Joint Report: Establishing a new regulation agency: Initial advice and options

Date:	18 December 2023	**Report No:**	TR 2023/2120
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Action sought

	Action sought	Deadline
Hon Nicola Willis **Minister for the Public Service**	**Agree** the proposed broad responsibilities for a new regulation agency. **Discuss** with officials your preferences for specific functions and organisational form.	Before 23 January 2024
Hon David Seymour **Minister for Regulation**	**Agree** the proposed broad responsibilities for a new regulation agency. **Discuss** with officials your preferences for specific functions and organisational form.	Before 23 January 2024

Contact for telephone discussion

Name	Position	Telephone		1st Contact
Mereama Chase	Director, Policy	Te Kawa Mataaho Public Service Commission	9(2)(a) privacy	✓
Erin King	Manager, Regulatory Strategy	The Treasury	9(2)(a) privacy	✓
Elisa Eckford	Principal Advisor, Regulatory Strategy	The Treasury	9(2)(a) privacy	

Ministers' Office actions

Return the signed report to the Public Service Commission and The Treasury.

Enclosure: No

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Executive Summary

The 100-day plan signals the Government's intent to address New Zealand's productivity challenges by improving regulatory quality. The Government intends to create a new regulation agency to support the Minister for Regulation in this aim.

Each of New Zealand's 180-200 regulatory systems have an agency (or agencies) responsible for the governance, monitoring and care (regulatory stewardship) of that system. Sitting across these individual regulatory systems is the regulatory management system (RMS) – that is the set of policies, institutions, tools, and processes employed by central government to help it develop, deliver, and maintain high-quality regulation that does not impose unnecessary costs.

A new agency focused on regulation will be able to strengthen the RMS and support a greater focus on improving regulatory quality – in a similar way to how the public finance system supports sound fiscal management. Officials recommend that this agency has a broad focus on lifting quality across all regulatory systems by ensuring that agencies with regulatory responsibilities follow good regulatory practice. This reflects the fact that the new agency will not have direct responsibility for specific regulatory systems. It should also look across all aspects of regulatory systems, reflecting the fact that issues with regulatory performance often stem from the way in which legislation is operationalised.

In determining the functions and form of the new agency, we recommend you consider:

- *the degree of centralisation of functions*, noting that the vast majority of regulatory quality work is carried out by individual agencies and that primary accountability for the performance of specific regulatory systems should remain with those agencies.
- *the distance of the agency from the centre of government*, noting that the majority of OECD members locate their regulatory oversight functions in a central agency or Ministry of Finance.
- *potential alignment and relationships with other cross-system functions*, such as the fiscal management and public sector management systems.

We would welcome a discussion with you to get a better understanding of your expectations for the new functions you have identified, so we can scope these in more detail:

- Evaluating proposals for new regulation.
- Carrying out regulatory reviews.
- Producing omnibus bills to implement the findings of regulatory system reviews.

In addition, we recommend that all of Treasury's existing regulatory oversight functions transfer to the new agency (noting that there are choices about whether the Secretary to the Treasury's Regulatory System Stewardship and Assurance functional leadership role transfers to the new agency, or remains within the Treasury, depending on choice of organisational form). There is also potential for the Government Regulatory Practice Initiative's functions to transfer across.

We have identified three options for the form of the new agency:

- A public service department.
- A departmental agency.
- A separate branded business unit (which could be supplemented with a functional chief executive).

In officials' view, any of these options could deliver the proposed functions, and provide a separately identifiable agency (which could be called a Ministry for Regulation in all cases), with a senior leader reporting directly to the Minister for Regulation, and dedicated resourcing and staffing. However, the optimal organisational form will depend on your expectations of how a new regulation agency should be configured.

Joint officials welcome a discussion with Ministers on:

- the focus of a new agency, including the degree of centralisation of functions and its alignment with other key systems and agencies
- the functions that would be carried out by the agency, including key new functions, and current functions carried out by the Treasury and other agencies.
- your preference for organisational form.

Once you have confirmed your preferred approach to an organisational form for a new agency, we will report back to you with a more detailed work programme and timeline to establish the new agency, along with indicative costs 9(2)(f)(iv) confidentiality of advice

Recommended Actions

We recommend that you:

a. **note** that officials see significant benefit in strengthening regulatory oversight across government, to lift the performance of regulatory systems.

   Noted

b. **note** officials' view that a new regulation agency should have a focus on working to lift regulatory quality across all regulatory systems, and across all the different parts of regulatory systems – not just legislation.

   Noted

c. **note** officials' view that decisions on the functions and form of a new agency should consider:

   i. the degree of centralisation of functions in a new agency;

   ii. the distance of a new agency from the centre of government; and

   iii. potential alignment and relationships with other cross-system functions.

   Noted

d. **agree** that, in addition to the new functions proposed by the Minister for Regulation, the new regulation agency should be broadly responsible for:

   i. strategic co-ordination and oversight of the RMS, including advising on strengthening the Regulatory Impact Analysis (RIA) system;

   ii. provision of guidance and support to agencies to help them improve their regulatory stewardship capability;

iii. administration of the RIA requirements for regulatory proposals, including quality assurance of more significant Regulatory Impact Statements, and provision of guidance and RIA training; and

iv. advising/delivering on New Zealand's international good regulatory practice (GRP) obligations.

