# 5 Making it happen

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| Key points |
| * The Commissions have identified a wide range of integration initiatives that offer significant joint net benefits. * Economic integration between Australia and New Zealand is well advanced and some of these new initiatives will be more complex and challenging. * Successful implementation requires sound governance arrangements, including the capacity for ongoing evaluation and review. * CER governance arrangements have been light-handed and pragmatic. They have worked reasonably well. There is scope to build on them to match the more complex policy challenges that lie ahead and enhance capacity for evidence-based policy. * Recommendations cover: * a clearer leadership and oversight role within CER * regulatory proposals at the national level should consider opportunities for trans-Tasman collaboration that would lower costs and deliver benefits * opportunities for coordinated action in regional and multilateral fora * five-yearly public reviews of CER’s achievements and direction. |
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Implementation of a policy can be a formidable challenge, regardless of how good it looked on the ‘drawing board’. Effective implementation requires governance arrangements that are suited to the task. This chapter looks at existing arrangements for the leadership, implementation and management of CER reforms. It considers whether improvements could be made in the light of experience, and to better match the requirements of an evolving CER agenda.

## 5.1 The forward agenda

In chapter 4 the Commissions proposed completing some unfinished CER business and a set of new initiatives deemed worthwhile on the basis of available evidence. The chapter categorised the proposed initiatives into the markets for goods, services, capital and labour. Closer integration and benchmarking of government services were also explored.

Taken as a whole, these proposals amount to a substantial forward agenda for CER, and one that contains ongoing challenges if the two countries are to maximise joint net benefits.

That said, CER initiatives need to take their place alongside domestic reforms and participation in broader regional or multilateral initiatives. It is outside the scope of this study to compare relative priorities within this wider landscape. The task here is to identify CER initiatives that are worth pursuing in their own right.

Many of the proposed initiatives would reduce impediments to trade in services. Compared to conventional border restrictions on merchandise trade, these can pose special challenges for reform. For one thing, the impediments often arise as an unintended by-product of pursuing a domestic policy objective. This may be a social or environmental objective not seen primarily in economic terms, or not publicly accepted as a legitimate subject for international negotiation. The impediments themselves are typically regulatory and can involve multiple interacting dimensions.

This places a premium on governance arrangements for CER that can play an effective role in marshalling evidence, establishing priorities and monitoring outcomes. Such arrangements can also help provide a coherent agenda and support its communication and public acceptance.

Cohesive political leadership and effective communication are key to the successful implementation of reforms (Tompson and Dang 2010). This is likely to be more difficult where two Governments are involved. Yet the past achievements of CER indicate the scope to implement the forward agenda successfully.

Good processes are a necessary, if not sufficient, condition for good outcomes. Acharya and Johnston (2007, p. 264) have examined a number of regional international institutions and found that their design is a deliberate and complex process that reflects multiple factors. They conclude that ‘institutional design does affect the nature of cooperation, especially when it comes to the realization of their [the parties’] initial goals’.

It is timely to ask whether CER’s governance remains fit for purpose, given the 30‑year evolution of CER, changes in external circumstances and the types of initiatives in the forward agenda.

## 5.2 Past and current governance of CER

CER governance can be characterised as light-handed and pragmatic. It has been held up as a workable alternative to EU-style integration with its grander visions and powerful supra-national institutions (Leslie and Elijah forthcoming).

The key CER decision-making processes remain within the respective Governments of Australia and New Zealand. While no Ministers have formal responsibility for the trans-Tasman relationship, the two Prime Ministers hold de facto ministerial responsibility for CER and meet periodically. There are also regular trans-Tasman meetings at ministerial and departmental levels, which drive efforts to coordinate and integrate.

At the level of government officials, the Trans-Tasman Outcomes Implementation Group (TTOIG) has served since 2009 providing oversight and coordination of a program to integrate Australian and New Zealand business laws as part of the Single Economic Market phase of CER. It consists of senior officials jointly chaired by the Australian Treasury and the New Zealand Ministry of Business, Innovation and Employment. It oversees and reports six-monthly on progress towards achieving 28 outcomes across nine areas of business law (section 4.1 has more detail) and has been largely successful in keeping the program on track.

