilities and functions, and the extent to which such variation is desirable. For example whether variation reflects differences in local resources or preferences or insufficient direction from central government;
 - f. identify opportunities for both central and local government to improve the regulatory performance in the local government sector. For example how to overcome any key capability, resourcing, or regulatory design constraints;

- g. examine the adequacy of processes used to develop regulations implemented by local government and processes available to review regulations and regulatory decisions made by local government; and
- h. recommend options to allow for the regular assessment of the regulatory performance of the local government sector, for example whether common performance indicators can be developed to assess performance.

Other matters

- 5. Where possible, the Commission should seek to quantify relevant costs and benefits of recommendations it makes in the inquiry. The Commission should prioritise its effort by using judgement as to the degree of depth and sophistication of analysis it applies to satisfy each part of the Terms of Reference.
- 6. The inquiry should not make recommendations that would directly affect representation or boundary arrangements for local government.

Consultation Requirements

- 7. The Commission should take into account existing and ongoing work in this area to avoid duplication, including the Government's eight point reform programme, resource management reviews, the Local Government Rates Inquiry, and the Auditor General's work on performance management.
- 8. In undertaking this inquiry the Commission should consult with key interest groups and affected parties. To ensure that the inquiry's findings provide practical and tangible ways to improve regulatory performance, the Commission should work closely with Local Government New Zealand, the wider local government sector and government agencies with regulatory regimes that affect local government.

Timeframe

- 9. The Commission must publish a draft report and/or discussion paper(s) on the inquiry for public comment, followed by a final report, which must be submitted to each of the referring Ministers by 1 April 2013.

HON BILL ENGLISH, MINISTER OF FINANCE
HON DAVID CARTER, MINISTER OF LOCAL GOVERNMENT
HON JOHN BANKS, MINISTER FOR REGULATORY REFORM

Overview

This overview provides a summary of the Commission's draft inquiry report on opportunities to improve the regulatory performance of local government. The draft is designed to elicit further submissions to guide the Commission's thinking as it prepares final recommendations. Findings are still tentative at this stage, and the draft raises questions and is testing ideas.

About this inquiry

The Commission has been asked to:

- develop principles to guide decisions on which regulatory functions are best undertaken by local or central government, and identify functions that would benefit from a reconsideration of the balance of delivery between central and local government;
- identify opportunities for both central and local government to improve the regulatory performance of local government; and
- recommend options for regularly assessing the regulatory performance of the local government sector.

The Commission's work to date

The Commission's tentative findings have been informed by a comprehensive engagement process. This began in July with the release of the inquiry Issues Paper on which 59 submissions were received.

Information from the inquiry submissions has been supplemented by approximately 80 engagement meetings with representatives from local authorities, community groups, businesses and central government agencies. The Commission has also conducted two surveys – one aimed at eliciting the views of all local authorities in New Zealand and the other targeted at 1500 New Zealand businesses from a cross-section of industries. A number of case studies on specific regulatory areas have also been developed.

The Commission has also carried out extensive analysis of Statistics New Zealand data in order to better understand the nature and diversity across local authorities, including research into the composition of regional economies and labour markets.

Together, these have provided the Commission with a rich picture of the regulatory issues facing local government.

What is 'local government regulation'?

Local authorities are responsible for a wide range of regulatory functions, from land and resource use under the Resource Management Act 1991, to building construction standards, food and hygiene regulations, the control of liquor and gambling activity, and waste management. In fact, the Commission has identified some 30 pieces of primary legislation that assign regulatory responsibilities to local authorities, and many other secondary instruments.

Importantly, statutes that confer regulatory responsibilities on local government, including the responsibility to prepare district and regional plans, far outweigh the regulations made by local authorities under the powers of the Local Government Act 2002. Indeed, the Commission has found that most bylaws are made under enabling statutes rather than under the more general provisions of the Local Government Act. Overall, local authorities appear not to be using their powers of general competence to enter new areas of regulation; however, they will rigorously use existing regulatory tools to address community issues and concerns.

A 'whole of system' approach

Because almost all of local government's regulatory functions are devolved or delegated from central government, it is important to take a step back and look at the regulatory system in its entirety.

To this end, the Commission has adopted a 'whole of system' approach which recognises that local authorities are part of a broader regulatory system. It is the performance of the entire system that determines how well regulations achieve their objectives.

Adopting a 'whole of system' approach means examining the entire regulatory cycle – from policy analysis and the decision to regulate, to the design of regulation, allocation of regulatory roles, implementation, monitoring and enforcement and performance assessment.

Divergent views are creating tension between central and local government

An obvious and growing tension exists between central and local government. The Commission believes a key source of this friction is different understandings of the role of local government in New Zealand's regulatory system, and indeed in the broader constitutional context.

There is a tendency in central government to (incorrectly) view councils as simply operational arms of central agencies – subservient organisations that must be responsive to the instructions of the Minister. Local authorities on the other hand view themselves as largely autonomous organisations that have their own funding base and whose leaders are elected by, and accountable to, their local constituents.

In addition to creating confusion and frustration, the absence of a well-defined constitutional or fiscal relationship between central and local government can have implications for the design and implementation of regulations – particularly where the interests of local authorities do not align with the broader objectives of central government regulation.

The quality of regulations reflects central government processes

The Commission has found a number of shortcomings in the way that regulations are made at the central level – these including a lack of implementation analysis, poor consultation and weak lines of accountability. While these shortcomings are not universal across all agencies, they are common enough to be of concern.

These shortcomings were reflected in the Commission survey of local government (results available online) which illustrated a strong belief within the sector that central government neither understands, nor adequately considers, the impacts of new regulatory functions it assigns to councils.

This can reduce the flexibility of councils to allocate their internal resources and in doing so can draw resources away from areas with higher value to local communities.

How should roles be allocated between the tiers of government?

In principle, the Commission believes that regulatory functions should be performed closest to the community that is affected, unless there is good reason to centralise. By adopting this approach, regulatory decisions are most likely to reflect local preferences and lead to efficient outcomes.

However, there are circumstances in which the efficiency of local decision making needs to be balanced against the gains from coordinating or centralising. These circumstances include:

- where the costs or benefits of regulation spill over to other jurisdictions (eg when discharges into a river in one jurisdiction create clean-up costs for downstream jurisdictions);
- where cost-savings can be leveraged;

- where jurisdictions have populations with similar preferences and demands for regulatory services (in this case duplication can be reduced without reducing the efficiency gains from reflecting local preferences); and
- where the necessary competencies, information and resources are only available centrally.

