What to expect from the ‘new’ Government

John Key has made it a badge of honour to announce his policy intentions well in advance and, where they are controversial, to signal a mandate from the electorate before proceeding.

Consistent with this, National went into the election campaign having already laid the foundations for much of its second term agenda. In some cases – securities law reform and KiwiSaver – legislation has been introduced. In others – the ETS, benefit reform, ACC – much of the policy work has already been done. This Brief Counsel looks at the likely shape of the new Government’s policy programme for the first half of the new term.

Continuity a key theme

We expect the continuities to outweigh the differences between the Key Government’s first and second terms.

National holds 60 seats in a 121-seat House. This may drop to 59 if the Greens pick up another seat at National’s expense on specials. But National would still be able to look to either Act and United Future or to the Māori Party to get a majority. It will not need all three parties on every issue.

A potential vulnerability for National is if Tariana Turia or Pita Sharples retire mid-term as there is a risk that their seats could go to Labour in a by-election.

The Prime Minister has indicated that he will be reshuffling his cabinet. But he has also said that there will be no change in three key portfolios: Finance will stay with Bill English, Foreign Affairs with Murray McCully and Trade with Tim Groser.

The fiscal settings will also be much the same as National is promising to maintain a close hold on the purse strings by:

- limiting new operating spending to $800 million in its first two budgets and to $1.2 billion in its third (2014-15) budget
- deferring any new capital allowances until Budget 2017, and instead
- funding new capital spending from the $5 billion to $7 billion Future Investment Fund which the Government will create from the asset sales process.
And the downsizing and search for efficiencies in the public sector will continue. National will apply what is effectively a sinking lid policy. The number of FTE core government administration positions (as opposed to front line jobs) will be capped at current levels over the next three years.

### Policy priorities

The mixed ownership and welfare reform programmes will soak up a lot of the Government’s time, energy and political capital – especially if the Māori Party demands a special deal for iwi as the price of its support. Key has ruled out preferential access, but expect some form of iwi accommodation for the Māori Party’s vote.

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<tr>
<th>Mixed ownership model</th>
<th>Sell up to 49% of Mighty River Power, Genesis, Meridian and Solid Energy. Reduce the government’s stake in Air New Zealand.</th>
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<tr>
<td>Comment</td>
<td>If the world slumps into recession, National will be under pressure to defer this programme until the market picks up. Bill English has already flagged this possibility. But National will be extremely reluctant to put the sales on hold as it needs the revenue if it is to have any chance of bringing the budget back into balance by the target 2014-2015 date.</td>
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<td>ACC</td>
<td>Open the workplace account to private insurance. Expand the Accredited Employers Programme. “Explore” opening the Motor Vehicles and Earners’ Accounts to competition.</td>
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<td>Comment</td>
<td>National will announce the detail of its ACC decisions in February but is expected to forge ahead with the reforms outlined in the Department of Labour discussion document, released on 1 June 2011.</td>
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<th>Resource management</th>
<th>Three tranches of reforms are planned. They are, in order of sequencing:</th>
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<td></td>
<td>• introduction of a new six month time limit to decide notified RMA consent applications for medium sized projects (new subdivisions and retail developments). This Bill will be introduced in March</td>
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<td>• amendments to the RMA to reflect the recommendations of the Infrastructure and Urban Design Technical Advisory Groups and to ensure that the Act better manages natural hazards such as flooding or earthquake-induced liquefaction. Officials will report to the Government on policy options in March with legislation due in the House by July, and</td>
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<td>• mechanisms for the management of water quality, quantity and allocation. These are likely to include a price mechanism and a mechanism to allow water rights to be transferred or traded. The Land and Water Forum will report to the Government on options by May next year.</td>
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<td>KiwiSaver</td>
<td>Enactment of legislation to increase the minimum contribution rate from 2% to 3% from 1 April 2013. Auto-enrolment is pencilled in for 2014 but will be implemented only when the budget is back in surplus.</td>
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<td>Innovation</td>
<td>Invest $60 million in “national science challenges” to find solutions to some of the issues New Zealand faces – e.g. how to intensify primary production in an environmentally sustainable way. Transform Industrial Research Ltd (a CRI) into an advanced technology institute to work in the high tech manufacturing and services sector.</td>
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<td>ETS</td>
<td>Key amendments to the ETS legislation will:</td>
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<td>• extend the 50% surrender obligation so that, rather than expiring at the end of 2012, it is phased out in equal instalments over three years from 2013, and</td>
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<td>• introduce off-setting for pre-1990 forest landowners from 1 January 2013, allowing the land to be converted to the most economic use without deforestation liabilities being incurred if a comparable forest is replanted elsewhere.</td>
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A review will be held in 2014 into whether agriculture should enter the scheme in 2015 as currently legislated. This review will recommend that entry be deferred until the technologies are available to allow farmers to reduce their emissions or our trading partners are also exposed to a similar carbon cost.
Employment

