

## REGULATION PERSPECTIVES

EVIDENCE SHOWS SELF-REGULATION IS THE LEAST BURDENSOME APPROACH FOR TAXPAYERS, PROVIDING AN ENVIRONMENT IN WHICH BUSINESSES AND CONSUMERS CAN TRANSACT WITH CONFIDENCE. SELF-REGULATION HAS BECOME INCREASINGLY COMMONPLACE IN MANY COUNTRIES, WITH CONSUMERS, GOVERNMENTS AND BUSINESSES VIEWING IT AS PREFERABLE TO GOVERNMENT REGULATION.



A NEW ZEALAND PERSPECTIVE





The voice of business

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Business NZ is New Zealand's largest business advocacy body representing the combined members of regional business organisations EMA Northern, EMA Central, the Canterbury Employers' Chamber of Commerce and the Otago-Southland Employers' Association, which offer services and support to 14,500 member companies. Business NZ also represents 60 national industry associations, with a combined membership of some 76,000 employers in the private sector, from large firms to the self-employed. Together, these employ around 80% of private sector employees. [www.businessnz.org.nz](http://www.businessnz.org.nz)

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## THE COST OF COMPLYING WITH REGULATIONS IS A KEY ISSUE FOR BUSINESS AND IS A KEY DETERMINANT OF NATIONAL COMPETITIVENESS

Regulatory costs can be direct, affecting capital and operating costs. They can also be indirect, in the form of resource misallocation and reduced innovation, investment and productivity.

The need to comply with government requirements can also have non-quantifiable effects such as stress and anxiety, such 'psychic costs' arising from uncertainty about obligations.

While a certain level of regulation is required for any country that wishes to provide a stable economic environment in which to do business, too much regulation can discourage investment and productivity.

Business NZ tracks the level of compliance costs imposed on New Zealand businesses, with the annual Business NZ-KPMG Compliance Cost Survey. This survey has shown a significant

increase in the regulatory burden on businesses, particularly small businesses, over the last three years. Results from the survey inform Business NZ's advocacy work with parliamentarians and other decision makers.

*Regulation Perspectives* is a further initiative aimed at raising awareness of the need to reduce the regulatory burden on enterprise, in the interests of the economic well being of all New Zealanders.



**Phil O'Reilly**  
Chief Executive Business NZ

# REGULATIONS: THE REGULATORY BURDEN IN NEW ZEALAND IS HOLDING BACK BUSINESS AND ECONOMIC GROWTH. GOVERNMENT REGULATION IS INCREASING AT AN ALARMING RATE.

“A VARIETY OF FORCES APPEAR TO BE CONTRIBUTING TO EXCESSIVE AND POOR QUALITY REGULATION AND THE COSTS IT GENERATES... A FUNDAMENTAL DRIVER IS INCREASING ‘RISK AVERSION’ IN MANY SPHERES OF LIFE. IN EFFECT, REGULATION HAS COME TO BE TREATED AS A PANACEA FOR MANY OF SOCIETY’S ILLS AND IN PARTICULAR IS SEEN AS AN EASY MEANS TO PROTECT PEOPLE AGAINST AN ARRAY OF RISKS – BIG AND SMALL, PHYSICAL AND FINANCIAL – THAT ARISE IN DAILY LIFE. REFLECTING THIS VIEW, A FAILURE BY GOVERNMENTS AND THEIR REGULATORS TO ‘DO SOMETHING’ IN RESPONSE TO THE CRISIS OF THE MOMENT OFTEN BRINGS CRITICISM FROM POLITICAL OPPONENTS AND THE MEDIA.”

GARY BANKS, CHAIRMAN AUSTRALIAN REGULATION TASKFORCE

New Zealand faces a deluge of regulations as bad as or worse than in other developed countries. The first part of this book sets out the issues impacting on over-regulation in New Zealand. The second part gives the Business NZ perspective – action points to a more sensible regulatory regime.

## What is regulation?

Regulation is the process of making rules that govern behaviour<sup>1</sup>. The rules may be imposed by government or other bodies, or may be self-imposed. In most instances regulations affecting businesses are imposed by government, and most often because of market failure.

## What is market failure?

Market failure is not markets breaking down or economic collapse – rather, it's a technical term covering a range of instances where markets fail to create maximum efficiency.