The Council of Australian Governments (COAG) is another important component of CER governance arrangements (box 5.1). In some areas, CER reform has taken its cue from the efforts of COAG to remove barriers to create a ‘seamless national economy’ within Australia. One example is FSANZ, the trans-Tasman joint agency for food standards, which grew from the Australian national food standards developed through COAG.

Ministers from both Governments attend the annual Australia-New Zealand Leadership Forum, where business and government leaders come together to focus on CER.

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| Box 5.1 New Zealand’s participation in the Council of Australian Governments |
| New Zealand Ministers have had observer status at relevant COAG Ministerial Councils for nearly two decades. Full membership was recommended in a 2008 report by the Australian House of Representatives Standing Committee on Legal and Constitutional Affairs. The Australian Government accepted this recommendation in relation to Ministerial Councils that consider matters where New Zealand has an interest. When the new COAG structure was put in place in 2011 New Zealand was invited to (and opted to) join the Ministerial Councils and Fora detailed below.   |  |  |  | | --- | --- | --- | | Standing Councils | Select Councils | Legislative and  Governance Fora | | Community and Disability Services | Climate Change | Consumer Affairs | | Energy and Resources | Housing and Homelessness | Food Regulation | | Environment and Water | Immigration and Settlement |  | | Health | Women’s Issues |  | | Law and Justice | Workplace Relations |  | | Police and Emergency Management |  |  | | Primary Industries |  |  | | Regional Australia |  |  | | School Education and Early Childhood |  |  | | Tertiary Education, Skills and Employment |  |  | | Transport and Infrastructure |  |  | | New Zealand does not participate in the Select Councils on Disability Reform and Gambling  Reform or in the Fora on Corporations, Gene Technology and the Murray-Darling Basin. | | | |
| *Sources*: NZ PC and Ministry of Foreign Affairs and Trade. |
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### Benefits of light-handed CER governance

As described in chapter 3, progress on CER has been incremental and pragmatic. This style has generally worked well, in that it has:

* delivered significant integration with broad public support in both countries
* taken into account political, cultural and social preferences
* had relatively low transition and administrative costs.

An early examination of trans-Tasman integration (Holmes 1995) noted its low administrative costs and a relative absence of bureaucracy:

There has been no need for the creation of a regional bureaucracy like the European Union’s, or to devote large amounts of official time to managing the operation. (p. 47)

In its review of Mutual Recognition Schemes, the Australian Commission commended TTMRA as a ‘low maintenance’ system that does not establish a new bureaucracy or require repeated updating (PC 2009b).

Trans-Tasman governance differs markedly from arrangements in the EU, where member states have delegated monitoring and some rule-making functions to supranational institutions, notably the European Commission and the European Court of Justice (box 5.2). CER also differs from the North American Free Trade Agreement, which has several administrative bodies, and other regional trading arrangements (Lloyd 1996). A closer comparator is the arrangements of the Nordic countries (box 5.2).

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| Box 5.2 Differing styles of governance of economic integration |
| **The European Union** (EU) stands out for the breadth and depth of its economic integration. Trans-Tasman integration bears both similarities to and important differences from European integration. Both regions aim to achieve a single market for goods, services, labour and capital. In both, the principle of mutual recognition by member states of each other’s national regulations, standards and qualifications has been important in furthering integration. In the EU this has proven relatively easy for goods, but more difficult for services.  The designers of the EU created supranational institutions — the European Commission, the European Parliament and the European Court of Justice. These function alongside the inter-governmental European Council. Member states have ceded some decision-making powers to these supranational institutions, which have wide authority and can create policies and laws that have ‘direct effect’ in the member states.  Australia and New Zealand have created some joint institutions — the Joint Accreditation System of Australia and New Zealand (JAS-ANZ); Food Standards Australia New Zealand (FSANZ); and the planned Australia New Zealand Therapeutic Products Agency (ANZTPA) — but their authority is limited to specific issue areas. The two Governments also maintain some (ministerial) control over these institutions.  **The Nordic countries** — Denmark, Finland, Iceland, Norway and Sweden — share a long history of cooperation and cultural and linguistic similarities. This smaller group of similar countries has more in common with CER, in contrast to the greater size and diversity of the EU (27 member states).  The Nordic Council of Ministers is the inter-governmental body of Nordic cooperation. It brings together Ministers from national governments with a focus on policy cooperation in areas such as culture, leisure and media; economy, business and working life; education and research; and environment and nature. |
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| Box 5.2 (continued) |
| The Nordic Passport Union enables passport-free movement of Nordic citizens and establishes their right to live, work and study with full equality with nationals in other Nordic countries. The public information service ‘Hello Norden’ is an initiative that provides information to potential migrants about rules relating to living, studying and working in other Nordic countries. |
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### Too light-handed?

