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## F Regulation review and reform: international perspectives

The Office of Regulation Review's annual series *Regulation and its Review*, has included a review of selected international developments in areas of regulatory impact analysis and other measures for ensuring that new regulation is efficient and effective. This report continues the practice.

### *Overview*

Demonstrating that best practice regulation making is an ever-evolving process, most of the English-speaking countries with which Australia typically compares itself and which have comparable regulatory reform programs, specifically the United Kingdom, Canada and New Zealand, have revised their regulatory impact analysis requirements over the 2006-07 period. The European Commission, which has similar comprehensive requirements, is also currently undertaking a review of its requirements.

While the United States has not altered its core regulatory impact analysis processes in the past year, the US government agency involved in promoting good regulation has become concerned that guidance documents in that country are becoming quasi-regulatory and are not being subjected to the same scrutiny as regulation. Hence, it has responded by issuing a policy on good guidance processes.

Within the Asia-Pacific region, regulatory impact analysis requirements are not currently common, especially requirements comparable with those in Australia, but a number of countries are taking steps to introduce regulatory reform programs.

This appendix briefly outlines developments in the United States, United Kingdom, Canada, New Zealand and the European Union, gives a brief state-of-play in regulatory reform in Australia's near neighbours, and identifies recent work undertaken by the Organisation for Economic Cooperation and Development (OECD) and the Asia-Pacific Economic Cooperation (APEC) forum on regulatory reform.

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## *United Kingdom*

On 14 May 2007 the United Kingdom Cabinet Office introduced a new Impact Assessment Format, which is intended to apply under a transitional arrangement until November 2007, from when it will be applied in full (BRE 2007a). The new format is aimed at increasing transparency and producing better regulation. Emphasis has been placed on conducting the Impact Assessment early in the process of developing regulation, and improving analytical quality and quantification.

The key features of the revised Impact Assessment are:

- a revised template to improve clarity and transparency, including new requirements to summarise both the rationale for government intervention and evidence supporting the final proposal
- an online database of all Impact Assessments to allow greater public scrutiny
- a strengthened Ministerial declaration to bolster the quality of the analysis in Impact Assessments, supported by improved arrangements within departments
- revised guidance for policy makers to make it easier for them to produce quality Impact Assessments focused on the burden of the regulations they are developing
- an increased emphasis on post-implementation review. (Cabinet Office (UK) 2007a, p. 1)

The UK requirements place considerable emphasis on the implementation of regulation. First, the Impact Assessment is required to be updated and republished just prior to the commencement of regulation and, in addition, it is specified that guidance on a regulation should be published 12 weeks before implementation and that all new regulations should commence on one of two specified dates each year, 6 April and 1 October (BRE 2007b).

In addition to the above new requirements the UK launched, on 14 June 2007 a review of the Government's consultation policy (Cabinet Office (UK) 2007b), including consultation in relation to regulatory policy development. Issues being examined by the review include how to achieve greater flexibility in consultation processes — including whether to adopt a principles-based approach — and how to counter 'consultation fatigue'. The UK Cabinet Office notes the value in linking consultation and Impact Assessments, suggesting that 'publishing Impact Assessments as part of consultation exercises has improved the quality both of public consultations and of impact assessments themselves' (Cabinet Office (UK) 2007c, p. 10).

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The UK Government's existing consultation principles have been in place since 2001. They were updated in January 2004 and are based on the following six criteria.

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate. (BRE 2005, p. 4)

Departures from the Code of Practice require the authorisation of the responsible government minister or head of the government authority and the expectation is that the reasons for the departure will be explained in the consultation document (Cabinet Office (UK) 2007c).

In July 2007, the UK Government released a paper that identifies further regulatory reforms, *Next Steps on Regulatory Reform* (DBERR 2007). The identified reforms include targeted simplification of regulation, helping business to understand regulation (in particular, the proposal is for a code of practice on good guidance – which appears to have parallels with the US concern with guidance identified above), and embedding transparency and prioritisation into the regulatory system (DBERR 2007).