Yes/No

e. **agree** that, consequently, all the functions currently carried out by the Treasury's Regulatory Strategy team should transfer into the new agency.

Yes/No

f. **indicate** whether you would like further advice on the possibility of locating the Government Regulatory Practice Initiative (G-REG) in the new agency.

Yes/No

g. **note** that an initial stocktake of Regulatory Impact Analysis quality assurance resource across government indicates that this resource is typically small and integrated into the roles of senior policy staff.

Noted

h. **note** that officials have identified three options for the form of the new agency, which could all provide you with a separately identifiable agency with dedicated senior leadership, staffing, and resourcing.

Noted

i. **discuss** with officials your preferences for:

i. the nature and scale of proposed new functions for the new agency, including evaluating proposals for new legislation, carrying out regulation sector reviews and producing omnibus bills to implement the findings of regulation sector reviews;

ii. strengthening the current functions carried out by the Treasury, including in relation to the quality assurance of Regulatory Impact Statements; and

iii. the new agency's organisational form.

Yes/No

j. **note** that, following this discussion, we will provide joint Ministers with more detailed advice on timing and implementation.

Noted

Hannah Cameron
Deputy Commissioner, Strategy and Policy

Kerryn Fowlie
Director, Economic Strategy

Hon Nicola Willis
Minister for the Public Service

Hon David Seymour
Minister for Regulation

Joint Report: Establishing a new regulation agency: Initial advice and options

Purpose of report

1. Cabinet has invited the Minister for Regulation to provide a plan for the preferred approach to the establishment of the new regulation agency by 8 March 2024 (CAB-23-MIN-0468).
2. This report seeks confirmation of your objectives in creating a new regulation agency. It provides advice from the Treasury and the Public Service Commission on the options for the new agency's focus, functions and form in the context of the Government's priorities for the Regulation portfolio.
3. Feedback on this report and discussion with Ministers will enable a draft Cabinet paper to be provided to Ministers for their consideration in early February. Concurrently, practical steps are underway to establish the new agency, including the process for recruiting an establishment lead.

Government priorities

4. The Coalition Agreement between the National and the ACT Party and the 100-day plan have clearly signalled the Government's intent to progress work to address New Zealand's productivity challenges by improving regulatory quality.
5. The Government intends to create a new regulation agency to support the Minister for Regulation in this aim by:
    a. Establishing a stronger central **regulatory oversight function**,[1] including stronger quality control mechanisms for all new and existing legislation.
    b. Ensuring dedicated resources for this function.
    c. Raising the prominence of regulatory performance generally.
6. This agency would be funded in the first instance by disestablishing the Productivity Commission and consolidating regulatory oversight work across the public sector where appropriate.
7. In an initial meeting with Treasury officials, the Minister for Regulation provided more detail on his expectations for a new agency, including that it would:
    a. Be a new agency, with a distinct identity, ringfenced resources and senior dedicated leadership.
    b. Over time, become around two to three times the size of the current Productivity Commission (i.e., around 40-60 staff) 9(2)(f)(iv) confidentiality of advice
8. We also understand that the intended functions of the new regulation agency will include:
    a. Assessing proposals for legislative change and making recommendations on whether they should proceed.
    b. Carrying out regulation sector reviews in consultation with the relevant Minister.
    c. Producing omnibus bills for reform of laws as a result of these reviews.

[1] Regulatory oversight is defined by the OECD as the variety of functions and tasks carried out by bodies/entities in the executive or at arm's length from the government in order to promote high-quality evidence-based regulatory decision making.

Background

9. Each of New Zealand's 180-200 **regulatory systems**[2] have an agency (or agencies) responsible for the governance, monitoring and care (**regulatory stewardship**[3]) of that system:

    a. Under the Public Service Act, all departmental chief executives have stewardship responsibilities for legislation administered by their agencies, supplemented by Cabinet-mandated expectations that require agencies to properly govern, monitor and care for their regulatory systems.

    b. Agencies are also responsible for ensuring that regulatory proposals falling within their responsibilities meet quality standards, including in relation to legislative design and implementation.

10. Sitting across these individual regulatory systems is the **regulatory management system** (RMS) – that is the set of policies, institutions, tools, and processes employed by central government to help it develop, deliver, and maintain high quality regulation that does not impose unnecessary costs.

11. Limited attention and resource have been devoted to the management of regulatory quality in New Zealand over time. As a consequence, New Zealand's institutional arrangements for regulatory oversight are comparatively under-developed[4]. While New Zealand's public finance system performs strongly relative to other countries, this is not the case for the RMS.

12. A stronger, better resourced regulatory oversight function will be able to strengthen the RMS and support a greater focus on improving regulatory quality – noting the OECD has stressed the importance of robust mechanisms and institutions to lifting regulatory quality (see **Annex 1** for further information on regulatory oversight arrangements in other jurisdictions).

13. Our understanding is that establishing a new regulation agency is intended to ensure this focus on improving regulatory quality is not lost due to prioritisation of other work within a larger department.