The Commission has developed a framework to guide the allocation of regulatory functions.

National standards do not necessarily improve consistency

The Commission has found that national regulatory standards are often inconsistently applied. The inconsistency usually stems from different understandings by local officials working on the ground. Greater consistency can be achieved through sharing good practice and coordination between local authorities, which could be facilitated by relevant departments and ministries.

Monitoring and enforcement appears to be under-resourced

There is evidence to suggest that monitoring of local regulations is under-resourced and that this is undermining the achievement of regulatory objectives. Inquiry participants suggested that statutory timeframes are resulting in councils spending more resources on processing consents than they would otherwise consider efficient. The result is that other regulatory tasks (such as monitoring and enforcement) may receive fewer resources than necessary.

There may be gaps in the enforcement tools available to councils

While local authorities generally believe they have sufficient enforcement tools at their disposal, there is a strong feeling within parts of the sector that regulations would be considerably more effective if infringement notices were made further available to councils for a wider variety of noncompliant behaviour.

Cooperation on regulatory functions is widespread

The Commission has observed a considerable level of cooperation between local authorities on regulatory functions. Cooperation can capture many of the benefits of centralisation (such as economies of scale, access to skills and expertise, and the exchange of leading practice) while maintaining the advantages of local decision making (such as the ability to cater for spatial variations in community preferences).

The intersection between Māori interests and local regulations is becoming increasingly important

Involving Māori in decision-making presents a significant opportunity and can act as a catalyst for innovation. Recent moves towards co-governance arrangements are, for those local authorities involved, one of the most fundamental changes to their nature and operations in recent times. To achieve meaningful involvement of Māori (and in particular to make co-governance arrangements effective), local authorities need to find new ways of working with their communities and carrying out environmental management.

Appropriately recognising the relationship of Māori to aspects of the environment involves effectively meshing two different systems of governance – local representative democracy, and the tikanga and kawa of local iwi. At present, this governance or 'system' issue is left largely up to local authorities to resolve. There are real questions about whether the current legislative framework effectively enables such relationships.

Mechanisms for assessing the regulatory performance of local government need improving

There are a number of weaknesses in the current systems used to assess the regulatory performance of local governments. These include insufficient use of performance information to identify performance improvements, the absence of feedback loops between central and local government and a lack of balance in what is measured.

The Commission is seeking feedback on a number of options for improving these performance systems.

Ways forward

In developing solutions to the issues identified to date, the Commission is focusing on a number of broad themes:

- Achieving a closer alignment of incentives among the different regulatory actors (including strengthening the accountability of central government for the quality of the regulations devolved or delegated to local government).
- Ensuring that there is adequate capability at both central and local levels to provide effective regulation and to lift the quality of analysis applied to regulatory design. This includes seconding local government staff to central government to assist with policy development and providing training to local government officers and Councillors when new regulatory responsibilities are introduced.
- Better co-ordinating regulatory activity to avoid unnecessary strains on the system (eg ensuring local authorities are given adequate lead time to prepare for regulatory change and phasing the introduction of new regulations to avoid bottle-necks).
- Improving the quality of engagement between central and local government through meaningful consultation.
- Encouraging a change of culture in both spheres of government so that they view each other as policy partners and co-regulators.
- Developing new tools to better understand how the regulatory system is performing.

1 About this inquiry

Key points

- Regulations touch many aspects of our lives – from the environment and buildings we live in, to the food we eat. Regulation is part of doing business and can have a major impact on a firm's profitability and growth. The impacts and outcomes of regulation are all around us.
- When designed well, and enforced efficiently and effectively, regulation can help achieve broader economic, social and environmental goals that underpin wellbeing.
- The Government has asked the Commission to undertake an inquiry into opportunities to improve regulatory performance in local government. Specifically to:
 - develop principles to guide decisions on which regulatory functions are best undertaken by local or central government;
 - identify opportunities for both central and local government to improve the regulatory performance of local government; and
 - recommend options for regularly assessing the regulatory performance of the local government sector.
- Local government regulatory activities have a clear impact on regional economic growth, and ultimately national economic growth.
- The scope and breadth of the regulatory functions of local government cannot be overestimated – the Commission has identified over 30 pieces of primary legislation that confer regulatory responsibilities on local government, and many regulations in secondary instruments.
- Local government regulatory activity sits within a wider regulatory system that can be characterised as complex, multi-level and mutually dependent. This raises inherent risks to regulatory efficiency and performance.
- The Commission's approach to this inquiry is to take a 'whole of system' view. That is, to examine the underlying institutions, principles and processes of the regulatory system and identify possible performance improvements – in the regulation-making process, implementation, monitoring and enforcement, how regulatory roles and responsibilities are allocated and how regulatory performance is assessed.
- Specifically, the Commission has found scope for improvements in the overall regulatory system for local government through reforms that help:
 - align the incentives of all regulatory actors;
 - ensure adequate capability at both central and local level;
 - co-ordinate multiple regulatory activities; and
- integrate multiple levels of government to ensure that regulation achieves its intended outcomes.

The report is structured as follows:

Chapter 2 describes the evolution and structure of local government in New Zealand. The constitutional place of local authorities is examined focussing on their role, powers, and accountability, and the nature and foundation of their regulatory responsibilities.

Chapter 3 outlines the extent and nature of diversity across local authorities. Differences in circumstances, endowments and local conditions across local authorities mean that local authorities face distinct regulatory challenges which, in turn, drive different approaches to regulation at the local level.

Chapter 4 draws on the theoretical literature, and on the experiences of submitters, along with survey responses, to develop a framework for allocating regulatory responsibilities between different levels of government.

Chapter 5 considers funding issues arising from the allocation of regulatory responsibilities.

Chapter 6 describes the architecture and constitutional foundations of New Zealand's regulatory system.

Chapter 7 takes a critical look at the adequacy of central government regulation making and identifies areas where regulatory governance is below leading-practice. Options for improving regulation-making at the central level are explored.

Chapter 8 explores the extent of cooperation between local authorities. Although the focus is primarily on horizontal cooperation across councils, consideration is also given to the impact of central government on the incentives for local authorities to cooperate. A potential framework is offered that identifies possible opportunities for further cooperation across councils.

