



NEW ZEALAND CHAMBERS OF COMMERCE SUBMISSION ON REGULATORY RESPONSIBILITY BILL

INTRODUCTION

The New Zealand Chambers of Commerce (Inc), NZCCI, welcomes the opportunity provided to make a submission on the Regulatory Responsibility Bill.

NZCCI is an umbrella organisation serving the interests of 34 Chambers of Commerce nationwide. These, in turn, represent over 24,000 businesses around the country. While many of our members are in the SME category our membership includes most of the largest corporations in New Zealand.

NZCCI exists to promote, support and encourage efficient, profitable businesses. Our members provide employment, pay wages, produce goods and services, and determine the depth of the tax base. In so doing, they enable the government to build infrastructure and to provide benefits. If business is flourishing, everyone benefits; if business is in recession or constrained in other ways, peoples' standards of living suffer. For businesses to flourish, they require an environment that is supportive, and a culture that encourages, rewards and celebrates success.

Regulation created by government is a key element of this environment.

SUBMISSION SCOPE

NZCCI notes that the Regulatory Responsibility Bill is part of a package of recommendations prepared by the government's Regulatory Responsibility Taskforce seeking to improve regulatory quality.

The heart of the Bill identifies a number of "principles of responsible regulation". These fall into six broad categories and are largely based on already existing Legislation Advisory Committee (LAC) Guidelines:

Rule of law **of** Legislation should be clear and accessible, not adversely affect rights or not impose obligations retrospectively, treat people equally before the law and resolve issues of legal right and liability by application of the law rather than through administrative discretion.

Liberties Legislation should not diminish a person's liberty, personal security, freedom of choice, or rights to own, use or dispose of property, except as necessary to provide for any such liberty, freedom or right of another person.

Taking of property Legislation should not take or impair, or authorise the taking or impairment of, property without the consent of the owner unless it is necessary in the public interest and full compensation is provided.

Taxes and charges Legislation should not impose or authorise the imposition of taxes except by or under an Act, nor should it impose or authorise charges that exceed the reasonable cost of providing the goods or services, or the benefit that payers are likely to obtain.

Role of the Courts Legislation should preserve the Court's role of authoritatively determining the meaning of law and, where legislation authorises a public entity to make decisions that may adversely affect any person or property, it should state appropriate criteria for making those decisions and provide a right of appeal on the merits against those decisions to a Court or other independent body.

Good law making Legislation should not be made unless those likely to be affected have been consulted, the need has been carefully evaluated, the benefits outweigh the costs and it is the most effective, efficient and proportionate response to the issue available.

The taskforce makes two principal suggestions in respect of encouraging Parliament to comply with a Regulatory Responsibility statute.

Firstly, they recommend that the courts be empowered to say whether a piece of legislation complies with the Regulatory Responsibility Act. The courts will not be able to strike the law down, preserving the sovereignty of parliament, but even the knowledge that the courts can review the decisions will have a salutary effect.

A second suggestion is that the chief executives will have to certify that proposed legislation and regulations comply with the bill. Departments today often put up regulations that do not meet guidelines. A formal certification process will give departmental heads pause.

The taskforce also suggests that amendments by Parliament to legislation must have a certificate which states that the proposed changes meet the tests in the Regulatory Responsibility Act and those that the Regulatory

Review Select Committee have in the Standing Orders, a review function over all legislation.

Additionally, the taskforce recommends that every department review existing legislation against the principles of the Regulatory Review Act.

Will it work?

NZCCI agrees that a process as proposed by the Taskforce will certainly slow up law making. But will it improve the quality of legislation? Will the outcome be a system of regulations that enables productivity and increased economic growth for New Zealand as a whole and result in a reduction to individual businesses in the cost of doing business arising from time wasting and expensive regulation?

The taskforce cites a number of examples of rushed law making that might not have survived reviews required by a Regulatory Responsibility Act; the Foreshore and Seabed legislation, the forced unbundling of Telecoms network (which cost shareholders an estimated \$3 billion and none of the promised benefits appear to have eventuated), and the stopping of the Canadian pension fund bid for Auckland Airport that deprived yet another group of shareholders of their property rights.

However, there is little scrutiny of the actual cost for business and the economy as a whole arising from bad quality and/or unnecessary regulation.