Examples of market failure (some examples overlap):

- Markets producing too much or too little of certain products
- Failure to efficiently produce or distribute goods or services
- Instances where market forces do not allocate resources towards their highest valued use
- Not enough information to encourage transactions between buyers and sellers
- Imperfect competition (e.g. monopolies, market dominance)
- Instances where prices do not reflect the full costs to society of certain goods or services (e.g. the cost of pollution emitted in production of those goods or services)
- Market operations producing socially undesirable results
- Markets failing to produce public goods (e.g. armed forces, police force)

Given the range of types of market failure – some major, some minor – it's wrong to assume that regulation is called for in every case. In many cases market failure can lead to self-correction in a short space of time.

Also, market failure does not necessarily mean that government should intervene – the result of government failure, in attempting to address market failure, might be even worse. This is because a government is unable to provide some of the key features of markets, e.g. it is a monopoly and is less able to act efficiently in decentralised locations.

Indeed, problems stemming from government regulation in response to market failure can last longer than the original market failure itself – regulation can often place a 'stake in the ground' that can take a long time to move.

Regulation is often seen as a way in which risk to society can be minimised. However sometimes regulating to minimise risk will cost more than the problems arising from that risk. For example, a regulation to help prevent people getting mortgages that are too big to handle could be to require everyone to have a 50% deposit on their first house. The problem: this would stop some people from owning a home who would otherwise have enough income to pay their mortgage with say a 10% deposit.

In general, competition is a better approach to economic efficiency than regulation, and regulators should encourage sustainable competition for the long term. Competition law and policy should provide appropriate safeguards, not change the playing field to disrupt the operation of the market.

Overall, there are no quick fixes. Regulation should never be set in concrete, but equally should not be continuously relitigated to cater for the interests of a minority over the majority.

## Types of regulation and their consequences

Business is subject to three main types of regulations:

1. Regulations imposing obligations for the benefit of other parties (e.g. consumer rights, health and safety, border control regulations).
2. Regulations requiring financial payments – taxes, rates, levies, loan repayments etc.
3. Regulations for information – requiring businesses to record or disclose information to the government (e.g. Statistics NZ surveys) or to third parties (e.g. company financial reporting requirements).

The first category above requires firms to change the way they operate in some way, while all categories create administrative responsibilities and costs. These imposed responsibilities, changes and costs make up the regulatory burden or compliance burden experienced by business.

<sup>1</sup> The terms 'regulation' and 'regulations' used in this book refer both to statutory interventions and interventions via the regulation-making process

## Regulation – what’s happening internationally?

A major study conducted by the Organisation for Economic Cooperation and Development (OECD) tracked legislation and regulation across 20 member countries, including New Zealand, and from this, issued seven recommendations<sup>2</sup>.

1. Programmes for regulatory reform should have clear objectives and frameworks for implementation.
2. Regulations should be regularly reviewed to ensure they meet their objectives efficiently and effectively.
3. Regulations, institutions that implement regulations and regulatory processes should all be transparent and non-discriminatory.
4. The scope, effectiveness and enforcement of competition policy should be reviewed and where necessary strengthened.
5. Economic regulations (those designed to affect the price or availability of goods or services) should only be used to stimulate competition and efficiency, and should be eliminated except where clear evidence demonstrates that they are the best way to serve broad public interests.
6. Regulations that create barriers to trade and investment should be eliminated through continued liberalisation.
7. Linkages with other policy objectives that support reform should be developed.

## The New Zealand experience

Regulations largely originate from governments as part of the lawmaking process, and from government departments charged with achieving economic, social or environmental objectives. There is also a move towards self-regulation by industry groups. The number of regulations imposed by governments and government departments is increasing at an alarming rate: since 1999 more than 2,000 new regulations have come into existence. Some of the reasons are:

- Governments wanting to be seen to be ‘doing something’ about a current problem.
- Political parties seeking regulations desired by their constituencies as part of MMP coalition dealing.
- Rushed legislation (e.g. at the end of the parliamentary year) giving rise to poorly scrutinised, unnecessary regulations.
- Incentives for government departments to engage in regulatory activity as a way of maintaining staff and budget levels.

Unfortunately there are few requirements for discipline in regulations, apart from the requirement for regulatory impact statements and business compliance cost statements on major regulatory proposals.

## Regulatory impact statements (RIS)

A regulatory impact statement lists the potential impacts from proposed regulation. The requirement for a RIS was introduced in the late 1990s to improve the quality of regulation making by ensuring that regulatory proposals are cost-effective and justified.

All policy proposals submitted to Cabinet which result in government bills or statutory regulations must be accompanied by a RIS, unless an exemption applies.

## Business compliance cost statements (BCCS)

The aim of the BCCS is to ensure that compliance costs from laws or regulations are fully considered and kept as low as possible.