Chapter 9 acknowledges that it is important that those regulated are treated promptly, fairly and consistently. It examines the behaviour of local authorities as regulators, drawing from submissions, engagement meetings and the Commission surveys.

Chapter 10 explores the challenges that local authorities can face when monitoring and enforcing regulations. It begins by examining the factors that determine regulatory compliance and the impact of these factors on enforcement. The chapter then draws on available data to discuss the adequacy of compliance monitoring by local authorities and whether they have a sufficient range of enforcement tools at their disposal.

Chapter 11 examines the costs impact of regulation on business, and provides insights into which regulations impact most on firms' cost structures.

Chapter 12 examines the decision-making and appeals processes for local regulations made under the RMA. It considers how the system of decision-making and appeals can better interact together.

Chapter 13 examines the involvement of Māori in local authorities' regulatory decision making. It identifies local authorities' statutory obligations towards Māori and the Crown's on-going responsibilities under the Treaty of Waitangi. It evaluates the extent to which the regulatory policy and procedural requirements for local authorities facilitate participation by Māori in local authorities' decision making as part of satisfying the Crown's Treaty responsibilities.

The report concludes with **Chapter 14** which considers how to improve regulatory performance assessment. Options are offered to improve performance assessment, involving more performance assessment at the 'system level' and opportunities to reduce the reporting burden. Feedback is sought on these options.

2 Local government in New Zealand

Key points

- There are significantly different understandings, both within central government and between central and local government, of the nature of the relationship between central and local government. These differences are evident at both the general and specific levels.
 - At the general level, there are differences in understandings of the overarching relationship between central and local government: in particular, there is disagreement about what the role of local government should be and to what extent it is, or should be, autonomous from central government.
 - At the specific level, there are differences in the context of specific regulatory frameworks: in particular, there are divergent views about the extent of local authorities' discretion in exercising specific regulatory functions and powers, and about the extent to which local authorities should be and are accountable to central government for their performance.
- It is important to be clear about the constitutional place of local authorities and, in particular, about the relationship between local and central government, because these matters will determine what options for the design of the regulatory system are feasible or appropriate. In particular, these issues shape how the regulatory system deals with the nature of accountability and extent of autonomy of local authorities.
- The uncertainties and tensions between local and central government are detrimentally undermining the effectiveness of current regulatory frameworks. The different understandings of the role, powers, and accountability of local authorities have created confusion and inefficiency in regulatory systems.
- While local government is a creature of statute, it operates as a largely autonomous provider of services, funded separately by property taxation and held accountable by voters. In the absence of well-defined constitutional or fiscal relationships, local and central government are most accurately regarded as two spheres of a system of collective decision making, each with revenue-collection powers to fund the implementation of its particular policies and programmes.
- Contrary to common perceptions, almost all regulations made or administered by local authorities are undertaken on the direction of central government, or are responses to obligations established under Acts of Parliament.

Findings

F2.1

The level of tension between central and local government about their respective roles may now be at a level that is unhealthy and could undermine the development and performance of regulatory functions.

F2.2

It is important to be clear about the constitutional place of local authorities and, in particular, about the relationship between local and central government, because these matters will determine what options for the design of the regulatory system are feasible and appropriate.

F2.3

Contrary to common perceptions, almost all regulations made or administered by local authorities are undertaken on the direction of central government, or are necessary for carrying out their duties under Acts of Parliament.

3 Diversity across local authorities

Key points

- New Zealand's local authorities are diverse in terms of their size, social make-up and industry structure.
- Reflecting this variation, New Zealand's local authorities face distinct regulatory challenges and so may adopt differing approaches to local government regulation.
- The available data suggests that the economic growth experience across New Zealand's local authorities has been diverse.
- Given diverse local economics and other regional differences, the regulatory policies of central government may lead to different outcomes in different regions, suggesting the need for careful consideration of the regional impacts of national policies.

Questions

Q3.1

To what extent should local government play an active role in pursuing regional economic development?

Findings

F3.1

New Zealand's national population is projected to grow over the next 25 years, but almost half of New Zealand's TA areas are expected to decline in population over this period.

F3.2

Differences in demography, labour markets and local incomes across New Zealand's local authorities may drive different regulatory needs and capacity at the local government level.

F3.3

Physical endowments vary across New Zealand's TAs, as does industrial activity. Employment data indicate a pattern of larger hub TAs, which tend to have fuller suites of industries, along with a larger number of more specialised smaller authorities.

F3.4

Greater industrial specialisation in smaller TAs suggests more specific regulatory needs in smaller authorities. This provides one explanation for variation in regulatory activity across New Zealand's TAs.

F3.5

New Zealand's TAs have had mixed employment growth experiences. Employment growth has been steadier in larger TAs, while varying significantly across smaller TAs.

F3.6

Local variation likely drives different regulatory approaches. Part of this variation in regulatory approach appears to be differing interpretations of local government's role in promoting economic growth.

F3.7

The appropriate role of local government in fulfilling its mandate to pursue economic growth has been left unclear by central government.

4 Allocating regulatory responsibilities

Key points

- The Commission has developed a framework for allocating regulatory responsibilities between different levels of government underpinned by the principle of subsidiarity – decision making, powers, responsibilities and tasks should reside with the lowest, or least centralised competent authority (level of government).
- If the issue to be regulated is a local one, and people affected by the decision are represented by the jurisdiction, and the jurisdiction has the information and capability to make a decision, then devolving decision making to those affected is likely to be the most efficient solution.
- Many local issues, however, also have benefits or costs that extend beyond the boundary of the local jurisdiction. Local decision making can be rebalanced to capture these broader interests in a number of ways – from the provision of guidance or direction, to a clarification of responsibilities, to a reassignment of role to the centre – depending on the relative weight given to the magnitude of spillover effects and the value accorded to local preferences.
- Where preferences are more homogeneous, greater consideration should be given to the efficiencies that come from avoiding duplication of decision making at the local level.
- Systematic analysis of the capabilities and information required to undertake regulatory tasks is required when designing a regulatory regime and assigning regulatory roles. How information and knowledge will be diffused between actors in a regulatory regime, particularly where tasks are allocated across different levels of government, is also an important consideration in the design of regulation.
- A central tenet of good regulatory design is that risk should be allocated to those parties able to manage it through the actions they are able to take. A misallocation of risk can have costly consequences and those costs may fall on parties unable to mitigate them efficiently. Insufficient attention has been given to the ability to manage risk in the allocation of regulatory roles.
- Uncertainty about roles and accountability, and problems in coordinating activity are likely to occur when regulatory responsibilities are split between central and local government.
- Both local and central government need to work on a constructive engaged relationship for the development of quality regulations and the delivery of regulatory outcomes.
- Feedback is sought on proposed guidelines for allocating regulatory roles and evaluating the assignment of roles.

