



## **Australian Government**

**Department of Finance and Deregulation**  
**Office of Best Practice Regulation**

PROTOCOL BETWEEN THE  
OFFICE OF BEST PRACTICE REGULATION  
AND THE  
REGULATORY IMPACT ANALYSIS TEAM



**THE TREASURY**  
Kaitohutohu Kaupapa Rawa

1. This document details the working arrangements between the Australian Government Office of Best Practice Regulation (OBPR) and the Regulatory Impact Analysis Team of New Zealand's Treasury (RIAT) in relation to the assessment of Regulatory Impact Statements (RISs) prepared for ministerial councils and standard setting bodies under the requirements of the *COAG Best Practice Regulation: A Guide for Ministerial Councils and National Standard-Setting Bodies* (COAG Guide, COAG 2007).
2. The section 'Process Guidelines for Regulatory Impact Assessment' of the COAG Guide, details the process by which the OBPR provides advice and assistance on the preparation of RISs for ministerial councils and national standard-setting bodies and monitors compliance with the COAG Guide.
3. This process provides that draft RISs are sent by ministerial councils and national standard-setting bodies to the OBPR for advice prior to the RIS being made available for public comment (termed the 'Consultation RIS' throughout this Protocol). Where a trans-Tasman issue is involved, the OBPR will refer the draft Consultation RIS to the RIAT for comment. Similarly, the OBPR will forward the decision-making RIS to the RIAT for comment. The aim is to ensure that potential impacts to New Zealand are adequately identified and analysed.

#### **Identification of a trans-Tasman issue**

4. The criteria to determine whether a particular regulatory proposal gives rise to a trans-Tasman issue is potentially very broad. For the purposes of this Protocol, it is considered by both the OBPR and the RIAT that as an initial means of identification, a list of the Commonwealth-State ministerial councils with New Zealand participation would provide suitable guidance. This list is attached as Annex A to this Protocol (contact details will be updated as necessary). It is noted that trans-Tasman issues may develop outside the scope of the list of ministerial councils with New Zealand participation and that this list is for initial guidance only. In cases where either the OBPR or RIAT become aware that other COAG fora are considering matters where there are trans-Tasman issues, where it is feasible, they will advise the other party with the objective of allowing the requirements detailed in the COAG Guide to be met in full.

#### **Process for Review of a Consultation RIS by the RIAT**

5. As detailed in the COAG Guide, the OBPR will assess a Consultation RIS within two weeks. The following paragraphs detail the mutually agreed process for consultation with the RIAT assuming this two-week turnaround period.
6. Upon identification that there is a trans-Tasman issue involved in relation to a draft Consultation RIS prepared by a ministerial council (as detailed in paragraph 4 above), the OBPR will forward the RIS to the RIAT by electronic mail or facsimile as soon as possible (i.e. preferably no later than one working day after its receipt from the ministerial council).
7. The RIAT will undertake to advise the OBPR (by electronic mail) whether or not it intends to provide any comments on the draft Consultation RIS within two working days of receiving it.
8. Where the RIAT confirms that it does not intend to make any comments, the OBPR will continue its assessment of the draft Consultation RIS as normal.

9. Where the RIAT confirms that it does intend to provide comments on the draft Consultation RIS, it will undertake to provide those comments to the OBPR (by electronic mail) within five working days of receiving it. This will provide the OBPR with sufficient time to incorporate the RIAT's comments within its own assessment of the draft Consultation RIS.
10. The RIAT acknowledges that the OBPR may in some instances be required to assess a draft Consultation RIS in a shorter timeframe than the two weeks indicated in the COAG Guide. In these instances, the OBPR and RIAT will work together to ensure as far as possible that any comments from the RIAT are incorporated into the OBPR's assessment of the draft Consultation RIS.
11. As detailed in the COAG Guide, the OBPR will advise the ministerial council of its assessment of the draft Consultation RIS, which will incorporate any comments from the RIAT. The OBPR will forward in a timely manner a copy of its assessment to the RIAT for information. The RIAT notes that the advice presented to the ministerial council may or may not be adopted in the further revision of the RIS.