Since 2001 all policy proposals submitted to Cabinet that required a regulatory impact statement have also required a business compliance cost statement.

Unfortunately since 2001 adherence to RIS and BCCS requirements has been of varying quality and often lacking in thoroughness in identifying the cost to business of proposed regulations. The impression is given that such statements are not being used to seriously question the need for new regulations.

<sup>2</sup>Guiding Principles for Regulatory Quality and Performance OECD 2005

## For regulations one size can fit all

A common misconception is to assume that regulation should be tailored for different groups. There may be cases where this is useful, but these are isolated. Generic competition law and policy regulation are one instance where the same rules for all provide the best outcome, with clear guidelines for all businesses, on the understanding that in normal competitive markets some players will make higher returns than others, based on risk and return. The desire to differentiate business groups for one reason or another frequently causes more harm than good.

Often, emotive terms such as inflexible, unfair and unconscionable are used to promote regulations that provide advantages for one type of business size, sector or region over another. While the arguments put forward can often seem significant and justifiable, the flow-on effects can lead to more problems than solutions.

Once governments go down a regulatory path where certain groups receive concessional treatment, this can lead to confusion and send inappropriate signals, paving the way for continued tinkering with regulations as issues arise thereby creating less certainty for business. It can end up being a bargaining game, as individuals, firms or organisations seek better conditions for themselves. It can also result in businesses spending time trying to adapt their operations in order to obtain the most beneficial regulatory structure, rather than working towards increased productivity and competitiveness.

An approach by the government that causes multiple interventions may bring short-term benefits, but can also end up stifling the free market. Multiple fittings can mean too many sizes, confusing market participants.

## Compliance costs

Compliance costs are the *administrative and time* costs of complying with legislation (e.g. the time and resources involved in working out tax or holiday payments) as opposed to the *substantive* costs imposed by legislation (e.g. the amount of tax to be paid or the amount of holiday pay to be paid).

Compliance costs of a regulatory proposal are only those additional costs that arise from the proposal. They do not include costs from activities that would have been carried out anyway. Overseas studies have estimated direct compliance costs at between 4-12% of a country's GDP (OECD 1997).

*“Compliance costs are magnified by: rapid and frequent legislative change, requirements that overlap or conflict with other regulations; and the complexity of the regulations themselves”.*  
Ministerial Panel on Compliance Costs – July 2001

Businesses can also incur higher compliance costs than necessary because of poor management systems and skills, due to lack of experience, capabilities or equipment.

It should be noted that compliance costs will never be – and should never be – zero. A certain level of compliance is actually beneficial for a business, such as updating financial records. However, when the level of compliance negatively affects the day-to-day operations of a business then changes or other options need to be considered.

*“High compliance costs stifle innovation, hinder competitiveness, hamper investment, deter compliance, and result in firms being reluctant to expand or take on more staff”.*  
Ministerial Panel on Compliance Costs – July 2001

## Keeping an eye on compliance costs

The annual Business NZ-KPMG Compliance Cost Survey<sup>3</sup> has now been running for three years, providing valuable information on the costs businesses face when complying with legislation and regulations.

Survey results highlight two important facts:

1. Compliance costs are getting worse.
2. Compliance costs hit smaller businesses harder.

<sup>3</sup> For more information see [www.businessnz.org.nz/surveys](http://www.businessnz.org.nz/surveys)



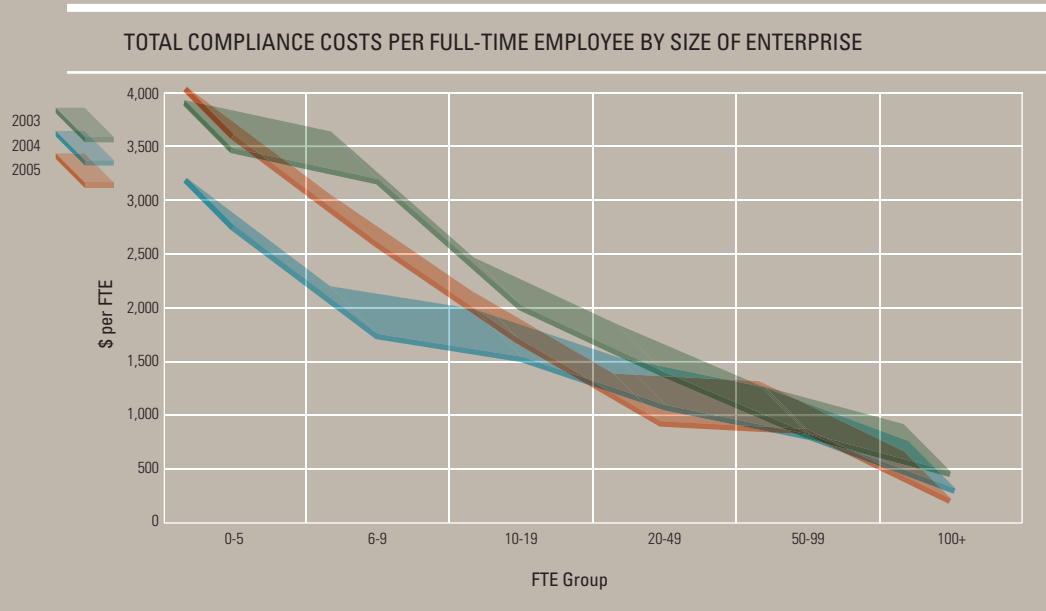
Table 1 shows the average costs for businesses for the main four areas of compliance – tax, employment, environment and ‘other’, showing the dominance of tax and employment compliance.