Questions

Q4.1

Have the right elements for making decisions about the allocation of regulatory roles been included in the guidelines? Are important considerations missing?

Q4.2

Are the guidelines practical enough to be used in designing or evaluating regulatory regimes?

Q4.3

Are the case studies helpful as an indicative guide to the analysis that could be undertaken?

Q4.4

Should such analysis be a requirement in Regulatory Impact Statements or be a required component of advice to Ministers when regulation is being contemplated?

Q4.5

Should the guidelines be used in evaluations of regulatory regimes?

Findings

F4.1

Better regulatory decisions will be made, and overall wellbeing improved, when those who bear the costs and benefits from the regulation have representation in the jurisdiction making the decision.

F4.2

If there are spillover effects, better regulatory decisions will be made if the costs and benefits that are borne by those outside the decision making jurisdiction are taken into account.

F4.3

There are advantages from local decision making if preferences are heterogeneous because local governments are better at aligning local preferences than central governments, but where preferences are more homogenous across the country, there may be advantages from reducing the effort and cost of multiple decision makers.

F4.4

When allocating regulatory responsibilities, consideration should be given to what level of government has, or can most efficiently obtain, the relevant information needed for effective decision making and implementation.

F4.5

When allocating regulatory responsibilities, consideration should be given to the capabilities required of the role and the existence and quality of governance and accountability arrangements within the jurisdiction tasked with the role.

F4.6

Good regulatory outcomes are more likely to be achieved when there is clarity of role and coordination between levels of government responsible for standard-setting and implementation.

F4.7

Good regulatory decision making and implementation will be compromised if the level of government responsible is inherently inefficient or unaccountable.

F4.8

Submissions point to a mismatch between national and local preferences and priorities when it comes to regulation. Around half of local authority survey respondents agreed that there are conflicts between local priorities and regulations originating at central government level.

F4.9

Approximately 70% of businesses in New Zealand only deal with one council and for those businesses that operate over more than one jurisdiction, this is over a limited range of regulatory matters.

F4.10

Targeted approaches could be adopted for reducing the costs for businesses operating across multiple jurisdictions while maintaining the benefits of local tailored regulation.

F4.11

There are issues with insufficient regulatory capability but this can be found at all levels of government. There are a number of ways of dealing with capability gaps that do not always require a reassignment of roles to a different level of government.

F4.12

A misallocation of risk can have costly consequences. Insufficient attention has been given in the past to the ability to manage risk when allocating regulatory roles.

F4.13

Both local and central government need to work on a constructive engaged relationship for the development of quality regulations and the delivery of regulatory outcomes.

5 The funding of regulation

Key points

- The results of the Commission's survey show that almost half of councils identify building and construction consents as the regulatory function that takes up the most staff time and resources. Planning, land use or water consents were identified by 40% of councils.
- The Commission estimates that the four main regulatory activities undertaken by councils constitute, on average, around 6% of local authority operating expenditure (with a range of 2–10% in the councils examined).
- If the benefits of regulation accrue locally then it is appropriate that the associated costs are managed locally. The funding of regulatory functions is ultimately a policy matter for individual local authorities, based on the requirements of section 101(3) of the LGA, 2002.
- Regulations should be reviewed to remove centrally-set specific fee amounts. Fees should be determined by local authorities (subject to the requirements of section 101(3) of the LGA).
- The local government sector has a strongly held view that central government passes regulatory functions to local authorities without sufficient consideration of the funding implications for councils.
- Unfunded mandates occur when central government imposes additional responsibilities and costs onto local government without the funding necessary for their provision, or the ability to fully recoup the cost of carrying out these responsibilities.
- Unfunded mandates can lead to national and local priorities not being delivered to the optimal level. They can weaken the discipline on central government to make sure that the total benefits outweigh the total costs of regulation and can also lead to inequitable cost bearing, inefficient financing and under-resourcing of regulatory functions.
- Many local authorities that engaged with the inquiry were of the view that regulatory functions delegated to them should be at least part funded through taxation. Such funding would be highly likely to come with strong accountability requirements.
- There are a number of principles that should be considered if fiscal transfers for regulatory services are to be made.
- The Commission is yet to reach a conclusion on the issues arising from unfunded mandates in the provision of regulatory services and welcomes submissions on this topic.

Questions

Q5.1

Do any regulatory functions lend themselves to specific grants? If so, what is it about those functions that make them suitable for specific grants?

Q5.2

If general grants were to be considered, on what basis could 'needs assessments' be undertaken? What indicators could be used to assess need?

Q5.3

What would appropriate accountability mechanisms for funding local regulation through central taxation look like? How acceptable would these be to local authorities?

Findings

F5.1

The local government sector has a strongly held view that central government passes regulatory functions to local authorities without sufficient consideration of the funding implications for councils.

Recommendations

R5.1

Regulations should be reviewed to remove specific fee amounts and make those fees at the discretion of local authorities, subject to the requirements of section 101(3) of the Local Government Act 2002.

6 The regulation-making system

Key points

- To fully understand local regulation, a wider appreciation of the overall regulatory system is required.
- New Zealand regulatory process centres round the three branches of government – the legislature, the executive and the judiciary. These branches of government operate within a framework that is deeply intertwined with New Zealand’s constitution.
- The institutions, principles and processes through which regulations are made are important determinants of the quality of regulatory intervention.
- To promote rigorous analysis, Cabinet requires that a Regulatory Impact Statement (RIS) accompany all proposals sent to Cabinet for consideration. If a proposed policy is likely to have a significant impact on the New Zealand economy, or if there is significant risk or uncertainty around the policy, the RIS must be reviewed by the Regulatory Impact Analysis Team (RIAT) within Treasury.
- Most matters that go to the Cabinet for a decision are first considered by one or more Cabinet committees. Once a bill is introduced to the House, Select Committees examine the bill in detail. This can provide the public with an opportunity to comment on proposed legislation and participate in committee inquiries.
- Post-implementation reviews are a key source of feedback to Government on how well regulations are achieving their intended outcomes. Such feedback is central to the continuous improvement of a regulatory system.

