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Good Progress on Regulatory Responsibility Legislation

Last week brought encouraging news for those concerned about over-regulation in this country. Parliament's Commerce Committee recommended that a high-level expert task force should be established to carry forward work on the concept of a Regulatory Responsibility Act.

The select committee was reporting on a member's bill introduced by ACT MP Rodney Hide, which in turn had its origins in a 2001 study *Constraining Government Regulation* (www.nzbr.org.nz) by economist Bryce Wilkinson commissioned by the Business Roundtable, Federated Farmers and the Auckland and Wellington Chambers of Commerce.

The study was motivated by the recognition that all previous attempts to curb bad regulation – parliamentary bills and subordinate regulation – had proved ineffectual.

Far too often, measures have been driven by political (vote-seeking) motives or by special interest groups rather than the interests of the public at large. Much legislation contains fuzzy and incomprehensible language (like 'price-sensitive information', 'sustainable management', 'workable competition') and turns out to have consequences that were unintended by lawmakers.

The main checks to date on bad regulation have been the requirements for regulatory impact statements (RISs) to accompany bills and official discussion documents, and the guidelines of the Legislation Advisory Committee.

Both, however, are routinely ignored or, in the case of RISs, done badly. Many would not pass cost-benefit analysis 101.

The government has recently announced that responsibility for oversight of the regulatory impact analysis process will be shifted from the Ministry of

Economic Development to the Treasury. MED, a major regulatory agency, was alone in advising the committee that New Zealand's regulatory framework was in good shape.

The transfer may help matters, but the Treasury was responsible for the regulatory impact statement on the climate change bill currently before parliament which failed to address the critical question of net benefits to New Zealanders, and was associated with advice on the Telecom unbundling legislation that contained no cost benefit analysis at all.

MED and Treasury have to date also resisted stronger regulatory disciplines, arguing that at most the RIS requirements should be codified in statute.

The problem with this approach is that while cost-benefit analysis (the centrepiece of the RIS process) is a useful analytical tool, it is too subjective to be an effective check and it cannot be applied to many regulations (think of the Electoral Finance Act).

It is pleasing to note that the Commerce Committee reached the same conclusion. In its report it recommends that further work be focused on two options, namely an option which distils and codifies the essence of the regulatory impact analysis and the LAC guidelines and provides for independent assessment of compliance, and the option of the bill as introduced.

The bill improves accountability by drawing on the accountability and transparency features of the Reserve Bank Act and the Fiscal Responsibility Act which constrain monetary and fiscal policy in sound ways.

It establishes 'good practice' principles for regulation and provides for 5-yearly reviews of acts and for performance disciplines on the part of regulatory agencies.

It extends to property generally the Public Works Act principle that land may be taken without consent in the public interest but fair compensation must be paid. Often regulations (such as the forced unbundling of

Telecom) also involve the taking of rights in private property, and if they are genuinely in the public interest a similar compensation requirement should arguably apply.

The bill expressly permits laws and regulations that are necessary for revenue purposes or for an essential public interest. It also permits temporary departures from its provisions. Such a regime would in no way obstruct the passage of sound and necessary regulation, but in the final analysis the courts would be a check on the abuse of regulatory powers as they are under the Public Works Act.

The Commerce Committee, chaired by National MP Gerry Brownlee, gave thoughtful consideration to what could be a landmark piece of legislation. Most countries struggle with the problem of excessive regulation which stifles business activity and reduces living standards.

All the main business organisations supported the concept of regulatory responsibility legislation. The New Zealand Institute of Chartered Accountants and the New Zealand Law Society made good contributions. The committee's report was unanimous, with Labour MP Paul Swain playing a particularly helpful role.

There are indications that minister of commerce Lianne Dalziel will accept the committee's central recommendation, namely that a task force made up of members with "extensive knowledge of public policy and economic, legal and constitutional matters" should be formed to extend its deliberations on better regulatory disciplines.

Done well, the work of the task force could chart the way for a regulatory statute of the quality of the Reserve Bank Act and the Fiscal Responsibility Act (now part of the Public Finance Act), help build a political consensus around it, and make a lasting contribution to curbing regulatory excesses.

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