

## **New Bill Best Hope for Regulatory Discipline**

Any doubts about the case for legislation to bring greater discipline to regulatory policy making in New Zealand should have been removed with the release of a recent Cabinet paper.

The paper dealt with the Regulatory Standards Bill (formerly known as the Regulatory Responsibility Bill) that was approved by Cabinet and is now before parliament. It requires new regulation to respect key principles of good law-making such as the rule of law, access to the courts, and compensation for takings.

Led by the Treasury, every government department associated with the paper opposed the proposal. Who should be surprised? Government departments are often the promoters of regulations. They increase their powers and budgets and reward interest groups that are important to them. Why would they want to be subject to greater discipline?

The departments objected that it would be too expensive for them to vet new regulation against key principles of responsible regulation; an argument which must gall and astonish business people expected to comply with their regulations.

The ironies abound.

The Bill was the product of a high quality taskforce, headed by former Treasury secretary Graham Scott, which reported in 2009. Had he been the current secretary he would surely have recommended the Bill.

Another irony: the same day that the government announced its decision on the Bill, it also announced that crowd controllers and bouncers would be brought within the licensing regime for security guards, extending it from 12,000 to 21,000 people (at a cost of many millions of dollars).

Like rust, the bureaucratic urge to regulate never sleeps. Last year parliament passed an astonishing 139 Acts, totalling over 3000 pages.

So what does the Bill propose that raises the hackles of government departments?

It creates mechanisms to screen out bad regulation which offends against common law constitutional principles. It sets out principles for good regulation; requires certification by chief executives and ministers against them; allows a government override in cases of necessity; and empowers courts to declare regulations to be incompatible with the principles.

The Bill could not come too soon. Over the past decade, New Zealand has seen a glut of new regulation, much of which has harmed the public interest and contributed to the slump in productivity growth. The 2025 Taskforce suggested that a third of the income gap with Australia could be reduced with better regulation.

Business people and business organisations have been telling government officials about regulatory burdens for years, but to no avail. The Ministry of Economic Development and Treasury keep asserting that regulation in New Zealand is in good shape.

The fact that New Zealand scores well against OECD countries for regulatory quality (even though it has slipped on some measures) is of little comfort.

Stifling regulation in many OECD countries is a major cause of their current high-debt, high-unemployment, low-growth economic woes. They are a poor benchmark. New Zealand should be striving for best practice, regardless of what other countries do.

The Ministry of Economic Development has been an ardent promoter of much business regulation. It was responsible for the financial advisers legislation which, particularly in its original form, was widely regarded as the worst piece of legislation in recent years. Initially MED proposed that a 16 year-old salesperson at an electronic store would be breaking the law by raising the option of selling a computer on hire-purchase!

Treasury should know better. It recognises that the main current discipline on regulatory policy, the regulatory impact statement process, isn't

working. It recently commented that only half the significant regulatory proposals considered by Cabinet since 2008 have met expected standards. This reflects entrenched indifference to regulatory quality. No sanctions seem to be applied to chief executives responsible for poor quality advice on regulations.

The departments also fret that the Bill will spawn litigation. Yet no automatic consequences follow from a declaration of incompatibility – governments are free to ignore it. Over time, however, declarations could be expected to carry political weight. The idea is to encourage governments to ‘get it right the first time’.

In this respect the bill is comparable to the Reserve Bank Act and the Fiscal Responsibility Act (now part of the Public Finance Act). These ‘economic constitutions’ are essentially transparency and accountability statutes designed to achieve better policy outcomes. Like those legislative landmarks, this Bill doesn’t in any way infringe parliamentary sovereignty. Countries with more formal constitutions, such as Australia, the United States and Canada, give far greater powers to courts.

It is possible that the disciplines created by the Bill are not strong enough. The Business Roundtable would have preferred a regime (like the Public Works Act) that would have mandated compensation for regulatory takings (like the egregious unbundling of Telecom and the Auckland airport interventions of the previous government.)

Nevertheless, the Regulatory Responsibility Taskforce produced an impressive report and a well-considered, if modest, proposal for improving regulatory quality. Alternatives such as the establishment of a parliamentary commissioner for regulation, as proposed by the Treasury, look ineffective and run counter to the need for less government bureaucracy, not more.

The bureaucracy has had its say; now the productive sector has its chance. All major business organisations will be strongly supportive of the Bill when it reaches a select committee. It is the most promising ‘game in town’ to curb regulatory overkill.

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