7 Regulation making by central government

Key points

- The majority of regulatory functions undertaken by councils arise from statutes emerging from central government. Therefore, the ability of councils to deliver the intended regulatory outcomes is inherently linked to the quality of regulations produced at the central level. For this reason it is important to take a step back and look at the regulatory system in its entirety.
- Effective regulatory governance requires active management of the entire 'regulatory cycle' – from the decision to use a regulatory instrument, to its design, implementation, monitoring, enforcement and review. Good governance relates to both the stock and flow of regulations.
- Poor regulatory governance, particularly during the design phase, can result in regulatory failure. However, regulatory failure can be difficult to detect when costs are disbursed widely throughout society, when the effects of regulations take time to materialise, and when 'feedback loops' are not in place to prompt remedial action and/or reform.
- The Commission has identified several areas where regulatory governance within central government agencies is below leading practice. While deficiencies in these areas are not universal across all agencies, they can be important for the quality of regulations devolved or delegated to councils.
- The current shortfalls in regulatory governance are, to varying degrees, perpetuated by the difficulties in assigning responsibility for regulatory outcomes when regulations are designed at the central level and implemented at the local level.
- Current institutional arrangements seem to shield central government agencies from the full fiscal and political cost of decentralising regulatory functions. This appears to be reducing the incentive on central government agencies to undertake thorough analysis of regulations before passing them to local government to implement. It may also be reducing investment in the skills needed to undertake detailed implementation analysis at the local level.
- There is no single policy solution that will strengthen regulatory governance and improve the quality of decentralised regulations. Rather, a portfolio of measures will be needed to bolster the architecture of regulation making. These measures should focus on four key themes:
 1. Aligned incentives – strengthening accountability of ministers and public servants for the quality of regulations devolved or delegated to local government
 2. Improving capability – lifting the quality of analysis in central government of local government regulation
 3. Meaningful consultation – improving the quality of engagement between central and local government on regulatory issues
 4. Changing cultures – recognising local government as policy partners and co-regulators
- Pragmatic approaches to building better relationships between central and local government are needed. These approaches must be based on a mutual understanding that both levels of government ultimately exist to create public value and that their ability to create public value is tied, at least in part, to the actions of the other.

Questions

Q7.1

What measures, or combination of measures, would be most effective in strengthening the quality of analysis underpinning changes to the regulatory functions of local government?

Q7.2

What measures, or combination of measures, would be most effective in lifting the capability of central government agencies to analyse regulations impacting on local government?

Findings

F7.1

Regulation making at the central level is below leading practice. This is having a material impact on the quality of regulations devolved or delegated to the local government sector.

F7.2

Current institutional arrangements can shield central government agencies from the full fiscal and political cost of decentralising regulatory functions.

F7.3

When regulations are developed centrally and implemented locally the incentives faced by central government to undertake rigorous policy analysis are reduced. However, care needs to be taken not to confuse implementation problems with inadequacies in the underlying design of regulations – this requires careful post-implementation analysis.

F7.4

The degree of Ministerial pressure on the public service to provide quality advice on local government regulatory issues is a key influence on behaviour. It is therefore important that Ministers have strong incentives to ensure that the advice they receive on these issues is of high quality and the product of a rigorous policy process.

F7.5

The tendency of central government agencies to operate independently has resulted in regulatory functions being conferred on local government without considering their interaction and impact on existing regulatory functions administered by local authorities.

F7.6

An opportunity exists to use the Better Public Service Initiative to promote a more joined up, whole of government approach to regulatory policy involving the local government sector.

F7.7

The RIS process has a valuable role to play in ensuring the quality of regulations delegated or devolved to local government. However, at present this value is not being fully realised and improvements to the process are required.

F7.8

While there are some examples of leading practice, consultation with local government on the design of new regulations is generally poor.

F7.9

There is evidence to suggest that implementation analysis is a generic weakness of regulatory policy analysis in New Zealand. This weakness impacts on local government because local government is often the implementer of government policy.

F7.10

The financial, capability, capacity and risk management challenges faced by local government in implementing regulations appear to be poorly understood within central government. There is little analysis of how these challenges will impact the successful achievement of regulatory outcomes.

F7.11

A spectrum of measures exist that would help improve the quality of regulation delegated or devolved to local government. Many of these would have broader benefits for the overall standard of central government regulation making.

F7.122

While guidance and training material on good policy practices are available, the incentives on agencies to ensure they utilise this material are weak. Perhaps the most relevant example of this is the limited traction obtained by DIA's policy guidelines for regulatory issues involving local government.

F7.133

Pragmatic approaches to building better relationships between central and local government are needed. These relationships must be based on a mutual understanding that both levels of government ultimately exist to create public value and that their ability to create public value is tied, at least in part, to the actions of the other.

8 Local government cooperation

Key points

- Local government cooperation is an effective way of overcoming some of the ‘gaps’ identified in Chapter 1. It is part of a strategy for reducing capacity, information, administrative and policy gaps. As such, there is a sound conceptual basis for cooperation across councils.
- Reflecting the potential benefits, there is a great deal of cooperation, coordination, and sharing of resources occurring across local authorities. Cooperation around consents for building and construction, followed by planning, land use and water consents, and food safety are the main areas of regulatory cooperation. Councils are generally satisfied with the outcomes of cooperation and open to it across the range of their regulatory functions.
- A shared vision of regulatory outcomes and the buy-in of council management and councillors are important prerequisites for cooperation. Cooperation can be both informal (sharing information and best practice) and formal (sharing staff, contracting regulatory services to another council, joint procurement of professional services and better alignment of regulations).
- Cooperation can yield significant benefits but also involves considerable time and resource. As such, decisions to cooperate should be based on careful consideration and analysis.
- The actions of central government can significantly impact on the extent of horizontal cooperation across councils. If local authorities must respond too quickly to a new duty, they are more likely to establish and entrench their own in-house solution, reducing the likelihood of cooperation. Also, well-developed guidance material from central government can help facilitate cooperation.
- Information on the similarities and differences across local authorities, especially territorial local authorities, can be used to highlight potential collaboration opportunities to alleviate ‘capacity gaps’. Likewise, the relationship between administrative areas and local economic areas (as proxied by labour markets) can also highlight potentially beneficial cooperation opportunities.