### *United States*

The US Office of Management and Budget (OMB) issued a Final Bulletin for Agency Good Guidance Practices on 25 January 2007 (OMB 2007). The bulletin was issued in recognition that regulation is frequently broad and principles based, so government agencies increasingly tend to produce guidance material to assist interpretation. The guidance produced may be voluminous and detailed, and may expand on the regulatory rules, yet it is usually subject to less transparent processes than regulations. In particular, the OMB has noted that '[g]uidance can have coercive effects or lead parties to alter their conduct' (OMB 2007, p. 3435), even though it is not legally binding. Hence, the bulletin identifies practices for

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developing and using ‘significant’ guidance documents, and requirements for enabling public comment and making guidance documents available to the public.

### *Canada*

The Government of Canada (2007) *Cabinet Directive on Streamlining Regulation* (the Directive) came into effect on 1 April 2007. The Directive introduces new development, implementation, evaluation and review requirements to apply over the ‘regulatory lifecycle’ (Government of Canada 2007, p. 2). The new Directive has arisen from the regulatory process recommendations of the *Smart Regulation: A Regulatory Strategy for Canada* initiative (EACSR 2004) and replaces and builds upon the 1999 *Government of Canada Regulatory Policy* (Government of Canada 1999), which already contained regulatory impact analysis requirements.

The ‘regulatory lifecycle’ approach adopted by the Directive represents a more comprehensive application of process requirements than under the previous policy, with particular emphasis on assessing regulatory proposals at an early stage of the development process. A ‘Triage Framework’ has been introduced for this purpose. The pre-existing requirement for a regulatory impact assessment for new regulatory proposals has been enhanced, in line with the recommendations of the *Smart Regulation* report, to include requirements for a risk assessment as part of identifying and assessing the public policy issues (or problem) and for identification of a measurable policy objective (EACSR 2004; Government of Canada 1999; and Government of Canada 2007). The Treasury Board of Canada Secretariat has also been given a greater role in reviewing regulatory proposals and the quality of analysis undertaken. Streamlined processes apply to regulatory proposals where impacts are less significant.

The pre-existing consultation requirements have been given a new emphasis; in particular, ‘open, meaningful and balanced’ consultation is to be undertaken with affected parties at all stages of the process. It is also a requirement that all regulatory proposals be published in the *Canada Gazette* to invite public comment. A comment period of 30 days is identified as the standard for most cases, but flexibility is permitted.

The Directive itself is to be reviewed within five years of it coming into force.

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## *New Zealand*

In New Zealand, a new regulatory impact analysis regime began on 1 April 2007. It is intended to build on the pre-existing regulation impact statement (RIS) requirements with greater emphasis on analysis throughout the regulatory policy development process. At the same time, some streamlining has been undertaken to reduce duplication between RISs and Cabinet papers, and in relation to RISs for tax policy changes. The new regime follows the recommendations of the Quality Regulation Review, which commenced in 2006.

The New Zealand Regulatory Impact Analysis Unit (RIAU) will comprehensively review RISs only where regulatory proposals are ‘likely to have significant impacts on economic growth’ (Dalziel 2006, Executive Summary). All proposals with large impacts on the following factors, whether positive or negative, will be reviewed by the RIAU:

- the ability or incentives of businesses to innovate, invest or operate
- competition in markets, the ability to enter markets, or the structure or make-up of any markets
- the degree of international connection between New Zealand and overseas markets, particularly the single economic market between New Zealand and Australia
- the cost or availability of infrastructure or related services
- the availability of, or access to, finance for business growth. (Dalziel 2006, Recommendations).

In all other cases apart from a selected few, such as where the proposal is novel or contentious or would create inconsistency with the Trans-Tasman Mutual Recognition Arrangement, New Zealand government departments will need to ‘self-regulate’. This means that departments will need to include a statement ‘that they are satisfied that their own analysis, consultation and RIS are adequate and comply with the Code of Good Regulatory Practice’ when submitting Cabinet papers with a RIS (Jones 2007, p. 1). Further incentives to undertake quality analysis are provided by requiring all RISs to be published and requiring discussion documents released prior to preparation of a final RIS to include either specific questions and/or discussion relating to each of the substantive RIS sections, or a draft RIS.

