

Dr Richard Worth
Chairman
Regulations Review Committee

Dear Richard

Re: Inquiry into the Ongoing Requirement for Individual Regulations and their Impact

I am writing in response to the letter received on 19 March regarding the inquiry into the ongoing requirement for individual regulations¹ and their impact.

Business New Zealand welcomes the opportunity to provide our thoughts and comments regarding the review, and in particular the second issue as outlined in the letter regarding mechanisms to provide ongoing and systematic review of currency of regulations and revocation of redundant regulations.

Business New Zealand has a strong interest in the quality of regulation in New Zealand, typified by our work into various areas of regulation that affect employers, via employment, tax, accident compensation legislation, as well as a host of regulations, such as those dedicated to occupational health and safety etc.

Part 1: Mechanisms to provide Ongoing and Systematic Review of Currency of Regulations and Revocation of Redundant Regulation

The letter outlines three questions that the committee wishes to receive our views on, which are provided as follows:

- 1. An analysis of redundancy requires an assessment of the original purpose of the regulations. Should all regulations be required to state their purpose? If so, which is the preferred mechanism?*
- 2. Is a systematic mechanism for reviewing redundancy of regulations required?*
- 3. The discussion paper suggests four potential mechanisms for reviewing redundancy of regulations. If a systematic review process is required, which*

¹ The terms 'regulation' and 'regulations' used in this letter refer both to statutory interventions and interventions via the regulation-making process.

process is the most suitable for New Zealand? Is there a more appropriate system not described by the discussion paper?

Regarding the first part of question (1), Business New Zealand agrees that all regulations should be required to state their purpose. As the paper outlines, there are options in which this can be outlined, such as cabinet papers or explanatory notes.

Regarding the second part of question (1) that asks about the preferred mechanism, narrowing down to one preference may be difficult given there are often benefits from using various sources of information, and that a second best answer may need to be found due to accessibility issues with particular cabinet papers. Therefore Business New Zealand has no firm view regarding the specific preference, but there may be some middle ground in which cabinet papers are given first priority, but explanatory notes are used if a cabinet paper is unable to be sufficiently accessed.

Regarding question (2), we would first like to point out that it is important the various options outlined in the paper are not viewed in isolation, nor seen as competing options. There is significant value in looking at instigating a range of options that lead to improvements in the quality of regulation in New Zealand. For instance, in Business New Zealand's 'Regulation Perspectives'², we stipulate nine actions that the Government could adopt to improve the quality of regulation in New Zealand:

- *Define the Problem:* Require all proposals for regulation to include clear analysis of the problem to be addressed.
- *Do a Cost Benefit Analysis:* Require all proposals for regulations to include a cost-benefit analysis by an independent agency with a service similar to that provided by the Australian Productivity Commission.
- *Travel up the Pyramid:* Consider non-regulatory options first, moving 'up the pyramid' to generic light-handed options, then more stringent options only if clearly warranted.
- *Keep it Generic, Light-Handed:* Give preference to light-handed generic regulation.
- *Regulate only when Required:* Introduce new regulations only when justified by clear cases of significant – not minor – market failure.
- *Self-Regulation as a Goal, not a Pathway:* Self-regulation should not be introduced as a precursor to future government-imposed regulation, instead it should be allowed to stand on its merits.
- *Review all Regulations:* Use an independent agency to undertake regular reviews of regulations to ensure they are achieving the original objective and check whether they are still required.

² <http://www.businessnz.org.nz/file/1053/Regulation%20Perspectives.pdf>

- *Sunset Clauses:* Put a sunset clause – with an expiry date in, for new regulations where appropriate. Once expired, the regulation should be reviewed.
- *Regulatory Responsibility Act:* Adopt a Regulatory Responsibility Act that requires adherence to a set of principles to achieve discipline in regulation making.

Some of these nine proposed actions are discussed in the Committees' paper, while others involve a combination of government and industry collaboration, which as we outline below is a key determining factor in the success or otherwise of improving regulation in New Zealand.

The paper proceeds to discuss four possible options as a preferred mechanism that we would like to comment on:

Ad Hoc Departmental Review

We agree that Government departments are typically in one of the best positions to be aware of the operation of a regulation and whether the policy objectives are indeed being achieved by the regulations in place. However, any such review needs to be outwards focussed, in that there is the ability for the private sector to feed into the department's review. While this may seem obvious, it is a crucial step that we have not always consistently witnessed with departments, which may decide to conduct the review without the ability for outside input.

Also, there is the potential for bias in the review process from both within the department and even at a Ministerial level. There may be vested interests from those within departments who are in charge of large regulatory areas which may need to be significantly reduced, as well as particular views having to be incorporated by the Minister of the department. While we would expect any departmental review to provide an unbiased and informed decision, there will always be questions surrounding this approach given many government departments often have large regulatory budgets.