Questions

Q8.1

What are the benefits and costs of cooperation? Are there any studies that quantify these benefits and costs?

Findings

F8.1

There is significantly more cooperation, coordination, and sharing of resources occurring amongst local authorities than is commonly known.

F8.2

Despite the wide use of cooperative arrangements, very few empirical studies have been undertaken (either domestically or internationally) to quantify the benefits and costs of council cooperation on regulatory functions.

F8.3

Because local authorities operate within a highly diverse set of circumstances, the returns from cooperation are likely to be highly situation-specific. As a result, significant care must be taken in applying or interpreting business cases from one jurisdiction in another.

F8.4

Cooperation can capture many of the benefits of centralisation while maintaining the advantages of local decision making (such as the ability to cater for spatial variations in community preferences).

F8.5

The speed with which central government seeks to implement new regulatory initiatives may materially affect the likelihood of local cooperation. Central government consultation processes, done well, can lay the foundation for local authorities working together.

9 Local authorities as regulators

Key points

- Local authorities do not appear to be using their powers of general competence to get into new areas of regulation. However, they will rigorously use existing regulatory tools to address community issues and concerns.
- Local authority Building Consent Authorities have taken a risk-averse stance to building consents due to the potential liabilities they face. Some local authorities will take a very cautious approach when they are required to regulate where a high level of technical expertise is required, reflecting capability constraints faced by councils.
- The involvement of elected councillors in regulatory decisions is most likely greater than previously understood. Political involvement sits on a spectrum, from clearly inappropriate practices such as deciding who should be prosecuted, through to less clear matters such as involvement on independent hearings panels, or making funding decisions at council level for potentially costly prosecutions.
- Inconsistency in the application of national regulatory standards at local government level more often than not occurs because of the different understandings of local officials working on the ground. Greater consistency would be achieved through sharing good practice and coordination between local authorities, which could be facilitated by relevant departments and ministries.
- Local authorities place a high premium on client satisfaction in measuring the performance of their regulatory services, but in practice results were mixed. Business survey respondents generally felt that local authority processing times had not improved over the last three years. Overall, 27% of respondents were actively dissatisfied with the regulatory services and approach of their local authorities.

Questions

Q9.1

Are there potential pooled funding or insurance style schemes that might create a better separation between councillors and decisions to proceed with major prosecutions?

Q9.2

Are bylaws that regulate access to council services being used to avoid incurring costs, such as the cost of new infrastructure? Is regulation therefore being used when the relationship between supplier and customer is more appropriately a contractual one?

Q9.3

What factors (other than the type of regulation most commonly experienced by different industry groupings and the size of businesses in these sectors) explain differences in the satisfaction reported by industry sectors with local authority administration of regulations?

Findings

F9.1

Local authorities do not appear to be using their powers of general competence to get into new areas of regulation. However, local authorities are using the powers available to them to deal with the local issues they face. Some local authorities will take a very cautious approach with regulation that requires a high level of technical expertise, reflecting capability or risk issues.

F9.2

Elected council members involvement in individual regulatory decisions is most likely greater than previously understood.

F9.3

The independent hearings panel process can be a good way of ensuring the views of interested parties are heard fairly and lead to recommendations being made to councils.

F9.4

Centralising functions or providing more national guidance is often seen as a solution to inconsistency. However, inconsistency more often than not occurs because of the different understandings or approaches of local officials working on the ground. Greater consistency is more likely to be achieved through sharing good practice and coordination between local authorities, which could be facilitated by relevant departments and ministries.

F9.5

Twenty seven per cent of business survey respondents were actively dissatisfied with the regulatory services and approach of their local authorities, however there is considerable variation between industries.

10 Local monitoring and enforcement

Key points

- The ideal enforcement strategy is one that strikes the right balance between persuasion and coercion in securing regulatory compliance. This balance may differ between regulatory regimes. Similarly, the ideal balance may differ between local authorities (LAs) due to the different characteristics of regulated populations.
- General conclusions on the overall 'sufficiency' of compliance monitoring are difficult and must be treated with caution. Nevertheless, there is evidence to suggest that monitoring of local regulations is often under-resourced, and that in some cases this may be undermining the achievement of regulatory objectives.
- The presence of funding constraints within regulatory budgets does not in itself prove that insufficient monitoring is occurring. It does, however, highlight the importance of allocating available budgets in an efficient manner.
- Inquiry participants have suggested that statutory timeframes are resulting in LAs spending more on administrative tasks than they would otherwise consider to be 'optimal' for their community. The result is that other regulatory tasks (such as monitoring and enforcement) may receive less funding than necessary.
- While local authorities appear broadly happy with the enforcement tools at their disposal, there is a strong feeling within the sector that regulations would be considerably more effective if additional measures such as the use of infringement notices were made more readily available to LAs. A fuller understanding of the benefits and costs of this proposal are worth exploring.
- Data from the Ministry for the Environment suggest that monitoring levels of Resource Management Act 1991 (RMA) consents are higher than they were in the mid-2000s, with 68% of consents where monitoring was a condition of the consent being monitored in 2010/11.
- In 2010/11, some 14,380 RMA consents were monitored, with 72% found to be compliant with the conditions of their consent. This figure may conceal non-compliance among people who never apply for consent – ie, people who are not 'in the system' and whose non-compliance is therefore not included in the statistics.
- Enforcement of resource consents appears to be increasing through both formal and informal methods.¹ However, of the formal enforcement options used in 2010/11, 81% were Excessive Noise Directions (END).
- Fines imposed by the Environment Court have been increasing in recent years. Judges have noted that fines imposed in previous years have been insufficient to deter non-compliance.

Questions

Q10.1

Are risk-based approaches to compliance monitoring widely used by LAs? If so, in which regulatory regimes is this approach most commonly applied? What barriers to the use of risk-based monitoring exist within LAs or the regulations they administer?

¹ Formal enforcement methods include infringement notices, abatement notices, directions or prosecutions. Informal enforcement methods include verbal warnings, letters and visits.

Q10.2

The Commission wishes to gather more evidence on the level of monitoring that LAs are undertaking. Which areas of regulation do stakeholders believe suffer from inadequate monitoring of compliance? What are the underlying causes of insufficient monitoring? What evidence is there to support these as the underlying causes?