In addition, RISs are required to give greater recognition to the impacts of proposed regulations on the stock of regulation, such as whether the proposal overlaps or duplicates existing regulation (Dalziel 2006).

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The business consultation website developed for the Quality Regulation Review is being left in place to give business an ongoing means for providing direct feedback on regulations affecting them (Dalziel 2007a).

New Zealand has also announced that it will trial the Australian Government's Business Cost Calculator, to determine the business compliance cost of proposed regulation, for a two-year period, beginning in the first half of 2008 (Dalziel 2007b).

### *European Union*

The Commission of the European Communities announced 'A strategic review of Better Regulation in the European Union' in November 2006 (European Commission 2006). At the European Commission level, the review calls for an updated simplification programme, including a quantitative target for reduction of administrative burden, independent scrutiny of impact assessments and strengthened enforcement of Community law (European Commission 2006). Noting that some member countries were not addressing these issues, the Commission called for these countries also to act domestically. An Impact Assessment Board, made up of high level officials independent of the policy-making areas, was created in November 2006 to 'offer advice and support in developing a culture of impact assessment inside the Commission' (European Commission 2006, p. 8; European Commission 2007).

An independent external evaluation of the existing impact assessment system was also instigated by the Commission in 2006. The evaluation identified the following areas as priorities for further development: better targeting of significant proposals and applying a proportionate level of analysis; increasing Commissioner and top-level management commitment; capacity building within departments of the Commission; and better integrating the system with the needs of other institutions, such as the European Council and European Parliament (European Commission 2007). The further developed measures for improving the quality of impact assessments will feed into the Spring 2008 Strategic Review of Better Regulation, which will examine both impact assessment processes and the administrative simplification programme (European Commission 2007).

### *Regulatory reform in our region*

Apart from New Zealand, Korea is the most advanced of the countries in our region in terms of introducing regulatory reform programs.

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Korea put in place a regulatory reform program following the Asian Financial Crisis in 1997. The program included a target of reducing existing regulation by 50 per cent and mandatory regulatory impact analysis for all new and important regulations. Important regulations are reviewed by the joint government – non-government Regulatory Reform Committee before they can be considered by Cabinet (Lee 2007).

Japan has undertaken several rounds of deregulation since the early 1980s, mainly addressing barriers to trade and investment. The Three-Year Programme for Promoting Regulatory Reform is an annually-updated rolling plan employed by the Japanese government to specify its regulatory reform priorities. The Three-Year Programme agreed to in March 2004, identified introduction of regulatory analysis as a priority, along with continuation of the review of existing regulation and administrative simplification measures, such as e-government (OECD 2004). Regulatory analysis has reportedly been undertaken within each government ministry on a trial basis since October 2004 (OECD 2006b), but it is not clear that a more general regime has been introduced as yet.

Outside of OECD countries, there have been several initiatives to implement a regulatory analysis program. Chinese Taipei has initiated a process to implement a regulatory impact analysis system. On 27 June 2007, the Council for Economic Planning and Development (CEPD) held an ‘International Conference on the APEC-OECD Integrated Checklist on Regulatory Reform’, inviting two OECD experts to meet with related government agencies, and to discuss ideas and concepts related to regulatory impact assessment. The executives of the Research Development and Evaluation Commission have been charged with planning and setting up an information platform and database for regulatory analysis (CEPD 2007).

China has requested, and is presently undergoing, an OECD Regulatory Reform Review. The first working group meeting to initiate the review was scheduled for 12 September 2007. It is intended that the report of the review will make recommendations for improvements to China’s regulatory frameworks, including in relation to capacities, institutions and tools for high-quality regulation (OECD 2007b).

### *The Organisation for Economic Cooperation and Development (OECD)*

The OECD released a report in 2006 summarising best-practice administrative simplification and burden-reduction strategies used across member countries, *Cutting Red Tape: National Strategies for Administrative Simplification* (OECD 2006a).