Focus of a new regulation agency

14. Based on the Government's intentions for a new agency, we propose that it have a broad focus on:

    a. *Working to lift regulatory quality across all regulatory systems* – a new regulation agency would not have direct responsibility for the operation and performance of specific regulatory systems – instead it would help to ensure all agencies with responsibilities for regulatory systems follow good regulatory practice by setting and administering expectations, monitoring compliance, and providing guidance and support. Its impact will therefore primarily be through supporting and incentivising

[2] Regulatory systems comprise a set of rules, organisations and activities that share a common policy objective (e.g. food safety). Regulatory systems are not limited to primary and secondary legislation, but include a range of activities including the delivery of services, education, monitoring and enforcement, and dispute resolution.

[3] Regulatory stewardship is the governance, monitoring, and care of our regulatory systems. It aims to ensure that all the different parts of a regulatory system work well together to achieve its goals, to keep the system fit for purpose over the long term, and to deliver value for money for taxpayers.

[4] In *Indicators* of *Regulatory Policy and Governance* (iREG) surveys, New Zealand falls short of OECD best practice, scoring relatively well on systematic adoption of RIA and transparency, but our highly devolved quality assurance arrangements and limited central oversight resources and powers means that we tend to place lower on oversight, quality control, and methodology. In addition, RIA compliance data collected by the Treasury shows some issues – for instance, there have been 23 cases of 'major' non-compliance with the RIA requirements so far in 2023, and the proportion of RISs which are determined to fail to the meet the QA requirements (2% in 2022) seems unrealistically low.

agencies (and Ministers) to meet standards of good regulatory practice[5]. Depending on the extra resource available, a new agency could play a much more active role in areas such as improving the quality of Regulatory Impact Analysis and conducting sector reviews, as well as helping build the capability of agencies to undertake their own reviews (or potentially supporting them to do this) and better maintain their own regulatory systems.

b. *Lifting regulatory quality across all the different parts of regulatory systems* – a stronger regulatory oversight function will be most effective if it has a broad focus on lifting regulatory quality across all the different parts of regulatory systems (e.g. on how regulation is implemented) rather than just on the quality of legislation. This is because regulatory systems involve a range of activities beyond legislative design, and all these different parts need to be working well to achieve the intended objectives at least cost.

15. In addition, when determining the functions and form of a new agency, we recommend considering:

a. *The degree of centralisation of functions in a new agency* – while centralisation of functions can lead to greater system efficiency and consistency, over-centralisation of functions carries a risk of a reduction in departmental capability and in agencies' focus on regulatory performance. In addition, expertise and up-to-date information on regulatory systems is held by the individual agencies, and it can be difficult to replicate this knowledge centrally.

b. *The distance from centre of government* – the OECD recommends that a body responsible for regulatory oversight should be "established close to the centre of government, to ensure that regulation serves whole-of-government policy."[6] We note that most of the member states surveyed by the OECD locate their regulatory oversight functions in a central agency or Ministry of Finance. This is also the case in most of the Australian jurisdictions we have looked at, noting that having the regulatory oversight functions located at the centre has allowed for access to key Government processes to support regulatory improvement agendas (see Annex 1).

c. *Potential alignment and relationships with other cross-system functions* – for instance, there are clear links between the RMS, the fiscal management system and the public sector management system, which all work across agencies to lift departmental performance. Other agencies also have responsibilities relating to the RMS – the Parliamentary Counsel Office (PCO), the Ministry for Business, Innovation and Employment (MBIE) and the Ministry of Justice. These are set out in more detail in **Annex 2**.

Functions of a new regulation agency

Key functions

16. As noted above, you have identified three key functions for a new regulation agency. While we are already considering how each of these could be given effect by a new agency, and preparing to give you advice, we would welcome a discussion with you to get a better understanding of your expectations for the nature and scale of these functions:

[5] The *OECD Regulatory Policy Outlook 2021* notes that influence and ability to get buy-in from regulatory agencies are critical factors in the success of regulatory oversight bodies – see Annex 1.

[6] Defining and contextualising regulatory oversight and co-ordination | OECD Regulatory Policy Working Papers | OECD iLibrary (oecd-ilibrary.org)

a. 9(2)(f)(iv) confidentiality of advice [redacted]

b. *Carrying out regulation sector reviews in consultation with the relevant Minister* – 9(2)(f)(iv) confidentiality of advice [redacted]

c. *Producing omnibus bills for reform of laws affecting sectors* – 9(2)(f)(iv) [redacted] 9(2)(f)(iv) confidentiality of advice [redacted]

Treasury's current regulatory oversight functions

17. **Annex 2** sets out the current functions of the Treasury's Regulatory Strategy team, including coordination and oversight of the RMS, providing guidance and support to agencies, administration of RIA requirements, and responsibility for international obligations in relation to regulation. Treasury officials can provide the Minister for Regulation with more details on these functions and how they currently operate. We recommend that all these functions transfer to the new agency.