Q10.3

Which specific regulatory regimes could be more efficiently enforced if infringement notices were made more widely available? What evidence and data are there to substantiate the benefits and costs of doing this?

Q10.4

Is there sufficient enforcement activity occurring for breaches of the RMA, other than noise complaints? If not, what factors are limiting the level of enforcement that is occurring?

Q10.5

Should the size of fines imposed by infringement notices be reviewed with a view to making moderate penalties more readily available? What evidence is there to suggest that this would deliver better regulatory outcomes?

Q10.6

Is sufficient monitoring of liquor licences occurring? What evidence and data exists that would provide insights into the adequacy of current monitoring effort?

Q10.7

How high is the burden of proof for each kind of enforcement action? Is it proportional to the severity of the action?

Q10.8

Is the different 'gradient' in the use of compliance options because there are missing intermediate options?

Q10.9

Are the more severe penalties not being used because there is insufficient monitoring activity by local authorities to build sufficient proof for their use?

Q10.10

Why are relatively few licences varied?

Findings

F10.1

Statutory timeframes for consent processing may have the unintended consequence of diverting resource away from other parts of the regulatory process, especially monitoring and enforcing regulatory compliance.

F10.2

Local authorities need a wider range of enforcement methods to ensure they can always take a proportional approach to enforcement.

11 The cost impact of local government regulation on businesses

Key points

- Regulation is important in achieving broader social, environmental and economic goals that underpin wellbeing. It is also part of doing business and can have a major impact on a business's productivity, profitability and growth. Poorly designed and inefficient regulation can lead to unnecessary and excessive regulatory costs that have wider impacts on productivity and wellbeing.
- The same regulations will affect businesses differently. For example, small businesses may not have the same capability as larger ones to monitor new regulatory requirements, identify how such requirements impact on them, and manage on-going compliance.
- Delays in obtaining responses from local authorities, and the sequencing of multiple regulatory requirements and decisions by local authorities, can impose substantial holding costs on business. Understanding the regulatory process from the customer's point of view is important in keeping compliance costs to a minimum and needs to be considered in administrative design.
- The regulatory impact and compliance costs arising from any regulation cannot be thought about in isolation. The cumulative effect of regulation – that is, the impact of an additional regulation to the existing stock of regulation of business – is an important consideration in regulatory design.
- The Commission's survey of businesses showed that almost three quarters of businesses had at least some contact with local government through the regulatory process. Of those that did:
 - 39% report that local government regulation places a significant financial burden on their business.
 - Nearly half of respondents thought the time and effort involved in complying with local authority regulations is too large (and nearly half were neutral or disagreed), and 70% of respondents were dissatisfied with the fees charged.
 - 'Planning, Land Use or Water Consents' and 'Building and Construction Consents' have the greatest cost impact on businesses. Both of these local government regulatory areas are typically associated with new projects such as expanding or building something from scratch.
 - Around 40% of surveyed businesses had contact with the local council over four or more separate regulatory areas.
- The business survey also asked businesses to compare the overall compliance costs of local government regulation with other regulations administered at the central level. 64% of business reported that complying with local government regulation has a greater cost impact than complying with tax regulations (PAYE, GST and business income). Only 12% reported that it has a greater impact than complying with employee superannuation schemes.

Findings

F11.1

Delays in obtaining responses from local authorities, and the sequencing of multiple regulatory requirements and decisions by local authorities, can impose substantial holding costs on business.

F11.2

The Commission's survey of businesses showed that almost three quarters of businesses had at least some contact with local government through the regulatory process. Of those that did:

- 39% report that local government regulation places a significant financial burden on their business.
- Nearly half of respondents thought the time and effort involved in complying with local authority regulations is too large (and nearly half were neutral or disagreed), and 70% were dissatisfied with the fees charged.
- 'Planning, Land Use or Water Consents' and 'Building and Construction Consents' have the greatest cost impact on businesses. Both of these local government regulatory areas are typically associated with new projects such as expanding or building something new.
- Around 40% of surveyed businesses had contact with the local council over four or more separate regulatory areas.

12 Making resource management decisions, and the role of appeals

Key points

- With the introduction of the RMA in 1991 many resource management decisions underwent a transition to a strongly devolved decision-making system with a strong element of public participation. The devolved tenet of the RMA was introduced alongside largely unaltered appellate structures.
- The Environment Court is an appellate court; its workload is largely generated by decisions of local authorities. The RMA gives the Court the power to render judgement on any aspect or instrument in the planning process and resource consent system (but not National Policy Statements, NPSs). Appeals are heard on a *de novo* basis, which means the Court hears evidence afresh and comes to its own decision on the merits of the case.
- Only a small proportion, around 2%, of RMA decisions reach the Court. Of those decisions, some of them may have a substantive impact with respect to plans, large consents or establishing precedent.
- Some weaknesses and perverse incentives and outcomes have been identified by parties to the RMA decision-making processes.
- Given the Legislation Advisory Committee's (LAC) general observations on the choice of appellate procedures, the use of hearings *de novo* in the RMA stands out as unusual. The LAC guidelines note "An appeal by way of re-hearing is the appropriate procedure in most contexts. It is more expeditious than a hearing *de novo* because it focuses on specific alleged errors, but not as restrictive as an appeal *stricto sensu*. Indeed, an appeal should focus on specific alleged errors."
- The debate on RMA appeals processes appears to have centred on 'extremes' – *de novo* versus appeals on points-of-law (or even removing the Court altogether).
- The debate on the appellate procedures under the RMA would benefit from more explicit consideration of some of the options in between the extremes, notably those included in the LAC guidelines. Looking at statutes that bear resemblance to the RMA, the option of re-hearing appears to warrant consideration. Also, who should have legal standing appears to warrant further consideration.
- If the devolved decision making by local authorities is still favoured, it appears timely to revisit the RMA appellate procedures. A different set of appeals procedures may incentivise public participation in the policy-making process at the local level, rather than litigating to create regulatory policy.

Questions

Q12.1

Is the very low number of consents declined best explained by risky applications not being put forward, the consent process improving the applications, or too many low-risk activities needing consent?

Q12.2

Would different planning approaches lead to less revisiting of regulation? What alternative approaches might there be?

Q12.3

What factors have the strongest influence on whether a District Plan or Regional Policy Statement are appealed?

Q12.4

Overall, would it be feasible to narrow the legal scope of appeals?

Q12.5

Would it be feasible to narrow legal standing?