‘Kiwi-Aussie pragmatism’ (as a roundtable participant described it) in CER governance appears to have served the two countries well thus far. However it has had some downsides.

A number of commentators and reviews have expressed concerns about the fragmented and ad hoc character that CER has sometimes displayed. They point to the absence of an oversight role, lack of cohesion, and cyclical variations in activity (box 5.3).

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| Box 5.3 Perspectives on CER governance |
| A number of participants in the study, as well as commentators and reviews, have expressed concerns about CER governance:  … the absence of a single goal statement is a problem for making progress… At the moment there is a list of outstanding issues that are being addressed in various ways, but no real sense of impetus. (Nicklin, sub. 11, p. 2–3)  … there have been variations over time in the pace at which the overall integration agenda, and individual issues within that agenda, have been pursued. (Scollay, Findlay and Kaufmann 2011, p. 4)  Certainly ministerial level engagement provides leadership and a semblance of co-ordination. However, it is an open question whether these provide the necessary degree of capacity for change. (Mahony and Sadleir, sub. 28, p. 3)  … there does not seem to be one driving force behind the implementation of CER. (JSCFADT 2006, p. 20)  A key success factor will be ensuring that governance doesn’t focus on a long list of activities, but is instead focused on the achievement of high-level objectives. (New Zealand Customs Service, sub. DR114, p. 3)  … we suggest … a trans-Tasman institution to monitor, engage and support ANZCERTA as a vehicle for deepening the economic and social aspects of this relationship. Such an institution might have the character of a steering committee… (Mahony and Sadleir, sub. DR95, p. 1) |
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The Commissions have been struck by the number and variety of the different parts of what could loosely be called the ‘CER enterprise’. There is no overall design or management, which makes it a major task to document the many agencies and players involved and their interactions.

## 5.3 Strengthening CER governance

Despite the largely positive past experience, the likely more complex and challenging nature of CER’s future suggest that improvements could usefully be made to CER’s governance arrangements. These improvements should be in keeping with the past light-handed and flexible approach and build on existing institutional structures. They should strengthen oversight and enhance support for an evidence-based approach to policy.

The Commissions consider that key opportunities for improving CER governance are:

* clearer leadership and oversight of CER
* regulatory proposals at the national level should consider opportunities for trans-Tasman collaboration that would lower costs and deliver benefits
* coordinated action in the pursuit of beneficial regional and multilateral integration, and greater leverage in global rule making and standard setting
* five-yearly public reviews of CER’s direction and achievements.

### Clearer leadership and oversight of CER

The current decentralised model of CER governance risks fragmenting the integration agenda leading to lapses in continuity and direction. Policy areas and associated governance arrangements are diverse. No single minister or agency is responsible for setting the overall agenda, overseeing the relationship, and monitoring progress and performance.

TTOIG comes closest to performing an oversight role. However, TTOIG focuses on a program of business law reform which is due to be completed in 2014. In addition, TTOIG’s co-chairs are senior officials in the departments with direct responsibility for delivery of most of the outcomes (the New Zealand Ministry of Business, Innovation and Employment and the Australian Treasury). This has been important in facilitating good progress towards these outcomes.

The ACTU and NZCTU see merit in a more representative oversight body (sub. DR118):

The Trans-Tasman Outcomes Implementation Group is too narrowly constituted to oversight changes affecting the welfare of citizens of both countries. … We call for establishment of a broadly representative oversight body in which unions and non-government organisations are recognised with a place at the table. (p. 25)

Leadership and oversight of the CER agenda as a whole could usefully encompass responsibility for setting direction and priorities, communication of key messages, monitoring progress, and holding officials to account. These would arguably enhance the profile and momentum of CER, better guide its future ‘direction of travel’ (see Finding 2.1), and quickly and effectively identify and address issues as they arise. But the benefits would need to be weighed against the costs of additional bureaucracy.