**TABLE 1.**

BUSINESS NZ-KPMG COMPLIANCE COST SURVEY: AVERAGE COST PER FIRM (2003-2005)					
Year	Tax	Employment	Environmental	Other	Total
2003	\$13,500	\$15,500	\$7,700	\$8,500	\$45,200
2004	\$14,900	\$10,400	\$5,400	\$5,400	\$36,100
2005	\$21,200	\$13,800	\$8,100	\$10,000	\$53,000

Figure 1 shows the disproportionate burden borne by small businesses.

**FIG 1.**



### Responses to regulatory burden

If businesses are facing increasing amounts of regulation and compliance costs, what can they do? There are generally only three options – businesses can comply, they can ignore the regulations, or they can leave or close down.

New Zealand businesses are typically law abiding and try to comply as best they can. However, keeping up with changes and increased regulations is very daunting and resource draining for many. Excessive red tape and compliance costs can stall growth, eroding competitiveness both domestically and overseas. Often, many firms may choose not to comply.

The worst-case scenario in terms of economic growth would be for businesses to decide to either close operations or move their business offshore. This would not provide the economic growth New Zealand needs to maintain first world living standards.

## The way forward

Debate over the regulatory burden on business is often polarised, resulting in a stalemate between those who favour stringent state regulation of business and those who want complete deregulation. There is however a middle way: self-regulation, which achieves responsibility and self-discipline by voluntarily accepted standards of professional practice.