Accordingly, while NZCCI's submission responds directly to the matters in the Bill and in particular the questions raised by the Minister for Regulatory Reform Hon Rodney Hide in his letter of 30 June 2010, **our core concern** is to offer a submission encouraging Government to adopt an operating principle for achieving its economic growth objectives by designing and applying a rigorous and transparent process by which all regulations are developed; namely:

- Undertake a benefit-cost analysis of all new and/or proposed regulations before they are enacted; and,
- Proceed with the regulation only when the benefits clearly exceed the costs.

Under-pinning our submission is a number of observations of critical importance to the business community:

- The burden of regulation is increasing and holding back business investment, productivity and competitiveness.
- It is the view of business that the thrust of regulatory reform should be on finding ways to have less regulation not more;
- An area of the Taskforce report that needs highlighting centres on suggestions that the already existing LAC Guidelines (as set out above) be used as a guideline for a campaign to reduce existing

- regulations and/or testing areas assessed as needing more regulation – e.g. the current review of the Resource Management Act.
- Also, NZCCI is greatly concerned at the apparently arbitrary selection of industries to be specially regulated; (energy is an example, freight transport and water pricing are others).
 - This suggests a form of '**regulatory creep**' is underway, and that therefore 'at any time, any industry' might become a candidate for increased regulatory treatment.
 - The uneven imposition of regulation is or has the potential to unfairly affect competition and resulting prices of goods and services to customers.
 - The unabated proliferation of (inappropriate) regulation that seems to have taken on a life of its own in recent years, is fuelling uncertainty, stifling innovation and is a factor in the recession that emerged in New Zealand in 2008 (and before the impacts of the global financial crisis began to become apparent here).

The balance of our submission elaborates the above observations and makes a number of suggestions and recommendations for addressing the concerns raised.

REGULATION IS INCREASING

NZCCI notes and strongly concurs with the concerns raised by Minister Hide when he finds it 'astonishing' that between 2000 and 2009 over 68,000 pages of regulation was passed. As the Minister notes, in light of this tidal wave of regulation it is hardly a surprise that the quality of New Zealand's regulation has deteriorated significantly relative to the rest of the world.

It is equally unsurprising that in the face of this proliferation of regulation, many businesses have been forced to conduct their business affairs in ways they would not otherwise have chosen.

In the face of this regulatory creep, NZCCI has become concerned over indications that businesses often have little idea of what regulations apply to them, appear unaware as to whether they are breaking any laws, and are either put off from engaging in a business activity either because complying is too costly and/or the regulation is too complicated to make the effort to comply.

In summary, we submit that a return to a legislative culture supporting less regulation is required, and encourage Government to become a champion for fewer and simpler regulations and devote more resources to this outcome.

We make some specific suggestions to support our case for pruning back unnecessary economic (and social) regulation in the final section of our submission – **RESPONSE TO QUESTIONS**

REGULATION IS COSTLY

NZCCI is also concerned at the cost for business and the economy of regulation – administering regulations, supplying information to regulators and complying. NZCCI has been unable to source an authoritative assessment of the cost of New Zealand regulation, but based on early international studies¹ it could be in the order of 8% of GDP or in excess \$4000 per business.

The summary of concerns over the cost of inappropriate regulations – i.e. regulations in which costs outweigh benefits - gathered by NZCCI over time includes the following:

- **Transfer seeking** – The incentive for a business to spend its time seeking regulations in their favour rather than engaging in productive activity and/or meeting the competition;
- **Regulations reducing productivity** – While firm data is lacking, a US estimate is that annual growth is 0.5% less than it would be because of inappropriate regulations.
- **Regulations that stifle innovation** – Groups using particular production techniques lobby for regulations that entrench their technology and preventing new technology or products entering the market. Those wanting to introduce new technology must lobby against such regulation. The delayed introduction of fast broadband opportunities into NZ is a good example of this.
- **Regulations that reduce investment** – Regulation that creates risk by creating an uncertain environment. The problem is not so much with the regulations themselves as with the process by which they are generated. The Chamber accepts that business can generally work with regulations once it knows exactly what they are. But not knowing when they will be introduced and what form they will take creates more risk, more uncertainty and reduces investment.
- **Regulation that begets more regulation** – “Enterprising” business people have a habit of finding ways round particular regulations, to which regulators respond by amending and expanding regulations. Over time this process adds to the proliferation of costly regulation.

To help address the concerns outlined in this section of our submission, NZCCI **strongly recommends** that Government consider adopting and rigorously apply a “Regulation Making Process” as part of the consideration for deciding whether to recommend a regulation and/or when introducing legislation.