18. These functions include the Secretary to the Treasury's Regulatory System Stewardship and Assurance functional leadership role, which was established to give Ministers assurance that the public sector was delivering on its regulatory stewardship responsibilities. To date, it has focused on lifting regulatory stewardship capability and addressing systemic regulatory issues that affect multiple regulatory systems. There are choices about whether this role transfers to the new agency, or remains within the Treasury, depending on choice of organisational form (see Annex 3). 9(2)(f)(iv) [redacted] 9(2)(f)(iv) confidentiality of advice [redacted]

19 9(2)(f)(iv) confidentiality of advice [redacted]

[7] 9(2)(f)(iv) confidentiality of advice [redacted]

9(2)(f)(iv) confidentiality of advice

20. [redacted]

21. In addition to these functions, the Regulatory Strategy team works closely with Vote teams in the Treasury when providing advice on the same issues, with system teams to bring a regulatory lens to processes such as the Budget, and with the broader Economic Strategy Directorate to bring a regulatory perspective into economic strategy work.

Functions located within other agencies

Broad regulatory oversight functions

22. **Annex 2** also sets out current functions in other agencies that we have identified as having a regulatory oversight component. These functions predominantly sit within MBIE, PCO and the Ministry of Justice.

23. We do not recommend that the majority of these functions move to the new agency, as they make up part of those agencies' core responsibilities (for instance, PCO's role to draft and publish legislation, and Ministry of Justice's role in leading on public law policy),

24. However, the Government Regulatory Practice Initiative (G-REG) could potentially move into the new agency. G-REG is a club-funded initiative hosted by MBIE. It was formed in response to the Productivity Commission's 2014 report on Regulatory Institutions and Practices to lift the capability and practices of the regulatory workforce, and plays an important role in the regulatory landscape. It has a current annual budget of $1 million, with five staff[8].

25. There are advantages in keeping G-REG within a large regulatory agency like MBIE given its focus on regulatory practitioners, however, it could be located within the new agency if you envisage that the new agency's functions will include a focus on capability-building across government. It is worth noting that G-REG has faced long-term funding challenges, due to the club-funding model, which would still need to be worked through as part of any potential transfer. We can provide further advice on this if you choose to pursue this option.

Quality assurance of RISs

26. Agencies that produce significant numbers of RISs also have some resource focused on quality assurance of those RISs. We have contacted the agencies that produced 10 or more RISs last year to ask them to estimate the amount of resource dedicated to quality assurance, and their responses are set out in the table below.[9]

Agency	Number of RISs in 2022 (approx.)	Approximate FTE for quality assurance
Department of Internal Affairs	10	0.25 FTE per year for panel responsibilities. 0.1 FTE per year for associated secretariat processes.

[8] 13 agencies are contributing to the cost of G-REG in 2023/24, at a total of $620,000. MBIE estimates that it contributes a further $380,000 to G-REG's operation by paying the full salary costs of the Director and covering all corporate costs.

[9] Please note the fields in this table might not be directly comparable. The number given for RISs prepared in 2022 does not include the figure for the number of discussion documents prepared. The FTE resourcing estimate given by agencies includes the combined time dedicated to the QA of both RISs and discussion documents. Officials can seek further clarification from agencies on these figures if you wish.

Ministry of Business, Innovation and Employment	37	0.2 FTE on average per year.
Ministry of Education	10	0.5 FTE per year
Ministry for the Environment	26	Have 68 staff allocated to a roster system for working on quality assurance, but they can't estimate the total FTE amount from across these staff. 0.1 FTE per administrator for chairing and coordinating.
Ministry for Primary Industries	12	RIA panel roster of around 40 members from across MPI. In total consists of around 0.3 of an FTE role.
Inland Revenue Department	15	0.25 FTE – covering both coordination and panel activities.
Ministry of Justice	11	Approximately 675 staff hours spent on QA (around 0.3 FTE) and 0.2 FTE for related administrative activities per year.

27. None of the surveyed agencies have dedicated teams undertaking quality assurance of regulatory impact statements or discussion documents. Quality assurance panel membership and any chairing or co-ordination roles are typically assigned either on a roster or volunteer basis to senior policy staff from across agencies as part of their wider work programmes. The resource required to carry out quality assurance activities is accounted for as a component of the overall cost of policy staff for most agencies, but agencies' estimates for quality assurance resource range from 0.2-0.5 FTE per year.

28. In gathering this information, several agencies commented to us that they see significant value in having the quality assurance of impact analysis housed internally for building policy capability and staff development. In addition to development and capability benefits, some agencies also noted that the involvement of policy staff results in higher quality impact analysis from the agency. Because of this, officials do not recommend pursuing incorporation of RIA quality assurance resource across agencies into a new regulation agency.

Regulatory stewardship resource

29. In addition to RIA quality assurance functions, each agency with responsibilities for regulatory systems will have variable (but, in most cases, very limited) amounts of resource dedicated to stewardship of those systems. The most significant of these are MBIE's Regulatory Stewardship branch and the Ministry for Primary Industry's Office of the Inspector General Regulatory Systems – which both focus on ensuring that these agencies are fulfilling their responsibilities in relation to the regulatory systems for which they are responsible.

30. Most of this activity would not generally be classified as part of the RMS, as it is focused on the performance of specific regulatory systems, so that agencies can meet their good regulatory practice obligations. Officials have therefore not considered incorporation of any of these functions in a new agency.