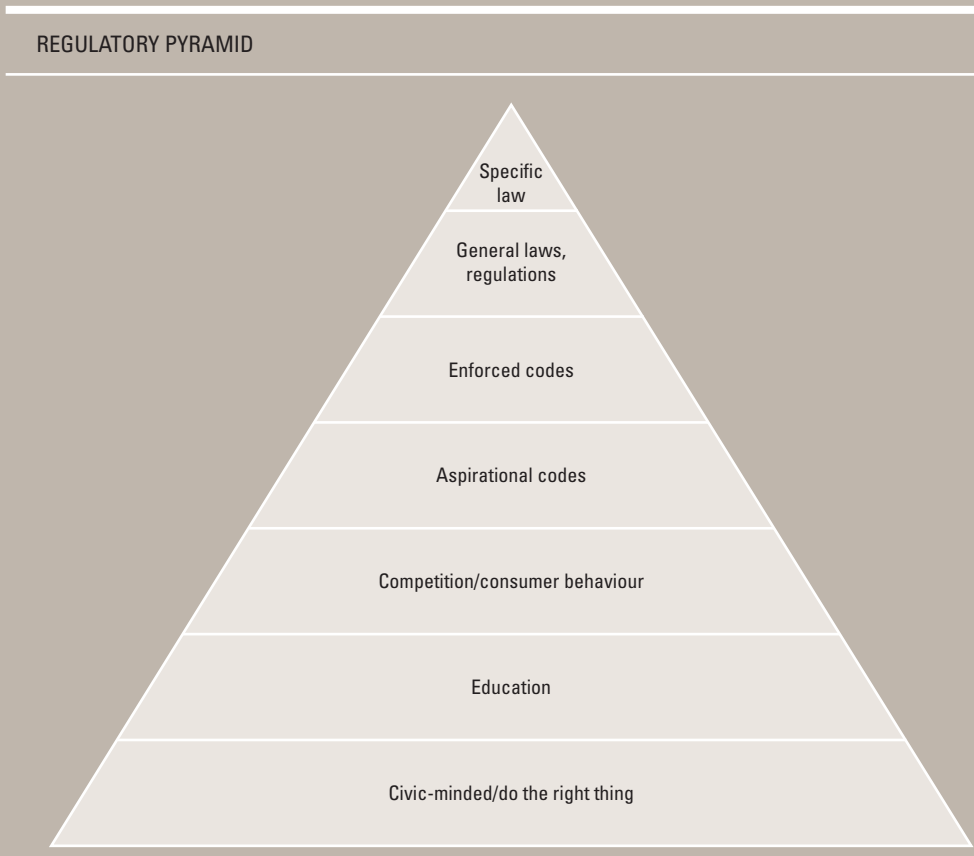
## Self-regulation

Self-regulation or industry-led regulation is where an industry or profession assumes the responsibility of disciplining its own affairs by voluntarily setting standards of practice.

## Types of self-regulation

Self-regulation can involve a wide range of structures. A useful way of determining what options are available other than government regulation is to model the options in the form of a pyramid<sup>4</sup> (see figure 2). At the top is government legislation applied to specific targets; below are general laws and regulations. The further down the pyramid, the more light-handed the regulatory approach becomes.

FIG 2.



<sup>4</sup> Industry Led Regulation Discussion Paper Ministry of Consumer Affairs July 2005

Some of the more frequently used forms of self-regulation are listed in table 2. The options for self-regulation are varied, and are not exclusive – industries could use a combination of approaches.

**TABLE 2.**

COMMON TYPES OF SELF-REGULATION		
Type of self-regulation	How it works	Implications
Firm-based service charters	Business sets out what it is doing for its customers	Voluntary and creates no legal rights for consumers
Aspirational code	Industry comes together to outline a voluntary code of practice	Intended to raise awareness or promote industry reputation, often accompanied by an information campaign
Accreditation/quality assurance scheme	A voluntary scheme where industry body accredits participants to advertise that they are members of a scheme or have complied with certain standards	Industry association often has considerable reputation, and accreditation is an advantage
Model contracts	Provide for industry, consumers (and where appropriate, government) to agree on standard terms	Such contracts must avoid anti-competitive conduct
External dispute resolution	Establishes a formal external dispute resolution service or ombudsman	Usually the service is free to consumers and decision by ombudsman is binding
Standards	Consensus based documents which set out minimum technical or performance requirements	Often developed by the industry, and may have legal force through incorporation in legislation, or may be voluntary
Legal codes/co-regulation	Codes with some backing by legislation; may have been developed by industry but often enforced by government	Can be mandated by government but often left to industry to develop detailed rules of the code

## SELF-REGULATION ENHANCES:

**EFFICIENCY** – through industry standards, reconciling diverse systems or products, permitting greater interchangeability and economy for consumers

**SAFETY** – through voluntary standards in areas like product design, fire prevention and hazard elimination

**INFORMATION** – enabling informed choices by consumers

## What makes for successful self-regulation?

Regardless what form of self-regulation is chosen, it cannot succeed without containing key elements such as cooperation, independence and efficiency. Table 3 lists key elements for self-regulation.

**TABLE 3.**

ELEMENTS FOR SUCCESSFUL SELF-REGULATION	
Cooperation	Participants have a duty to cooperate with each other in order to handle complaints
Effectiveness	The system must have a timely response rate, be flexible, current and applied in a non-bureaucratic manner; it should also be applied in both the spirit and the letter, and regularly reviewed
Efficient complaint handling & enforcement	The system should be able to handle consumer complaints, without charge, and must have adequate and credible sanctions to support its decisions
Independence	Decisions of self-regulatory systems should be made independently of government, specific interests and interest groups
Resources	The system must be sufficiently resourced and supported to be able to meet its objectives
Self-regulation & the law	It must always be in compliance with the law, and should never deprive a consumer of the protection by the law
Consumer benefits	Often, the purpose of a self-regulatory system is to maintain consumer confidence – it facilitates consumer protection by providing a route for the individual consumer to express a view directly to the business
Transparency & accessibility	Consumers must have access to the self-regulatory system and the means of doing so should be well known

## Advantages of self-regulation

### 1. Institutional knowledge

Self-regulation involves parties who generally have the best institutional knowledge about what needs to be done and what works. Although governments can hire technical expertise to draft regulations, they will almost always be slower in perceiving the need for action than the participants in the relevant market, and will have less industry-specific knowledge about the kind of action required. Self-regulation provides recognition of specialised expertise.