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The report identified the following best practice ‘tools’ that have been used by various OECD countries:

- ex ante measurement of burdens and using this information to trace burdens to their source
- information about the extent of estimated administrative burdens is increasingly being included in Regulatory Impact Analysis prior to the introduction of new regulations
- targets for burden reduction are being set and used to promote simplification in the first place and to monitor progress and maintain the momentum for further simplification and burden reduction
- political oversight of very burdensome measures
- codification remains an important tool for simplification
- information technology is an important tool for reducing burdens, for example, through data sharing, and simplifying licence procedures
- results must be communicated. Measurement can help show that progress has been made. (OECD 2006a, pp. 12-13).

The Red Tape Assessment project takes these strategies a step further through a systematic measuring of the administrative costs faced by businesses and subsequent comparison of findings across OECD countries. The subject of the current project is road freight, with thirteen OECD countries participating in the measurements, using the Standard Cost Model.

The OECD also released a document in February 2007, as part of the *Competition Assessment Toolkit* series, which promotes the integration of competition assessments into regulatory impact analysis (OECD 2007a). It was noted in this document that Australia, the UK, the US and the European Commission already did this and that such a mechanism ‘can help to ensure that competition policy principles are considered at early stages of the broader policy development process’ (OECD 2007a, pp. 2-3). The OECD considers this appropriate as it is in the design of the broad regulatory structure that anti-competitive impacts of regulation can potentially arise.

### *Asia-Pacific Economic Cooperation Forum*

The Asia-Pacific Economic Cooperation (APEC) forum has taken further steps to promote good regulatory practice among member economies. Relevant activities include the Fourth Conference on Good Regulatory Practices of the Standards and Conformance Sub-Committee (Vietnam, September 2006), the Tenth Workshop on

the APEC-OECD Co-operative Initiative on Regulatory Reform (Australia, June 2007) and the work of the Competition Policy and Deregulation Group in sharing information and experience, and promoting discussion in relation to competition policy/law and deregulation.

Consistent with APEC's objective of promoting trade liberalisation, the focus of the Standards and Conformance Sub-Committee of APEC is predominantly on reducing technical barriers to trade through encouraging member countries to align their technical regulation with international standards. The Competition Policy and Deregulation Group has been promoting the *APEC-OECD Integrated Checklist for Regulatory Reform* and a number of APEC member countries have undertaken self-assessments against the checklist over the past year (APEC 2006). Korea and Australia reported their assessments against the Checklist at the Cairns workshop in June 2007. Countries that had reported their assessments a year earlier — Hong Kong China, Chinese Taipei and the United States — reported back on the progress they had made. Indonesia has volunteered to undertake a self-assessment against the Checklist. (See summary of outcomes of the Tenth Workshop on the APEC-OECD Co-operative Initiative on Regulatory Reform, Cairns Australia, June 2007.)

**Table F.1 Regulatory impact analysis processes in selected OECD countries, 2005**

<i>Country</i>	<i>RIA before adopting new regulation</i>	<i>Cost-benefit assessment</i>	<i>Competition assessment</i>	<i>Report on RIS compliance</i>	<i>Regulatory plans</i>	<i>Sunset clauses</i>
Australia	✓	✓	✓	✓	✓	✓
Canada	✓	✓		✓ <sup>c</sup>	✓	✓
Japan <sup>a</sup>						
Korea	✓	✓	✓		✓	✓
New Zealand	✓	✓ <sup>b</sup>	✓	✓ <sup>c</sup>		✓
Sweden	✓	✓ <sup>b</sup>	✓		✓	
UK	✓	✓	✓	✓	✓	✓
USA	✓ <sup>b</sup>	✓ <sup>b</sup>	✓	✓	✓	✓
EU	✓	✓ <sup>b</sup>	✓	✓ <sup>c</sup>	✓	

.. Not applicable. <sup>a</sup> Japan adopted an regulatory impact analysis system on a pilot basis in 2004. <sup>b</sup> Only for major regulation or other selected cases. <sup>c</sup> Ad hoc basis.

Source: OECD 2006b.