Change could be realised in different ways. Possibilities include having a senior Minister in each country with overall responsibility for CER, an enhanced role for the annual CER Ministerial Forum, or a partnership between government and non-government organisations. A surer way forward would be to build stronger administrative support for the annual meetings that already take place at the highest political levels — between the two Prime Ministers, between the Treasurer (Australia) and the Minister of Finance (New Zealand), and at the CER Ministerial Forum.

For this purpose, a group of senior, trans-Tasman officials could be designated to:

* operate along the lines of TTOIG, but have coverage of all CER issues
* continue and broaden TTOIG’s existing monitoring function
* improve continuity of institutional knowledge about CER
* provide foresight about future opportunities and challenges.

The core membership of the group would likely come from the departments of prime minister and cabinet, treasury, foreign affairs and business in each country, with others involved according to agenda priorities, for example from social welfare or border-control agencies.

This group’s responsibilities should include monitoring issues relating to the common trans-Tasman labour market and the associated movement of people. It is important to promote a more integrated treatment of the various problems that can arise with cross-border movement of workers and their families and which can impact on efficiency, fairness and sustainability. The issues currently include pathways to citizenship, eligibility for some forms of state support and the interplay of tax obligations and access to benefits (see section 4.5).

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|  | **R5.1** |  | The Australian and New Zealand Governments should create clearer leadership and oversight of CER, including of issues relating to the trans-Tasman labour market and associated movement of people. The enhanced leadership and oversight should build on existing governance arrangements and the annual meetings of Prime Ministers and other Ministers. |
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### Regulatory proposals should consider trans-Tasman implications

When either country is introducing new or modified regulations, the opportunity to design the changes in a way that lowers transaction costs for businesses and people operating across the Tasman could be overlooked. This is another risk of the current fragmented governance arrangements. Two examples where regulations differ, but could have been aligned, are internet copyright violations and film censorship classifications.

New areas of regulation at the national level constantly arise (for example ‘cyber bullying’, privacy laws relating to social media) and there could be gains from a more collaborative approach across the Tasman.

Regulatory impact analysis (RIA) processes are well developed in each country and are required for all significant new regulations and modifications of existing ones. The RIA could be an appropriate point for the responsible government agencies to consider whether trans-Tasman collaboration or alignment would bring tangible gains. The choice among options would still need to be based on an overall cost-benefit test.

The COAG Best Practice Regulation Guide requires officials to seek and include comments from the New Zealand Treasury’s Regulatory Impact Analysis Team (RIAT) on any trans-Tasman issues. This worthwhile step should include assessment of whether there is scope for beneficial trans-Tasman regulatory alignment. But many national regulatory proposals are developed outside of COAG ⎯ and hence avoid COAG’s requirement for trans-Tasman scrutiny ⎯ yet have potential trans-Tasman dimensions.

Some areas already have a co-ordinating body, such as the Trans-Tasman Council on Banking Supervision (banking and prudential regulation) and FSANZ (food safety). There could be gaps in other areas, particularly if they do not have a history of collaboration. A way to cover these gaps would be a prompt in the RIA guidance material for Australian and New Zealand national proposals. The New Zealand Treasury is intending to include such a prompt in the next edition of its RIA Handbook.

A further and stronger step would be for the Office of Best Practice Regulation in Australia and the RIAT in New Zealand to comment critically on draft Regulatory Impact Statements that, in their assessment, overlook significant opportunities to reduce, or avoid raising, barriers to trans-Tasman commerce.

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|  | **R5.2** |  | Regulatory proposals at the national level should consider opportunities for trans-Tasman collaboration or alignment that would lower costs or deliver benefits for businesses and people active on both sides of the Tasman. |
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### Facilitating joint action

Chapter 3 noted the outward-looking nature of CER and its ability to act as a building block for Asia-Pacific integration. As Sir Frank Holmes noted some years ago:

Cooperation between the two countries in developing external relationships must inevitably assume increasing importance in their bilateral dealings with one another. (Holmes 1995, p. 32)

CER governance arrangements are likely to influence the way in which Australia and New Zealand interact with the wider region and how often they work collaboratively to pursue their aspirations in the region and more widely.