### 2. Flexibility

Being more flexible, self-regulation is less likely to stifle innovation or excessively limit consumer choice; it is nimble and can change quickly in response to changed circumstances. When a government introduces a regulation it is more or less permanent, and one of the most difficult challenges governments face is changing existing rules. In the private sector if a regulation is inefficient, a substitute will often be developed by relevant participants. Rules developed through self-regulation are in effect subject to a market test.

### 3. Lower cost

Self-regulation can be less costly for government, as the industry is responsible for enforcing the scheme. The industry will have incentives to minimise costs, thus benefiting firms and consumers. Self-regulation generally results in the costs of such regulation being fully borne in the market in which the regulation is imposed.

## Issues to manage

Operating a self-regulatory system involves managing a number of consumer and member challenges:

### **Cost**

Developing a self-regulatory system entails costs that are usually met by levies paid by industry members. This may prompt a negative reaction from some members who may view the costs as too high or may be concerned about resources being pulled away from other activities in their sector. This response may be addressed by ongoing member communication regarding the benefits to consumers and the industry of self-regulation.

### **Factional issues**

A faction of larger players in an industry may seek to impose a self-regulatory regime that is too exacting for smaller players to comply with, with anti-competitive results. This potential risk may be addressed by ensuring the industry body's governance rules ensure meaningful small player representation.

### **Self-withdrawal**

One consequence of self-regulation is that participants who breach the regulations may withdraw if faced with sanctions, therefore facing no material penalty. However this benefits the industry body itself, since it ensures the industry body is compliant, and also benefits consumers who gain from there being no non-compliant players in the system. An appropriate stance is to ensure that those operating the self-regulatory system are individuals or groups with high levels of respect and moral authority within the industry.

### **Coverage**

The more industry players sign up to a self-regulatory scheme, the stronger it will be. Conversely, low uptake may result in low consumer confidence in the sector, and insufficient coverage within the industry may result in some consumers being without protection. This highlights the need for the industry body to be proactive in communicating with players in the industry, promoting self-regulatory benefits to consumers and the industry.

### **Effect on consumers**

Consumers may be suspicious of self-regulation, seeing it as an industry protection device. They may believe that as a customer they will not get a fair deal since the industry will always look after its own. This suspicion can only be addressed through responsible behaviour by the self-regulatory body over time. Building consumer trust over a period of years is one of the most worthwhile endeavours of any industry.

## Effective self-regulation brings positive environment

Overall evidence shows that self-regulation is the least burdensome approach for taxpayers, providing an environment in which businesses and consumers can transact with confidence. Self-regulation in various forms has become increasingly commonplace in many countries, with consumers, governments and businesses viewing it as preferable to government regulation.

## Self-regulation in New Zealand

There are already many examples of successful self-regulation in New Zealand, ranging from the smallest of firm-based service charters through to co-regulation (with government). The following are examples that show how different forms of self-regulation can work for the requirements of varied sectors in the economy.

### CASE STUDY: INSURANCE COUNCIL OF NEW ZEALAND – ‘CODES OF PRACTICE’ APPROACH<sup>5</sup>

The Insurance Council of New Zealand (ICNZ), representing fire and general insurers in New Zealand, is made up of 29 member companies who write approximately 95% of New Zealand's general insurance business.

New Zealand has one of the least regulated insurance markets in the world. Many other countries including the UK, USA and Australia have insurance commissions that regulate the insurance industry and which ultimately add to the cost of insurance.

The insurance industry in New Zealand has proactively developed a self-regulatory framework in three parts:

#### **Fair insurance code**

This sets a requirement to act ethically and is in addition to obligations created by the law. This code was developed by ICNZ as a set of principles aimed at continually improving the standard of practice and service that member companies provide to customers.

#### **Solvency test**

This sets a requirement for the insurer to be financially sound. It requires all firms selling general or disaster insurance to obtain a rating from an approved rating agency; to register the rating with the Registrar of Companies; and to disclose the rating before entering into or renewing an insurance contract.

#### **Independent review**

Members of ICNZ undertake to accept review by the Insurance & Savings Ombudsman, an independent authority that can make binding decisions regarding complaints about personal and domestic insurance below \$100,000.

While ICNZ assumes no liability for its members, compliance with the self-regulation framework assures customers of quality service.