Experience shows that a successful outcome involves the cooperation of business. It is interesting to witness the initiatives that have come from Government departments due to the annual Business NZ-KPMG Compliance Cost survey, which is now running into its fifth year. Two of the questions in the survey (top compliance cost priority and the helpfulness of Government departments) have lead ACC, IRD and ERMA to conduct employer focus groups with members of our Regional Associations throughout the country to ascertain what are the key regulatory and compliance concerns for them. These meetings have proven successful in both ensuring new regulations are effectively administered and problems with existing regulations are remedied.

Overall, Any Government department regulation review needs to be regular and comprehensive if it is to be successful (i.e. no 'no go' areas).

The Committees' paper also discusses the possibility of one Government department taking responsibility for on-going review of regulations across the board. This is an area in which Business New Zealand believes there is real potential for change. Ideally, there should be some type of 'Gate-Keeper' department that is treated as independent from Government policy that provides a separate view on all proposed regulation introduced. All proposed regulation is passed through this department and can be rejected for further work if it fails to meet particular standards, such as the comprehensiveness of the RIS and BCCS statements. All proposed Bills and regulations would also have a cover sheet attached that provides a report and/or pass/fail mark by the independent Government body regarding the impact the proposals will have on the economy.

Ad Hoc Parliamentary Review

Business New Zealand agrees that parliament should always be involved in some shape or form regarding a review of regulation, considering the authority and overall responsibility they have for delegating law making.

However, Business New Zealand also agrees that there can be potential drawbacks of this approach. As stated in the paper, such reviews can often be ad hoc and the parliamentary committee can only identify redundant regulations and recommend revocation. However, a commitment by the committee to make this matter a more regular item for its consideration via an amendment to standing order 314 would get past the first hurdle, while an integrated process for other initiatives involving regulatory change would most probably solve the second drawback of only identifying redundant regulations.

While we certainly do not object to a parliamentary review of this nature, we would tend to view it as one of the lesser options going forward, as we believe a truly independent department/agency review would most likely provide the strongest long term benefits.

Independent Agency Review

Regarding the possibility of an independent agency review, our views in the *ad hoc departmental review* outline the need for the establishment of an independent department.

This section of the paper also discusses the March 2005 report of the Better Regulation Task Force, which delivers 2 key considerations:

1. *The UK can considerably reduce the regulatory burden on business by adopting the successful Dutch approach to reducing administrative costs. This approach involves first measuring administrative burdens and then setting a target to reduce them. The golden rule is that what gets measured gets done; and*
2. *We need a 'One in, One out' approach to new regulation, which forces departments to prioritise between new regulations and to simplify and remove*

existing regulations. This will complement the administrative cost reduction programme.

Regarding the first point, Business New Zealand agrees with many of the processes that are outlined in the Dutch approach to reduce paperwork and administrative costs. The Dutch approach typically involves three areas for burden reduction – measurement of the burden; political commitment to a target and an organisational structure to achieve that target.

The measurement of the effects of the proposed regulatory change and/or introduction is crucial in understanding the actual financial cost that will arise due to the introduction of new regulations. The Dutch approach involves the use of a Standard Cost Model to measure the administrative burden which it imposed on businesses through its regulatory activities. This element of the Dutch process is already taking place in New Zealand as we understand the Ministry of Economic Development (MED) is currently examining the use of the model in New Zealand, with the aim of implementing it in the near future. Business New Zealand strongly endorses this step, and we look forward to continued discussions with MED on this matter.

However, we do note that caution needs to be taken with the notion of specific target setting for regulatory change. While we support a clearly defined outcome being stipulated at the beginning of any process or task, the idea of reaching a specified target can end up creating perverse outcomes as it becomes a means to an end, with the target taking attention away from the process getting there.

For example, say a target of deducing the number of regulations in existence by 20% over three years was introduced. Simply reducing the number of regulations by that amount may have minimal economic benefits if only redundant legislation was taken out to obtain 'easy runs on the board'. If, however, a comprehensive review took place that put a stronger focus on those pieces of regulation that were causing the greatest issues for business, subsequent changes may only mean 5% of regulation may be altered or withdrawn, but have a far stronger positive outcome. Again, while we support a defined outcome, the use of targets can often be a fraught path to take.