Options for organisational form

31. We have identified three options for the form of the new agency. Any of these options could:

    a. deliver the proposed functions;

    b. provide a separately identifiable agency, which could be called a Ministry for Regulation in all cases;

    c. provide a senior leader reporting directly to the Minister for Regulation;

d. have dedicated staffing; and

e. be funded via a separate appropriation or Vote, to ensure that resources are ringfenced to the Minister's priorities in the Regulation portfolio.

32. These options are:

a. A **public service department**. There are 31 such departments, the smallest is the Ministry for Women (36 FTE, budget $15.1m).

b. A **departmental agency** hosted by the Treasury. A departmental agency has its own chief executive. This would be like the Social Wellbeing Agency hosted by Te Kawa Mataaho – Public Service Commission (31 FTE, budget $6.8m) or the Ministry of Disabled People/Whaikaha hosted by the Ministry of Social Development (175 FTE, departmental appropriations $59m in 2022/23).

c. i) Separate branded business unit within the Treasury, called a Ministry for Regulation, headed by a senior leader within Treasury, who could report directly to the Minister for Regulation, via delegated authority from the Secretary to the Treasury. This unit could be funded through its own appropriation or Vote to ensure resources are not reprioritised to wider Treasury priorities. This is a common way to establish a separate function. Examples include Biosecurity New Zealand, Immigration New Zealand, Food Safety New Zealand and Medsafe.

ii) A variant of this option could be headed by a **functional chief executive** appointed by the Public Services Commissioner, which would report directly to the Minister for Regulation. The only example here is the CE of the Cyclone Recovery Unit that was established in March 2023 within DPMC.

33. **Annex 3** sets out features of each of these organisational forms in more detail.

34. Officials have identified several criteria to help determine how effectively different organisational forms could support the new agency's success:

a. *The agency's ability to influence across Ministers and agencies* – for instance, an agency hosted by the Treasury will likely be able to do this more easily by leveraging off its central agency role.

b. *The agency's ability to link to broader systems and resources* – for instance, sitting within the Treasury would enhance connections between the RMS and public finance systems, and give the agency access to a broader range of skills and resources.

c. *Cost and efficiency considerations* – for instance, establishment costs for a standalone department would be greater, and it would need to meet separate accountability requirements, may have more standalone corporate functions, and would have a larger role (and thus cost) for its chief executive.

d. *The risk of loss of capability due to disruption* – this risk is greater for a separate department, where the function and therefore staff explicitly move to a new organisation, than for options where Treasury staff remain employed by the Treasury.

e. *Clarity of role and lines of accountability* – for instance, a standalone department likely has the clearest lines of accountability.

f. *Time to be fully operational* – options that require less structural changes will be quicker to fully operationalise (although all options will depend on resource availability).

35. The table below provides an initial assessment of different options for organisational form against each of the criteria – noting that all of these options could be called a Ministry for Regulation, and could have their own Chief Executive, Vote or appropriation.

	Ministry for Regulation: Branded business unit (with possible option of functional CE)	**Ministry for Regulation: Departmental agency**	**Ministry for Regulation: Department**
Ability to influence across Ministers and agencies who 'own' regulatory systems by playing a central agency role	Strongest ability as it is part of the Treasury.	Moderately strong ability as it is hosted by Treasury.	Has the greatest distance from a central agency and would need to make the most effort to establish this ability.
Ability to link to broader systems and resources – e.g. through access to the Treasury's financial management and economic advice and broader resourcing	Strongest ability, as it is part of the Treasury.	Moderately strong ability as it is hosted by Treasury.	Limited ability, as it is entirely separate from a central/larger agency.
Cost and efficiency considerations	Has the least additional cost over the status quo Back office can be provided by the Treasury, and therefore more resources used to drive the function. A functional chief executive would bring additional costs.	Would have additional costs associated with the chief executive, and reporting and other obligations of an agency.	Is the highest cost due to having the largest role for the chief executive, separate accountability requirements, and potentially separate corporate functions and premises.
Risk of disruption and loss of capability from the public service. There are limited numbers of people with the skills and expertise in strategic regulatory matters. It will be important to retain expertise in the public service	Least risky as there is the least change for Treasury staff. Reporting lines and management may change, particularly if a functional chief executive is also appointed. Treasury staff would be able to more easily rotate into the agency. Likely to be established the fastest.	Little risk of loss as Treasury staff would remain employed by the Treasury despite moving into the departmental agency. Reporting lines and management would change.	Greatest risk of loss as staff move to a new organisation and employer (although noting the intent is to employ significant new resource over time).
Clarity of role and lines of accountability	A branded business unit headed by a senior leader could report directly to the Minister (via delegated authority from the Secretary to the Treasury). If a functional chief executive was appointed, it would report directly to the Minister, requiring the two CEs to agree working arrangements and accountabilities for the branded business unit. Clarity could be assisted by a separate appropriation or Vote.	The chief executive of the departmental agency reports directly to the appropriate Minister. The chief executive of the departmental agency and the Secretary to the Treasury need to formally agree how back-office functions will be provided. Departmental agency has a separate appropriation or Vote.	Chief executive reports to responsible Minister and is accountable for own Vote.