<sup>5</sup> For more information see [www.icnz.org.nz](http://www.icnz.org.nz)

## CASE STUDY: ADVERTISING STANDARDS FOR ALCOHOL – A STANDARDS APPROACH TO SELF-REGULATION

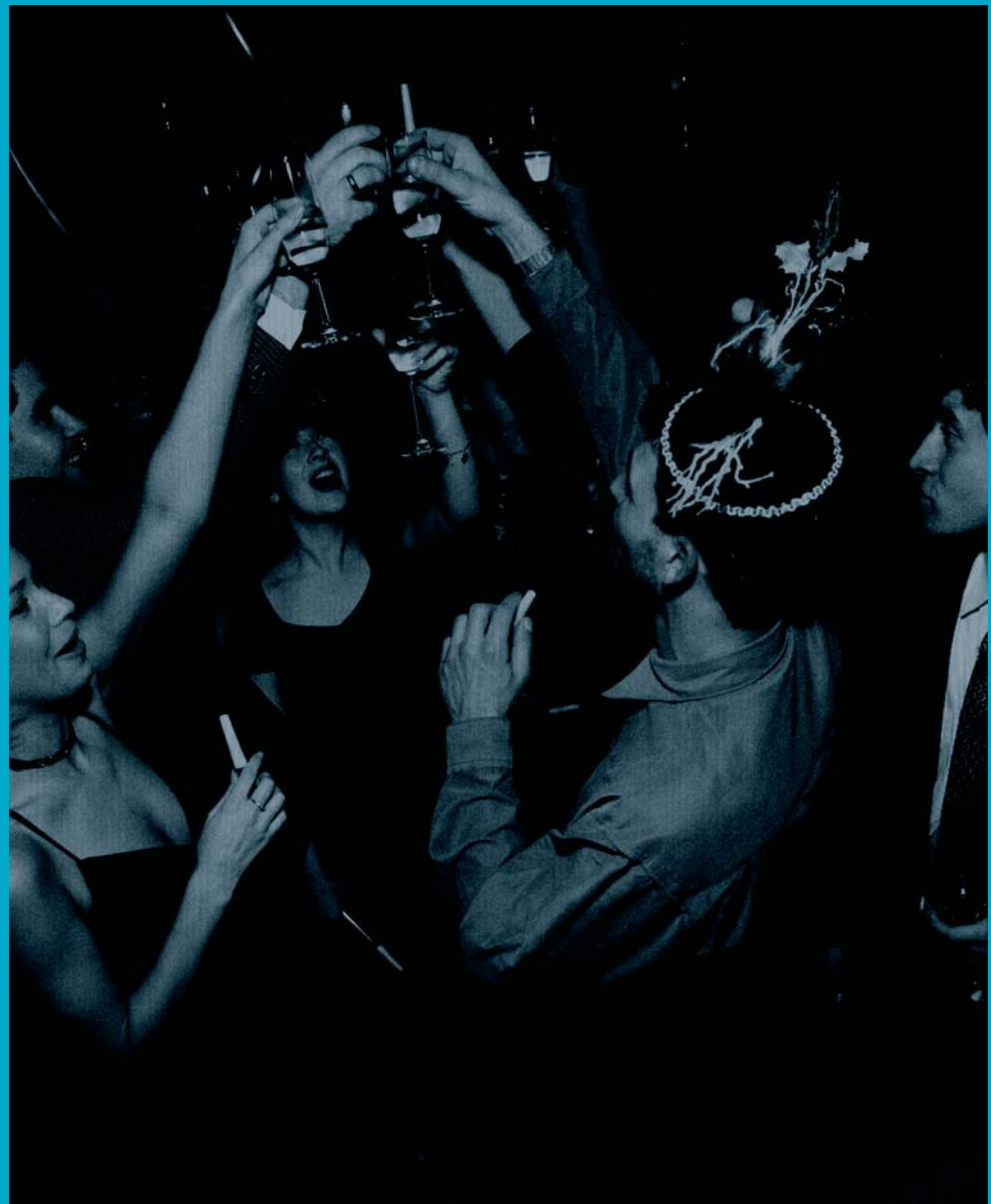
Media companies, advertisers and advertising agencies that are members of the Advertising Standard Authority (ASA)<sup>6</sup> seek to maintain generally acceptable standards of advertising at all times.

The ASA oversees a system of codes of practice for specific categories of advertising, developed in consultation with industry, consumer groups and government departments.

The code for advertising liquor aims to ensure that alcohol advertising is conducted in a manner that neither conflicts with nor detracts from the need for responsibility and moderation in merchandising and consumption, and which does not encourage consumption by minors.

ASA members are encouraged to seek approval before advertisements are published, by a liquor advertising pre-vetting system (LAPS).