#### **Focus of RIAT Comments**

12. Any comments made by the RIAT will focus primarily on the trans-Tasman impact of the particular regulatory proposal. This will be with the view of ensuring that the regulatory proposal is considered in the context of the broader trans-Tasman market. The comments may seek to ensure that the current policy and industry environment in New Zealand is accurately portrayed (relevant to the discussion of the status quo and potentially the problem definition) and that potential impacts to New Zealand industry, consumers or society are identified within the cost-benefit analysis of the Consultation RIS. This includes the full range of potential impacts to New Zealand, including economic, social, cultural, health and environmental impacts. Comments may also seek to encourage that such affected parties are consulted within the policy development process.
13. To this end, and acknowledging that Consultation RISs often contain only a preliminary assessment of impacts, the RIAT comments will endeavour to draw out in the Consultation RIS the relevant information from the responsible ministerial council in relation to the identification of impacts in New Zealand.
14. The RIAT may also provide to the ministerial council a list of suggested parties that they (in conjunction with the relevant New Zealand government agencies) feel should be consulted by the ministerial council in relation to its regulatory proposal. However, this role would be distinct and separate from the role of providing advice to the OBPR on the content of the draft Consultation RIS.

#### **Consultation within New Zealand Government**

15. As part of its assessment of the New Zealand perspective, the RIAT may liaise with other teams within the Treasury, Ministry of Economic Development and with the New Zealand government department or agency of the responsible New Zealand Minister on the relevant ministerial council. The focus of such discussions will be the content of the draft Consultation RIS vis-à-vis the RIS requirements. New Zealand departments and agencies will be advised by the RIAT to treat the draft Consultation RIS as confidential.

Furthermore, the department or agency should not make contact with the relevant ministerial council (or other stakeholders) regarding the draft Consultation RIS or its drafting process, but should ensure those detail comments on the Consultation RIS are referred to the RIAT. Where appropriate, the RIAT will provide the OBPR with background information on the detail and extent of any consultation with the relevant New Zealand government departments or agencies, and the subsequent outcomes, alongside its comments on the draft Consultation RIS.

16. Where the RIAT has undertaken to provide final comments to the OBPR on a draft Consultation RIS, it will also forward a copy of these comments to the departmental contact, as detailed in Annex A. This contact may then undertake to advise the responsible New Zealand minister on the ministerial council. This would assist in enabling the responsible minister to ensure, through his/her on-going participation in the ministerial council, that the impacts to New Zealand arising from the regulatory proposal are properly identified and suitably managed.

#### **Process for Review of a Decision Making RIS by the RIAT**

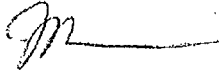
17. For a trans-Tasman issue where the RIAT has previously provided comments on a Consultation RIS, the OBPR will forward the final RIS for decision makers (Decision-Making RIS) to the RIAT for review. The primary purpose of this review will be to ensure that the potential impacts to New Zealand are adequately identified and analysed. Paragraph 12 above gives further information on the focus for review comments.
18. As for a Consultation RIS, the COAG Guide requires the OBPR to assess the Decision-Making RIS within two weeks of receipt. The process applied for the Decision-Making RIS will be as for the Consultation RIS in paragraphs 6 to 16 above.

#### **On-going Discussions**

19. The OBPR and RIAT will hold regular discussions (i.e. no less frequently than every three months) to ensure that the working arrangements detailed in this Protocol are feasible and complete. The key talking points in these discussions are likely to be the identification of up-coming trans-Tasman issues arising in both Australia and New Zealand, and any necessary improvements to this Protocol.
20. Joint efforts to identify upcoming trans-Tasman issues derive from the mutual aim of the OBPR and RIAT to facilitate better and more effective co-ordination of policy development between Australia and New Zealand, in line with the COAG Guide.
21. Any subsequent amendments identified as necessary to improve the effectiveness and efficiency of the working arrangements under the COAG Guide will be made to this Protocol by mutual agreement.

#### **Key Contacts**

22. The OBPR and RIAT will each nominate a key contact person for the purposes of the working arrangements detailed in this Protocol.



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**Jason McNamara**  
**For the Office of Best Practice Regulation**

**Date** 11/11/09



13/11/09

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**Michele Lloyd**  
**For the Regulatory Impact Analysis Team**

**Date**