Submission

By

Business NZ

to the

Ministry of Consumer Affairs

on the

Industry-led Regulation Discussion Paper

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INDUSTRY-LED REGULATION DISCUSSION PAPER
SUBMISSION BY BUSINESS NEW ZEALAND[1]

1.0 GENERAL COMMENTS ON THE DISCUSSION DOCUMENT

1.1 Business New Zealand welcomes the opportunity to comment on the Industry-led Regulation Discussion Paper. In general, Business New Zealand considers that the paper provides a useful discussion of the issues surrounding industry-led regulation, and in particular, the potential costs and benefits.

1.2 Given the impact of regulation on the economy, Business New Zealand welcomes alternative processes towards achieving desired outcomes without the need for government regulation.

1.3 While the use of regulation is necessary in a number of cases, it is important to assess all regulations regularly to ensure the need for them still remains, and that they do not conflict with the goal of achieving a more competitive economy, through strong productivity growth.

> ***"Since 1999 there have been 513 new laws and 1965 new regulations, Over 100 new acts and 403 new regulations came into being in 2004 alone".***
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> ***Source: Dr Muriel Newman, "National Business Review", 21 January 2005***

1.4 The direct costs of complying with regulatory controls consume a substantial amount of time and resources, both from a business and individual perspective. However, the direct costs represent only a small proportion of the total costs of regulatory compliance. The unintended costs and uncertainties generated can be much greater.

1.5 There can be incentives for governments under tight fiscal constraints to try and put some of their expenditure "off-budget" in the form of added regulatory/compliance burdens on the private sector. In the absence of strong incentives on governments to minimise regulatory constraints, there can be a tendency to impose more and more costs on the business sector knowing that such costs are not directly accounted for in the government's accounting framework (or official Budget).

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[1] Background information on Business New Zealand is attached as Appendix 1.

1.6 In order for there to be justification for government involvement via regulation, or "supporting" industry-led regulation, there must be a clear case of market failure, and the problem of market failure must be significant. Secondly, alternative "market based" approaches such as increasing information should be considered first before resorting to regulatory intervention, given that so-called "market failure" can well be replaced by "regulatory failure".

1.7 Given that markets are generally faster at self-correcting than government intervention, the onus of proof must be on government to establish beyond reasonable doubt that the benefits of intervention exceed the costs, including unintended costs associated with regulation (such as non-compliance).

1.8 While Business New Zealand generally accepts the benefits of moving towards industry-led regulation (as defined in the discussion paper) compared to government-imposed regulation **where there is an identified and clearly defined need for regulation**, we have a number of points we wish to make which are briefly outlined below.

a. In general, Business New Zealand supports light-handed generic regulation such as the Commerce Act and Fair Trading Act rather than industry-specific regulation, unless particular exceptional circumstances require an industry-specific approach. The obvious danger of industry-specific regulation is that it can result in distortions in investment behaviour and lobbying from vested interest groups to increase or implement further regulations to meet their individual objectives.

b. In general, Business New Zealand supports the advantages of industry-led regulation as outlined in the discussion paper compared to government imposed regulation. Industry-led approaches, provided they are voluntary, allow for flexibility for both producers and consumers to meet market expectations in a flexible and cost-effective manner without the need for government involvement.

c. In contrast to voluntary industry-led regulation, central government regulators generally have strong incentives to minimise their own (political) risks by imposing higher standards (costs) than might arguably be justified, because regulators do not bear the costs associated with their decisions (costs will ultimately be passed on to consumers). They may well "over-regulate" to minimise their own risks rather than be aware of, or adequately consider, the trade-offs consumers are willing to accept.

d. Furthermore, Government-imposed regulations can often “crowd-out” private sector initiatives such as product differentiation through the development and protection of brand names and the like. Government-imposed regulation will generally stifle market mechanisms that would arise in the absence of such regulation.

e. In a highly competitive market, firms have strong incentives to develop “brand-names” and other mechanisms which can convey information to consumers as to product quality, after-sales service etc. In this respect, competition is the most cost-effective protector of consumer demands. In a highly competitive market, individual firms have very strong incentives to protect their brand names given the need for repeat business in order to survive and prosper. Similarly, when firms get together to form “alliances” or “self-regulate” it will generally be to improve service to customers and hence the future profitability of the firm(s) which are part of the group.

f. “Self-regulation” (or industry-led) regulation provides strong incentives for individual members to monitor the behaviour of all other players to ensure the standard or “brand-name” conveyed to the public is maintained. In the case of government-imposed regulation, there is no such incentive to monitor behaviour.

g. Despite support, in general, for industry-led regulation (or self-regulation), an obvious danger with industry-led regulation is that it could result in a few “dominant” participants imposing their regulatory burdens on the rest of the market participants, either knowingly or unknowingly. This can result in a stifling of innovation and dynamism in the market as the discussion paper points out very clearly on p.23:

   > ***“As with any form of regulation, by setting common rules a scheme can have a tendency to reduce competition and the incentive for firms to innovate and create new products or services. It is therefore important that the industry scheme takes into account the potential effects on competition, and includes safeguards to ensure that members are not constrained in their ability to compete for new customers on price, quality and product and customer service standards.” (p.23)***

h. If “industry-led” regulation is “forced” on participants through the threat of government-imposed regulation then the outcomes are unlikely to be beneficial given that industry players will be constantly second-guessing what they will be required to do in order to minimise the threat of government imposed regulation. Similarly, if there is potential for a few dominant players in a particular industry to “force” their competitors to abide by industry-led regulation that has been designed by the major players in that industry, then there is potential for adverse outcomes – in the sense that smaller and perhaps niche-market players could be adversely affected. Given the wide variety of companies and the significant number of small to medium size enterprises (SMEs) in New Zealand, it is quite likely that these costs could be real. This reinforces the importance of ensuring that industry-led regulation is truly *voluntary.*

APPENDIX 1

BACKGROUND INFORMATION ON BUSINESS NEW ZEALAND

Encompassing four regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' & Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), Business New Zealand is New Zealand's largest business advocacy body. Together with its 57-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, Business New Zealand is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, Business New Zealand contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

Business New Zealand's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.

The health of the economy also determines the ability of a nation to deliver on the social and environmental outcomes desired by all. First class social services and a clean and healthy environment are possible only in prosperous, first world economies.