Q12.6

What features of the bylaw-making process are distinct from the district plan-making process, and how might you use practice under the one to improve the process under the other?

Findings

F12.1

Explicit consideration of the more moderate options included in the LAC guidelines for appeals processes needs to be included in any discussion of changes to the plan-making process.

13 Local regulation and Māori

Key points

- The Crown cannot transfer its obligations and responsibilities under the Treaty of Waitangi. The Resource Management Act 1991 (RMA) and Local Government Act 2002 (LGA) impose certain obligations on local authorities in respect of Māori, but they do not delegate to local authorities the Crown's obligations and responsibilities under the Treaty.
- It is the Crown's responsibility to interpret its obligations under the Treaty and to translate these into policy and procedural requirements for local authorities. There is a question about whether the policy and procedural requirements in the RMA and LGA, with respect to facilitating participation by Māori in local authorities' decision making, satisfy the Crown's responsibility.
- Māori have an interest in the regulatory system, especially for environmental management, that stems from their relationship with the environment (which can include a kaitiaki relationship). Both the RMA and LGA can be interpreted as requiring provision for this relationship to be made in the regulatory decision-making process.
- A kaitiakitanga relationship is more complicated than a strict question of who owns or who regulates a resource. Māori might have a kaitiakitanga relationship with an environmental feature that they do not have a legal property title to (notwithstanding native title claims).
- The challenge local authorities face where Māori have a kaitiaki interest in regulation is to effectively mesh two governance systems in a way that works for both parties and the community.
- Adequate systems, processes, and rules need to be in place to mitigate the perceived risk that recognition of tikanga Māori might be used as an excuse for inappropriate commercial gain (accepting that such an abuse would run counter to the kaitiakitanga and manaakitanga values that exist within tikanga Māori). There are examples of good models to achieve this.
- There are rules within any regulation about who exercises or is involved in the exercise of the powers set out in the regulation. Arguably, it is these process or decision rules (rather than the actual content of the regulation) that are of most importance to maintain, enhance, or restore the kaitiakitanga relationship.
- Current regulatory design may do an insufficient job of enabling local authorities to take account of kaitiakitanga. In particular, the decision-making system relies largely on levels of capacity that often are not present.

Questions

Q13.1

Are there any other ways that local authorities include Māori in decision making that should be considered?

Q13.2

What are some examples of cost-effective inclusion of Māori in decision making you are aware of?

Q13.3

What more intermediate options could there be for including Māori in RMA decision-making?

Q13.4

What are some examples of decision-making systems well-tailored to Māori involvement?

Findings

F13.1

On the available evidence, the current system for involving Māori in resource consent decisions does not appear to be working well for anyone, due largely to the costs and timeframes involved.

14 Assessing the regulatory performance of local government

Key points

- Regulatory performance assessment involves gathering information about the performance of a regulatory activity, process or system, and reflecting critically on this information.
- Leading performance assessment practices include strong auditor/local authority interaction, outcome-based annual reports by local authorities, comprehensive Society of Local Government Managers guidance material and some of the regulatory performance frameworks administered by central government.
- However, the Commission has identified a number of weaknesses in relation to local government regulatory performance assessment, including:
 - insufficient focus on using performance information to identify potential improvements;
 - lack of a system mindset in the development and administration of regulatory regimes (ie, there is a focus on individual parts of regulatory regimes but less focus on how the parts link up and depend on each other);
 - lack of feedback loops between the central and local government components of regulatory regimes;
 - lack of balance in what is measured (ie, overly focussed on timeliness and transactional measures); and
 - a potential weakness in the accountability framework as it relates to assessing capability.
- Options for improving the assessment of local government regulatory performance include:
 - encouraging local and central government to consider reducing the frequency of some regulatory performance reporting and reducing the external reporting burden;
 - encouraging central government to share administrative data to reduce the need for local authorities to produce new performance information;
 - creating documents that briefly describe regulatory regimes by setting out the purpose of a regulatory regime, the roles of different players in the regime and the types of benefits and costs that the regime will create;
 - convening small groups of people with responsibilities within a regulatory regime to briefly and jointly use existing performance information to assess the performance of a regime from the policy-making stage to delivery, including to identify key system issues and concerns. Such reviews could be progressively undertaken over time; and
 - improving the consistency of performance assessment frameworks across different forms of regulation.
- The Commission seeks feedback on the proposed options (and any other options that could improve performance assessment) and their costs and benefits.

Questions

- Q14.1** How have local authorities used the Society of Local Government Managers guide on performance management frameworks – or other guidance material – to assess local government regulatory performance?
- Q14.2** Is there a sufficient focus on regulatory capabilities in local government planning and reporting under the Local Government Act?
- Q14.3** Have local authorities encountered difficulties in dealing with different performance assessment frameworks across different forms of regulation? Which forms of regulation do a good job of establishing performance assessment frameworks, in legislation or by other means?
- Q14.4** Which of the Commission's performance assessment options have the best potential to improve the efficiency and effectiveness of assessment of local government regulatory performance and improve regulatory outcomes? What are the costs and benefits of these options? Are there other options in addition to those that the Commission has identified?

Findings

- F14.1** Assessment of local government regulatory performance will have net benefits when it improves regulatory outcomes while minimising the cost of performance assessment. The key elements are:
- a good understanding of the steps that lead to regulatory outcomes;
 - considering multiple dimensions of performance;
 - adaptability to different regulatory regimes and local and national priorities; and
 - a focus on minimising assessment costs by considering the frequency, form and information-requirements for performance reporting.
- F14.2** There is a crowded and disjointed regulatory performance reporting space for local government, driven by the combination of reporting requirements in the Local Government Act and the legislative reporting requirements for different forms of regulations.
- F14.3** There are several leading practices in relation to local government regulatory performance assessment, including:
- auditor/local authority interaction;
 - Society of Local Government Managers guidance material;
 - local authority annual reports that have moved away from transactional performance measures toward outcome-based, impact-based, and service-based measures;
 - International Accreditation New Zealand auditing processes for Building Control Authorities; and
 - the Ministry for the Environment biennial Resource Management Act performance survey.

F14.4

The value of performance assessment is likely to be impaired at present as a result of lack of balance in what is measured, insufficient focus on assessment of performance information, a potential weakness in the accountability framework as it relates to capability, and potential inconsistencies in the way regulatory performance is assessed across regulations.

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