We agree with the Minister that the ability of New Zealand firms to compete internationally – and contribute to catching up to Australia by 2025 - is

¹ *Economist*, 10 October 1992 and Australian studies by A J Moran (1987), & D Myers (1992) presented to the Western Australian Chamber of Commerce and also Kevin Guerin (2003) “*Encouraging Quality Regulation: Theories and Tools*” looks at costs of regulations in a paper prepared for Treasury.

affected by the costs of their direct inputs, including from the non-traded sector. Lower infrastructure costs through reform of transport, the waterfront, communications and public utilities are vital to improving the international competitive and productivity of New Zealand businesses.

That is, NZCCI **recommends** that a 'value for money' principle be added to the six existing LAC Guidelines set out above, and form an element of a "Regulation Making Process" package that is applied before any regulation or legislation proposal is introduced.

As well as applying the test of meeting the six LAC principles, there would be additional components to the "Regulation Making Process" as follows:

- A detailed analysis of the proposed regulation, including an evaluation of its costs and benefits and an examination of alternative ways of achieving the same objectives;
- A public scrutiny involving seeking public comment and assessment on the evaluation of benefits and costs; and,
- Where the public scrutiny confirms the evaluation of costs outweighs benefits the regulation should not proceed.

NZCCI submits that adoption of such a process, applied across all areas of government - Legislation, Orders in Council (regulations) and Local Government - would significantly improve the quality and quantity of regulations and consequently the business environment; i.e. be win-win. Costs imposed on business must ultimately be paid for by consumers; costs saved by business will ultimately benefit consumers.

In summary, for NZCCI the issue is not whether there should be regulation. The issue is the *process* by which regulations are developed.

NZCCI strongly submits that an 'appropriate' regulatory incentive for New Zealand businesses in 2010, and which we would like to see reflected in the Bill - especially given the tough, challenging and competitive times we are moving through - is some high level recognition that regulations have costs and benefits and a preparedness by Government to undertake a benefit-cost analysis of all new/ proposed regulations.

The stated outcome of this process would be to proceed with the regulation only when the benefits - both quantified and qualified - clearly exceed the costs.

Adopting such a system would, we suggest, help reinforce the interest of Government to support business by adopting measures to stimulate the economy - create growth and protect employment. This is one of those.

RESPONSE TO QUESTIONS

Accordingly, we respond to the specific questions feedback has been requested as follows:

- We agree that systematic testing of legislation and regulatory proposals against a set of established principles will help improve regulatory quality. Our preference is that the 'test' be applied before legislation and/or regulations are enacted
- We submit that the range of principles identified by the Taskforce needs to be widened to include a specific 'value for money' principle requiring a cost-benefit assessment of the impacts of a legislative and/or regulatory proposal.
- We strongly agree that all levels of legislation across all areas of government should be tested against a set of principles.
- We strongly support introduction of benchmarking, transparency and monitoring regimes around the process of 'testing' legislation/ regulation against agreed principles, and in particular to identify publicly their likely cost benefit outcomes. Our reasons for this are in terms of supporting open government, and enabling participation and collaboration by stakeholders in the process of government as much as possible.
- We suggest that the likely effects on Ministers and Chief Executives of introducing the measures discussed above would be to encourage them to be more considered about the impacts and consequences of their decision-making, and particularly on business and New Zealand's international competitiveness.
- Because our preference is for the 'test' to be applied before measures are introduced, we see the courts as a remedy of last resort for monitoring the impacts of the Bill.
- Rather, we suggest the a specialist Parliamentary Regulatory Impact Commissioner or Unit be established to confirm whether proposed legislation/ regulations is compatible with a set of legislative principles and best practice, and to advise the Parliament as measures proceed through the House. (A possible model is the Parliamentary Environment Commissioner or Ombudsmen's Office – they operate independently of Parliament but within Parliament's jurisdiction.)
- In respect of the question of whether the Taskforce's suggestions get to the heart of the measures needed, we strongly suggest that they are along the right lines but that there needs to be a best practice business-like focus applied. This is why NZCCI has urged the reframing of the Bill to ensure that real impacts on the bottom line cost of doing business are tested in the process of establishing responsible regulations

IN CONCLUSION

Our submission is put forward as a positive contribution to encourage the Select Committee assessing the Regulatory responsibility Bill to take actions and decisions to achieve good regulatory outcomes by adopting a regulatory design process aimed at creating a regime to give positive support and incentives to businesses and consumers and which reinforce New Zealand as an attractive and innovative place to invest, locate a business, live and work.

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