The notion of how best to handle reducing the number of regulations in New Zealand follows through to the second point above, namely the "one-in, one-out" approach. Business New Zealand unequivocally rejects this approach to new regulation. Improving the quality of regulation is not about balancing the number of regulations in existence. It is about improving the quality of regulation. If the introduction of a new regulation means the subsequent removal of another, then we would argue why wasn't the removed regulation eliminated in the first place? Why has it taken the introduction of a new regulation before an inadequate one was removed? Simply put, any improvement in regulation should automatically involve the modification and removal of inadequate regulation, and the introduction of any new regulation should involve a high threshold test.

Sunset Clauses

Business New Zealand has long supported the introduction of sunset clauses, as discussed in our Regulation Perspectives document. The paper outlines the fact that Australia has already made extensive use of sunset clauses for regulations at both a state and federal level, and introduced the Legislative Instruments Act in 2003 at a Federal level. Essentially, the point at which the expiry date is reached would be the optimal time to review a regulation.

In terms of the time period for both existing and introduced regulation that has a sunset clause attached, Business New Zealand has no firm view, but would want a compromise between giving enough time for the enactments to settle (probably 5 years), and not having a significant time period in which 'poor' legislation/regulations creates a sizeable cost to the economy (probably no more than 10 years).

Part 2: The Current Requirement to Undergo Regulatory Impact and Business Compliance Cost Statements and Exemptions from Those Requirements

Regulatory Impact Statements (RIS) and Business Compliance Cost Statements (BCCS) have become a familiar component of all policy proposals submitted to Cabinet, and should provide a quality assessment of the true costs and impacts of introduced regulation.

Business New Zealand agrees that these statements can be useful when considering whether grounds exist to draw regulations to the attention of the House. However, we must say that the quality of these statements has often left a lot to be desired. There are some that Business New Zealand believes have almost been considered an after thought in the legislative process, while others do not provide enough detail and simply skim the surface in terms of their real impact on the economy.

Therefore, we believe there are two immediate steps that need to be undertaken regarding the RIS and BCCS. Firstly, the overall quality of these certainly needs to be improved, which can be accomplished if such statements are put through an independent gate keeper department for regulation as discussed above. If the standard of the RIS or BCCS is not of a sufficient level, then they can be rejected and would have to be re-submitted.

Secondly, RIS and BCCS statements need to be more widely applied, such as a prerequisite for Private Members' Bills that the government is not planning to support or adopt, which currently do not require such statements but seem to have increased in terms of their use in the current political environment.

There are also standard Government Bills that we believe should include such statements, even though they have been put through in haste via the legislative process. An example is the recent State-owned Enterprises (AgriQuality Limited and Asure New Zealand Limited) Bill that Business New Zealand submitted on. As well as disagreeing with the intentions of the Bill, there were severe process flaws during the time in which it was in Bill format, including:

- Little to no consultation with affected parties on the Bill;
- Timeframe for introduction of the Bill into the House to its proposed report back, as well as timeframe for submissions was extremely short (affecting the ability for organisations to effectively consult with their members); and
- A lack of any RIS or BCCS statements.

The review asks if deemed regulations should be included, which as a positive would provide a level of scrutiny that is required for particular regulations, but as a negative may encompass some proposed regulation that simply doesn't require it. While we appreciate that some regulation may effectively get 'caught up' within the process, we would prefer to be on the side of caution to ensure potential regulation that could cause significant cost has to go through the impact process. A compromise might also be where an independent gate keeper department (rather than MED as outlined in the paper) is able to be in a position to deem if something requires an RIS and BCCS across the entire regulative agenda if they believe there is the potential for significant costs to the economy.

Conclusions: Best Ways Forward for Change

We are pleased to see that the Committee has been seriously considering these matters, and have asked for Business New Zealand's views on the best way forward regarding mechanisms for change. While the paper outlines a department review, a parliamentary review, an independent agency review and sunset clauses as potential steps forward, ideally, Business New Zealand would want the following processes in place for a systematic mechanism for reviewing redundancy of regulations:

1. An independent government body is established that oversees all regulatory practises. This body effectively becomes a 'Gate Keeper' for regulation and legislation;
2. All proposed Bills and regulations have a cover sheet attached that provides an identification of the purpose of the regulation and pass/fail mark by the independent Government body regarding the impact the proposals will have on regulatory burden;
3. Sunset clauses are introduced to all regulations and legislation, so that they are reviewed;
4. A Regulatory Impact Statement and Business Compliance Cost Statement are attached to all Private Members' Bills, as well as further exploration of other areas where they could be included such as all standard government bills;
5. Continued work towards the introduction of a Standard Cost Model that is mandatory and used across all government departments; and
6. The introduction of a Regulatory Responsibility Bill.

We thank you for the opportunity to comment.

Regards,

A handwritten signature in black ink, appearing to be 'PO'Reilly', with a stylized, flowing script.

Phil O'Reilly
Chief Executive
Business New Zealand