Time to be operational	Can be established now. An Order-in-Council would be needed for a functional chief executive.	An Order-in-Council would be needed for a departmental agency. Public Service Commissioner appoints CE under Public Service Act.	An Order-in-Council would be needed for a department. Public Service Commissioner appoints CE under Public Service Act.

36. Our initial analysis indicates that locating a new agency within the Treasury would have significant benefits in terms of the new agency's capability, influence and connections, and could be configured as a separate agency, with its own identity, senior leadership and dedicated resourcing. Further, a branded business unit would be the lowest cost, least disruptive, and quickest to fully establish out of all these options.
37. However, the optimal organisation form will depend on how each of these criteria are weighted, and your expectations of how a new regulation agency should be configured. Officials would therefore like to have a further discussion with you to better understand how each of these organisational forms could best support the Minister for Regulation in achieving his priorities for the portfolio.
38. Following that discussion, officials can provide further detailed advice in relation to your preferred organisational form(s).

Implementation

39. We have assumed that the Government wants the new arrangements to get underway promptly so that the work programme can begin. Irrespective of the final choice of organisational form, the Treasury has started to look for a senior leader reporting to the Secretary to the Treasury to lead the early phase of establishment.
40. If the option is to establish the agency as a branded business unit without a functional chief executive, establishment is straightforward, as all the mechanisms are already in place. If a functional chief executive, a departmental agency, or a separate department are wanted then the critical path for the formal establishment process is driven by the need for an Order-in-Council and the process for appointing a chief executive.
41. In terms of staffing, the new agency could initially comprise the current roles within the Regulatory Strategy Team within the Treasury (equivalent to around 10.75 FTE) noting that, depending on choice of organisational form, a process would need to be followed to transfer existing roles into a new agency. The work of this team has already been urgently reprioritised to enable it to focus on providing advice on delivery of your 100-day priorities within the Regulation portfolio (in addition to essential business as usual work such as administering the RIA system).
42. Once additional funding from the Productivity Commission disestablishment is available, the new agency could build to have a higher headcount by the start of the 2024-25 year (noting that the exact number will depend on the chosen form of the agency e.g. how much funding is required for a Chief Executive role and/or the greater overhead costs arising from a standalone department). 9(2)(f)(iv) confidentiality of advice [redacted]
43. We recommend that, once you have confirmed your preferred approach to an organisational form for a new agency, we report back to you with a more detailed work programme and timeline to establish the new agency, 9(2)(f)(iv) confidentiality of advice [redacted]

Next steps

44. Joint officials welcome a discussion with Ministers on:

    a. the focus of a new regulation agency, including the degree of centralisation of functions and its alignment with other key systems and agencies;

    b. the functions that would be carried out by the agency, including key new functions, and current functions carried out by the Treasury and other agencies; and

    c. the organisational forms that would work best for the agency.

45. Officials can provide further advice in January on any outstanding matters and implementation timeframes, followed by a draft Cabinet paper in early February, to meet Ministers' 100-day milestones.

Annex 1: Regulatory oversight bodies: OECD considerations and Australian jurisdictions

Key considerations in designing a regulatory oversight body

In its *Regulatory Policy Outlook 2021*, the OECD notes that "robust oversight is crucial for effective regulatory policy". It emphasises "the importance of establishing mechanisms and institutions to provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality".[10]

The OECD also notes that, while challenges with implementation of a whole-of-government approach to regulatory oversight suggest higher centralisation is necessary, there "seems to be no one-size fits-all rule" for designing a regulatory oversight system.[11] For examples and comparisons of existing arrangements, we have drawn from Australian regulatory oversight counterparts on both a state and federal level.

As a general point, the OECD comments on the critical ability of a regulatory oversight body to gain buy-in from across government, noting that "beyond institutional design and related requirements, ROBs' legitimacy, credibility, influence, and ability to elicit buy-in from those involved in better regulation across government are important factors for success".[12]

Location

On important features to consider when creating regulatory oversight bodies, the *OECD 2012 Recommendation of the Council on Regulatory Policy and Governance* states that a body responsible for regulatory oversight should be "established close to the centre of government, to ensure that regulation serves whole-of-government policy".[13]

Across the OECD and the European Union, regulatory oversight bodies are most commonly located within the centre of government, or within Ministries of Finance or Treasury. The below chart outlines the location of regulatory oversight bodies across OECD member countries and the European Union, as of 2021[14]:

[10] OECD Regulatory Policy Outlook 2021 | en | OECD

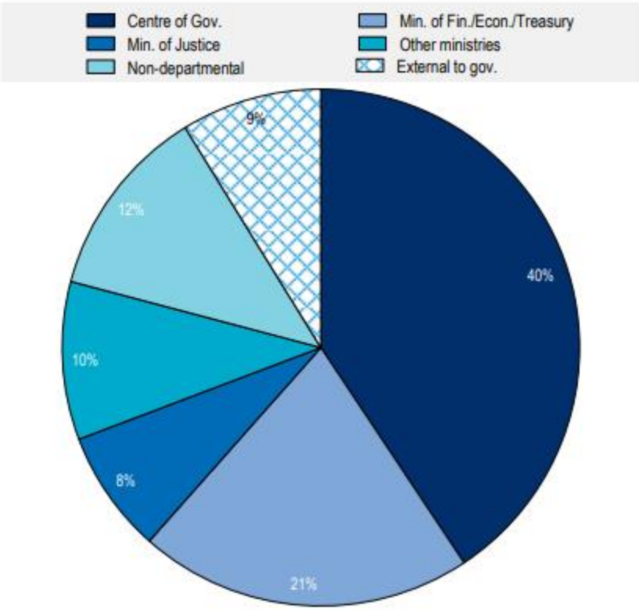
[11] Defining and contextualising regulatory oversight and co-ordination | OECD Regulatory Policy Working Papers | OECD iLibrary (oecd-ilibrary.org)