Further labour market deregulation through:

- removing the requirement to conclude collective contract negotiations
- removing the requirement that non-union members are employed under a collective agreement for the first 30 days
- allowing employers to opt out of negotiations for a multi-employer collective employment contract
- allowing employers to respond to partial strikes or other low-level industrial action with partial pay cuts
- extending flexible working arrangements (removing the 6-month rule before an employee can request a flexible working arrangement, removing the limits on the number of requests an employee can make in a 12-month period, extending the right to make a request to all employees, removing the requirement to invoke a formal process), and
- introducing a “Starting-Out Wage” set at 80% of the minimum wage for youth workers.

National has also said that it will review constructive dismissal so that it is less available as “an allegation of last resort.”

Comment

Will raise a number of difficult issues for the Māori Party.

Welfare

Benefits to be framed according to the level of workforce participation expected rather than – as now – according to the circumstance which created the dependency.

Job Seeker Support: includes unemployment and sickness beneficiaries and widows’ and DPB recipients whose youngest child is older than 14. Expected to look for full-time work.

Sole Parent Support: people will be required to undergo work testing when their youngest child turns one and to undertake at least part-time work when that child is five.

Supported Living Payment: basically the invalid’s benefit.

Comment

This is “brand National” but will require delicate handling (and a funding boost for whanau ora) to get the Māori Party on board.

Commercial regulation

Financial Markets Conduct Bill

Key provisions will:

- focus definitions on the economic substance of the financial product not just its legal form
- require all collective investment schemes to have an external supervisor
- establish additional licensing regimes for fund managers, independent trustees of workplace superannuation schemes, derivatives dealers and peer-to-peer lenders, and
- reorient the liability regime to civil remedies (including civil penalties) for most breaches, reserving criminal sanctions for egregious conduct and for “knowing” and “reckless” behaviour.

- replace the requirement for issuers to prepare a prospectus and investment statement with a requirement to issue a single product disclosure statement (PDS) targeted to retail investors
- establish additional licensing regimes for fund managers, independent trustees of workplace superannuation schemes, derivatives dealers and peer-to-peer lenders, and
- reorient the liability regime to civil remedies (including civil penalties) for most breaches, reserving criminal sanctions for egregious conduct and for “knowing” and “reckless” behaviour.
**Commerce (Cartels and Other Matters) Bill**

The Bill introduces criminal sanctions for intentional hard core cartel conduct.

- Lesser or unintentional offending will attract a civil penalty.
- Exemptions are provided for joint ventures and other "collaborative" activities provided they are not entered into for the dominant purpose of lessening competition.

**Companies and Limited Partnerships Amendment Bill**

The Bill:

- strengthens the company registration provisions to prevent shell companies being registered in New Zealand for criminal purposes, and
- creates criminal penalties for serious breaches of directors’ duties.

**Legislation to target loan sharks**

The major changes proposed are to strengthen the Consumer Contracts and Consumer Finance Act by adding new responsible lending criteria including that:

- the borrower must be reasonably expected to repay the loan without substantial hardship, and
- the lender must be honest and transparent in dealing with the borrower.

As has become the practice in the capital markets area, a draft exposure bill will be released for consultation prior to the legislation being introduced to the House.