

Submission

to the

Productivity Commission

on the

Regulatory Institutions and Practices Draft Report

9 May 2014

Submission by the New Zealand Bankers' Association to the Productivity Commission on the Regulatory Institutions and Practices Draft Report

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes which contribute to a safe and successful banking system that benefits New Zealanders and the New Zealand economy.
2. The following fourteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of New Zealand
 - Bank of Tokyo-Mitsubishi, UFJ
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - JPMorgan Chase Bank, N.A.
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited, and
 - Westpac New Zealand Limited.

If you have any questions about this submission, or would like to discuss any aspect of it further, please contact:

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Executive Summary

3. NZBA welcomes the findings of the Productivity Commission's draft report into regulatory institutions and practices.
4. NZBA strongly agrees that a comprehensive and well-designed regulatory system will improve the capability of regulators to make sound decisions and produce quality regulation. Quality regulation is essential to an efficient and well-functioning economy.
5. We agree in large part with the key findings of the draft report, specifically the importance of role clarity and ensuring regulators maintain an appropriate level of independence. We also agree that effective consultation and engagement with key stakeholders helps to promote confidence in regulators' decisions and will ultimately strengthen the legitimacy of New Zealand's regulatory systems.
6. More specifically we draw attention to, and endorse, the key findings of the case study commissioned by the Productivity Commission into the regulation of the financial sector (the case study). Below we address the specific recommendations from the case study which NZBA strongly encourages the Productivity Commission to pursue.
7. This submission is largely focused towards the case study rather than the draft report, and where relevant we address some of the more general findings of the draft report.

Key Points

Meaningful Regulatory Guidelines

8. As made clear in our initial submission, NZBA strongly supports the need for meaningful regulatory guidelines. As such we agree with the case study that regulators should be required to develop regulatory impact statements (RIS) early in the process of regulation and policy-making, and that these RISs are subject to greater and more robust external scrutiny and peer review. The idea of establishing a permanent ministerial position tasked with overseeing the quality of regulation-making has merit and is worthy of further consideration.

Improved Engagement

9. Our submission showed there is a need for more meaningful engagement from financial sector regulators. We endorse and see merit in the development of minimum standards for consultation on regulatory proposals (as was suggested by the case study). For these standards to be effective NZBA agrees that they should include minimum periods for consultation and a requirement the views of key stakeholders be considered. Further, a regulators' assessment of and response to submissions needs to be more transparent and should utilise external experts.

10. The case study also recommended that in order to improve industry coordination there be regular, semi-formal consultations between the Council of Financial Regulators (COFR), industry representatives and other stakeholders, with possibly Treasury as the overseer. Again NZBA strongly supports this proposition. Not only would this lead to improved engagement within the financial sector, and improved information exchange, it would also help address regulatory overlap (as discussed below).
11. We also agree that there is scope for enhanced trans-Tasman cooperation and engagement. In particular we see value in regular coordination between the New Zealand and Australian COFRs being established.

Clarity of Regulator Role and Objectives

12. As was acknowledged in our submission, regulators lack clearly defined objectives; often there is no problem definition of what exactly is trying to be 'fixed'. We agree with the solution put forth in the case study, to have the relevant Minister for each regulator establish a "Regulatory Outcomes Statement" that identifies specific outcomes for the regulator. This would benefit financial regulators, especially if these focus on wider economic objectives that benefit the entire financial sector.
13. We also support the suggestion of the case study that financial regulators would benefit from an enhanced performance assessment framework, where regulators are subject to more focused and comprehensive performance assessments on a regular basis.
14. NZBA also supports the recommendations in regard to role clarity put forth in chapter 4 of the draft report. In particular, amending the Cabinet Manual to include a 'general expectation' that before legislation is introduced to Parliament exposure drafts be published and consulted on, and that before new regulatory functions are allocated to an existing regulator, policymakers are required to assess whether the mission of the agency is compatible with the objective of the new regime.

Regulatory Independence

15. The importance of regulatory independence was made clear in our submission. However, it is vital that the notion of independence is not extended too broadly and is applied in a consistent manner. We therefore strongly encourage the findings of the case study that consistent principles be established governing regulatory independence. Such an approach would ensure greater consistency in the approach taken by regulators, and clarify to all stakeholders which matters should have operational independence and which should be subject to ministerial or cabinet determination.
16. There are varying governance arrangements among financial sector regulators. In our submission we demonstrated the need for a more consistent approach to the allocation of powers between regulators. We therefore agree with the case study that it would be useful to have a conversation as to the most effective governance

framework for regulators. A review of governance frameworks with reference to best international practice would ensure that any existing sub-optimal governing arrangements are identified and can be rectified.

17. We also share the view put forth in the case study that there is often the potential for conflicts of interests purely because of the functions certain regulators are required to perform. This issue was made clear in our submission with particular reference to the Reserve Bank and its unique role as both a policy maker and a regulator. We agree this issue needs to be reviewed and consideration given to introducing measures to eliminate or better manage conflicts.

Reduction of Regulatory Overlap

18. We highlighted in our submission that too often the demarcation between financial regulatory responsibilities is unclear and that as a result there are a number of unnecessary overlaps in responsibility.
19. NZBA therefore endorses the findings of the case study that it would be desirable for greater clarity on the demarcation between the responsibilities of financial sector regulators, particularly in regard to aspects of the regulatory responsibilities of the Financial Markets Authority, the Ministry of Business, Innovation and Employment, and the Reserve Bank. NZBA believes that a more clearly defined mandate is necessary to enhance the effectiveness of regulation.

Merits Review

20. The case study endorses Australia's approach to review, and recommends that New Zealand consider adopting a merits review framework similar to that of the Australian Administrative Appeals Tribunal (AAT). NZBA agrees that, at present, regulated entities in New Zealand have very limited options short of judicial review when seeking a review of regulator decisions. We believe it would be beneficial to have a conversation as to whether this could be an appropriate framework for New Zealand to adopt.

Stocktake of Financial Sector Regulation

21. NZBA agrees with the case study that once the current stage of regulatory reform is bedded in, it would be desirable for the Government to undertake a comprehensive review of the financial sector's regulatory framework. Such a review would provide an opportunity to assess the effectiveness and adequacy of recent regulatory changes specific to the financial sector.
22. Further, as identified in chapter 3 of the draft report, we share the Commission's concern regarding the lack of regular and detailed reporting on the state of New Zealand regulators. We therefore agree it would be beneficial for The Treasury to develop standardised requirements for agency annual reports.