[12] OECD Regulatory Policy Outlook 2021 | en | OECD

[13] Defining and contextualising regulatory oversight and co-ordination | OECD Regulatory Policy Working Papers | OECD iLibrary (oecd-ilibrary.org)

[14] OECD Regulatory Policy Outlook 2021 | en | OECD

Figure 3.2. Location of ROBs (in % of total)



Note: Data is based on 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Survey 2021.

All of the Australian regulatory oversight jurisdictions we have detailed information on are now located within central agencies, either at a state or federal level. They are located within various branches and levels of Departments of Finance and/or Treasury (with the exception of the federal Office of Impact Analysis, which is within their Department of Prime Minister and Cabinet).

Functions

Core functions of regulatory oversight bodies as described by the OECD include: quality control of impact assessment and other regulatory management tools, scrutiny of the stock of regulation, systematic improvement of regulatory policy, and the provision of co-ordination and guidance support for the implementation of a whole-of-government approach to regulatory quality.[15]

For the quality assurance of prepared impact analysis documents, the centralisation of the process varies greatly in Australia. At the federal level and in Victoria, the regulatory oversight units review all impact statements of significant proposals - whereas in New South Wales, quality assurance is less centralised, with the regulatory oversight body only reviewing impact analysis for some significant proposals, or on request of an authoring agency. The regulatory oversight units tend to only do reviews of impact analysis for proposals that are deemed significant, and on a state level seem to be shifting away from a compliance and enforcement approach to impact analysis oversight.

[15] Defining and contextualising regulatory oversight and co-ordination | OECD Regulatory Policy Working Papers | OECD iLibrary (oecd-ilibrary.org)

At the Federal level, there is strong centralisation of administration and compliance monitoring for impact analysis requirements. There is less centralisation on a state level with some states allowing agencies to self-exempt or self-assess for significance to decide whether impact analysis is required.

Most jurisdictions have a regulatory deep dive function and all of the regulatory units have a role in providing advice and support on good regulatory practice and regulatory proposal development processes. However, none of the Australian regulatory oversight units that we information on have dedicated roles relating to legislative quality assurance. Existing legislative processes and agencies such as Western Australia Office of Parliamentary Counsel are expected to provide quality safeguards in their standard approach.[16]

Better Regulation Victoria

In Victoria, the Regulatory group inside the Victoria Department of Treasury and Finance hosts the regulatory oversight body Better Regulation Victoria. The Regulation group also includes Regulatory Reform and Regulation Policy and Risk and Insurance Teams. Victoria has established a Commissioner for Better Regulation role which Better Regulation Victoria reports to and supports. Better Regulation Victoria carries out functions that cover both the stock and flow of regulation, including the quality assurance of RISs, red tape reduction, and regulatory deep dive reviews or 'health checks.'

The Australian Department of Finance has noted that having the regulatory oversight functions located at the centre has allowed for access to key Government processes including the Budget cycle to support regulatory improvement agendas (compared with, for example, being located in a Productivity Commission or other external agency).[17]

[16] https://portia.hamlet.treasury.govt.nz/work/link/d/IMANAGE!4889813.1

[17] https://portia.hamlet.treasury.govt.nz/work/link/d/IMANAGE!4889813.1

Annex 2: Current functions with regulatory oversight components

Function	Location	Comment
Strategic co-ordination and oversight of the Regulatory Management System	The Treasury	This includes responsibilities in relation to the functioning of the RIA system and disclosure statement regime.
Provision or guidance and support to agencies to help them improve their regulatory stewardship capability, and to improve alignment of agency investments and work programmes in relation to regulatory stewardship	The Treasury	This is predominantly through the Secretary to the Treasury's role as public service functional lead for regulatory stewardship, as appointed by the Public Service Commissioner.
Administration of the RIA requirements for regulatory proposals, including provision of guidance and RIA training	The Treasury	
Quality assurance of RISs	Responsible agencies The Treasury	This is largely devolved to responsible agencies. The Treasury quality assures around 10 significant RISs a year.
International obligations, regulatory coherence, and representing New Zealand in international regulatory fora	The Treasury/MBIE	The Treasury is responsible for advising/delivering on New Zealand's international obligations in relation to Good Regulatory Practice (GRP). MBIE shares with the Treasury responsibility for representing New Zealand in international regulatory policy fora, and for coordinating contributions to international benchmarking studies of regulatory quality and good regulatory practices.
Leadership and secretariat support for the cross-government (including local government) regulatory practice initiative (G-REG)	MBIE	G-REG is a voluntary, club-funded network of central and local government regulatory agencies established to collaborate on actions to professionalise and improve leadership, culture and workforce capability in regulatory practice, including developing national qualifications in aspects of regulatory compliance practice.
Research and analytical insight in the experiences of business in dealing with government	MBIE	This is delivered via Better for Business (B4B), part of MBIE's Small Business Services group.
Capability-building across government to design and deliver appropriate and accessible dispute resolution	MBIE	This is delivered via the Government Centre for Dispute Resolution (GDR).
Specialised legislative design and drafting support for New Zealand legislation	PCO	
Publication of authoritative versions of New Zealand's	PCO	