Australia and New Zealand acted together in negotiations with the Association of Southeast Asian Nations (ASEAN) to eventually form the ASEAN-Australia-New Zealand Free Trade Area (section 3.2). Close cooperation and joint approaches have occurred in other cases (for example, overseas development assistance in the Pacific and the ‘Cairns Group’ in WTO trade rounds).

There are benefits from working jointly where appropriate opportunities arise. However, as noted earlier (section 4.3), Australia and New Zealand should retain discretion about when they negotiate jointly or individually with other countries (thus removing one argument for a Customs Union). Working jointly may prove beneficial where the two countries can exert greater leverage by coordinating their stances in multilateral fora such as the WTO, and in rule-making and standard-setting bodies for areas such as customs, biosecurity, telecommunications, intellectual property and aviation.

It is important that the two countries stay alert to such opportunities for coordinated action.

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|  | **R5.3** |  | The Australian and New Zealand Governments should continue to identify and take opportunities for coordinated action to achieve beneficial regional and multilateral integration, and greater leverage in international rule making and standard setting. |
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### Regular reviews

Reviewing the effectiveness of major programs is an important part of good governance. The monitoring, evaluation and review of CER can be improved. This can be achieved through adopting guidelines for appropriate evaluation of initiatives, evidence-based policy making, and by periodic reviews of CER’s outcomes and direction. It is important to learn whether initiatives are achieving their intended benefits and whether there are unintended effects. Such feedback can also help build the evidence base for improving policy settings and developing new initiatives.

There is little research on CER reforms and their effects to date, apart from in the merchandise trade area.

Current mechanisms for the evaluation of CER initiatives are quite fragmented. Each of the multitude of agreements between the two countries tends to contain a clause requiring some form of review. For example, the 2011 CER Investment Protocol states that ‘The Parties agree to meet in or shortly after the first year of entry into force of this Protocol, and regularly thereafter, to review the operation of this Protocol.’ However, there is no consistent approach to such reviews, which have varied in quality and frequency. As a general rule, any significant trans-Tasman initiative should include a commitment to cost-effective evaluation.

Good evaluation of CER policies and comparisons of policy effectiveness across Australia and New Zealand depend on the availability of good data. Motu Economic and Public Policy Research (2012) is investigating the merits of New Zealand developing a longitudinal household panel survey along the lines of the Household, Income and Labor Dynamics in Australia survey (HILDA). There could be a case for the two Governments to support these surveys and coordinate and synchronise them in ways that help build a CER evidence base for policy evaluations and research on topics such as trans-Tasman people movement.

There is also merit in formal reviews that examine the overall health of CER. These were to be conducted ‘in house’ as part of the annual CER Ministerial Forum, led by Trade Ministers (Australian High Commission, New Zealand 2012). The character of these meetings can pre-dispose them to focus on immediate or short-term issues. Further, they have limited capacity to commission or consider more substantive analysis.

As Leslie submitted (DR111, p. 3), reviews also provide opportunities for public engagement on CER and to promote transparency.

Much integration of the Australian national and trans-Tasman markets has been achieved on a foundation of ‘executive’ and ‘cooperative’ federalism. This ‘cooperative’ federalism takes place within the structures of COAG, its ministerial councils and standing committees of officials. … these structures represent only the executives of the various jurisdictions involved. Without strong measures to enforce transparency, decision-making in these bodies might also be used to shield decision makers from public accountability for their actions. Transparency of decision-making is necessary to maintain democratic accountability with regard to who has made decisions and why they have done so. This is especially important in issue areas surrounding market integration that are potentially political but often technocratic in nature.

The original ANZCERTA was formally reviewed in 1988, 1992 and 1995. There would be merit in re-introducing comprehensive CER reviews conducted publicly at around five-yearly intervals. These reviews should focus on the broad direction of the CER agenda and draw together what has been learnt from the individual project evaluations and other relevant research conducted in the interim.

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|  | **R5.4** |  | The Australian and New Zealand Governments should undertake five-yearly public reviews of CER to take stock of what has been achieved and learnt, and to ensure that the agenda remains relevant and forward looking. |
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