primary and secondary legislation		
Promotion of the coherence, constitutionality and accessibility of New Zealand’s legislation	PCO	
Leadership and secretariat support for the advice and guideline maintenance work of the Legislation Design and Advisory Committee (LDAC)	PCO	
Promoting the rule of law and upholding the legitimacy of New Zealand’s constitutional arrangements	Ministry of Justice	
Advice and quality assurance of legislative proposals impacting on human rights, offences and penalties, and courts and tribunals	Ministry of Justice	

Annex 3: Characteristics of different options for organisational form

	Branded Business Unit within Treasury (with possible Functional Chief Executive)	Departmental Agency hosted by Treasury	Department
Description	A Branded Business Unit is part of a department but has a separate public identity (e.g. New Zealand Debt Management Office, Biosecurity New Zealand, Medsafe). The Head of the unit could report directly to the Minister for Regulation, via delegated authority from the Secretary to the Treasury. A Functional Chief Executive is appointed by the Public Service Commissioner under the Public Service Act to lead an important function either within a department or across the system (or both). They engage directly with, and report to, a Minister. (The only example here is the CE Cyclone Recovery, DPMC).	A departmental agency is a 'department within a department'. That is, an area of activity is formally ring-fenced within a host department. It has a chief executive appointed by the Public Service Commissioner and reporting to an appropriate Minister. Options to have own strategy and policy and/or manage own assets. Examples include the Social Wellbeing Agency (hosted by PSC) and the National Emergency Management Agency (hosted by DPMC)	Executive branch activities and advice are normally carried out by a department or a unit or agency within a department. The chief executive is appointed by the Public Service Commissioner and reports to the responsible minister. There are 31 Public Service Departments.
Functional leadership role for regulatory stewardship	Would remain with the Secretary to the Treasury (or would transfer to the functional CE)	Would transfer to the departmental agency CE	Would transfer to the departmental CE
Scope and focus	Needs to sit within the strategy and policy of its department	Sits within the strategy and policy of its department unless express provision is made when it is established.	Has a separate focus from other Government departments

	Branded Business Unit within Treasury (with possible Functional Chief Executive)	Departmental Agency hosted by Treasury	Department
Identity	Can have a separate public identity and could be called Ministry for Regulation.	Has a separate public identity and could be called Ministry for Regulation	Has a separate public identity and would be called Ministry for Regulation
Funding	Could have a separate appropriation within Vote Finance (overseen by the Minister for Regulation) or a separate Vote.	Could have a separate appropriation within Vote Finance (overseen by the Minister for Regulation) or a separate Vote. Responsibility for management of assets can be assigned when it is established.	Would have a separate Vote. Automatically has the ability to hold its own assets.
Back-office corporate functions (finance, legal, HR, communications)	Would be provided by Treasury	The Secretary to the Treasury and the departmental agency CE formally agree how back-office functions will be provided. The starting point would be that these come from Treasury as it is the host department.	Can have separate back-office functions, but for cost reasons we would recommend that these are shared with Treasury
Employment arrangements	Staff would be employed by Treasury	Staff would be employed by Treasury and the departmental agency CE would have statutory delegation to employ and manage own staff	Employs own staff
Formal accountability	Would be separately identifiable within host department's accountability documentation (e.g. statement of strategic intentions, annual report)	Is required to have separate identity within host department's accountability documentation	Has all the accountability arrangements of a standalone department
Costs	Minimal over the cost of the status quo (additional cost of CE in the case of a functional CE)	Additional cost of CE, and modest ongoing costs associated with accountability arrangements	Additional cost of CE will be higher than with other options as scope and responsibility would be greater. Higher ongoing costs associated with accountability arrangements and back-

	Branded Business Unit within Treasury (with possible Functional Chief Executive)	Departmental Agency hosted by Treasury	Department
			office functions. Potential for property costs.
Method of establishment and speed of establishment	A branded business unit can be established without formal mechanism. A functional CE position is established by Order-in-Council and an Acting CE could be in place shortly after that. The recruitment process for the substantive appointment could take up to 6 months and would need to go through APH and the Executive Council.	Established by Order-in-Council following Cabinet agreement. An acting CE can then be appointed. The recruitment process for the substantive appointment could take up to 6 months and would need to go through APH and the Executive Council. A formal agreement is needed between the departmental agency CE and host department CE in respect of back-office functions (although a departmental agency can commence operations before this is finalised).	Established by Order-in-Council following Cabinet agreement. An acting CE can then be appointed. The recruitment process for the substantive appointment could take up to 6 months and would need to go through APH and the Executive Council. Requires greater establishment of corporate machinery (even if shared with another department).