Members are bound by the decisions of the Authority's complaints board, made up of 14 widely representative groups from the Letterbox Media Association through to the Radio Broadcasters Association.



<sup>6</sup>For more information see [www.asa.co.nz](http://www.asa.co.nz)

## CASE STUDY: GAS INDUSTRY COMPANY – SELF-REGULATION AND CO-REGULATION<sup>7</sup>

The Gas Industry Company Ltd is an industry-owned entity established to fulfill the role of industry body under the Gas Act 1992. It is a co-regulator, working with the government and the gas industry to develop outcomes that meet the policy objectives in the Government's Policy Statement on Gas Governance.

The changes to the Gas Act made in 2004 that enabled the establishment of an industry body were as a result of a comprehensive review of the gas sector aimed at determining whether the sector could meet the Government's overall energy policy objective, which is to ensure that energy is delivered to all classes of consumers in an efficient, fair, reliable and environmentally sustainable manner.

The Government invited the gas industry to establish a governance structure and work programme to deliver on the expectations set by the Government in its policy statement. The policy statement stated that the Government favoured industry-led solutions where possible, but that it was prepared to impose regulatory solutions if it considered they were required.

As a co-regulatory body, the Gas Industry Co is able to make recommendations to the Minister of Energy on industry matters, including regulations on gas wholesaling, processing, transmission, distribution and retailing.

The Gas Act states that the principal objective of the Gas Industry Co, in recommending gas governance regulations, is to ensure that gas is delivered to existing and new customers in a safe, efficient and reliable manner.

The Gas Industry favoured this model, given its greater ability than government to assess the costs and benefits of alternative rules because of the knowledge and experience of industry participants.



<sup>7</sup> For more information see [www.gasindustrycompany.co.nz](http://www.gasindustrycompany.co.nz)



## Unsuccessful self-regulation

Not every introduction of or attempt at self-regulation is successful. There are instances where despite best intentions, competing interests create too much of a hurdle for self-regulation to work efficiently and effectively.

There are other instances where despite collaborative endeavours by the main players in a market to provide a voluntary option, government opts to impose regulations.

## CASE STUDY: ELECTRICITY MARKET RETURNS TO GOVERNMENT-IMPOSED REGULATIONS

From 1994 onwards, New Zealand's electricity market went through a period of industry reform, and the market at one point was self-regulated, but ultimately returned to a government-regulated model.

Reforms during the 1990s included the Electricity Corporation (ECNZ) being split into competing state owned enterprises. Later reforms included the forced separation of line and retail businesses.

The initial split-up of ECNZ led to the introduction of self-governance and the development of regulatory practices, with the Government signalling it would introduce legislation and regulations if industry governance failed to deliver.

The industry set up a single self-governance structure, bringing together the three existing governance structures (the NZ Electricity Market, the Multilateral Agreement on Common Quality Standards, and the Metering & Reconciliation Information Agreement). However, the electricity shortage in winter 2001 raised concerns about the ability of the regime to provide sufficient dry-year capacity and ongoing adequate investment. A referendum of industry and customer representatives on a proposed set of self-regulating rules brought a poor level of consensus, with less than half of lines and transmission companies agreeing to the proposal, two thirds of traders agreeing and only five per cent of consumers agreeing.

As a result the Government made the decision to impose regulations on the industry via an Electricity Commission, which now mandates all essential rules of trade in the electricity industry.



## CASE STUDY: TELECOMMUNICATIONS AND MOBILE CHARGES – GOVERNMENT OVERRIDES COMMERCE COMMISSION TO REGULATE INDUSTRY

In 2004 the Commerce Commission undertook an investigation into mobile termination rates ('termination' refers to the switching of calls between landline and mobile phones). The investigation was prompted by complaints over high charges given the lack of competition in the mobile termination market.

In 2005 the Commission recommended to the Minister of Communications that mobile termination rates should be regulated by government. In response, both main players in New Zealand's mobile market, Telecom and Vodafone, presented the Commission with a commercial alternative to regulation. Vodafone's offer was confidential, while the Telecom offer was for a five-year programme of voluntary price reductions in termination rates on 2G and 3G networks, and a pass through rate of 100% for reductions in wholesale termination rates through to the retail price for fixed to mobile calls.

After reviewing the report and the commercial offers by Telecom and Vodafone, the Minister of Communications asked the Commission to reconsider its final recommendations. The Commission responded with a report in late 2005. While the reconsidered report took into account the commercial offers, it decided that regulation would still bring greater benefits for end users than voluntary offers by the major players, and reiterated its earlier recommendation.



### Summary

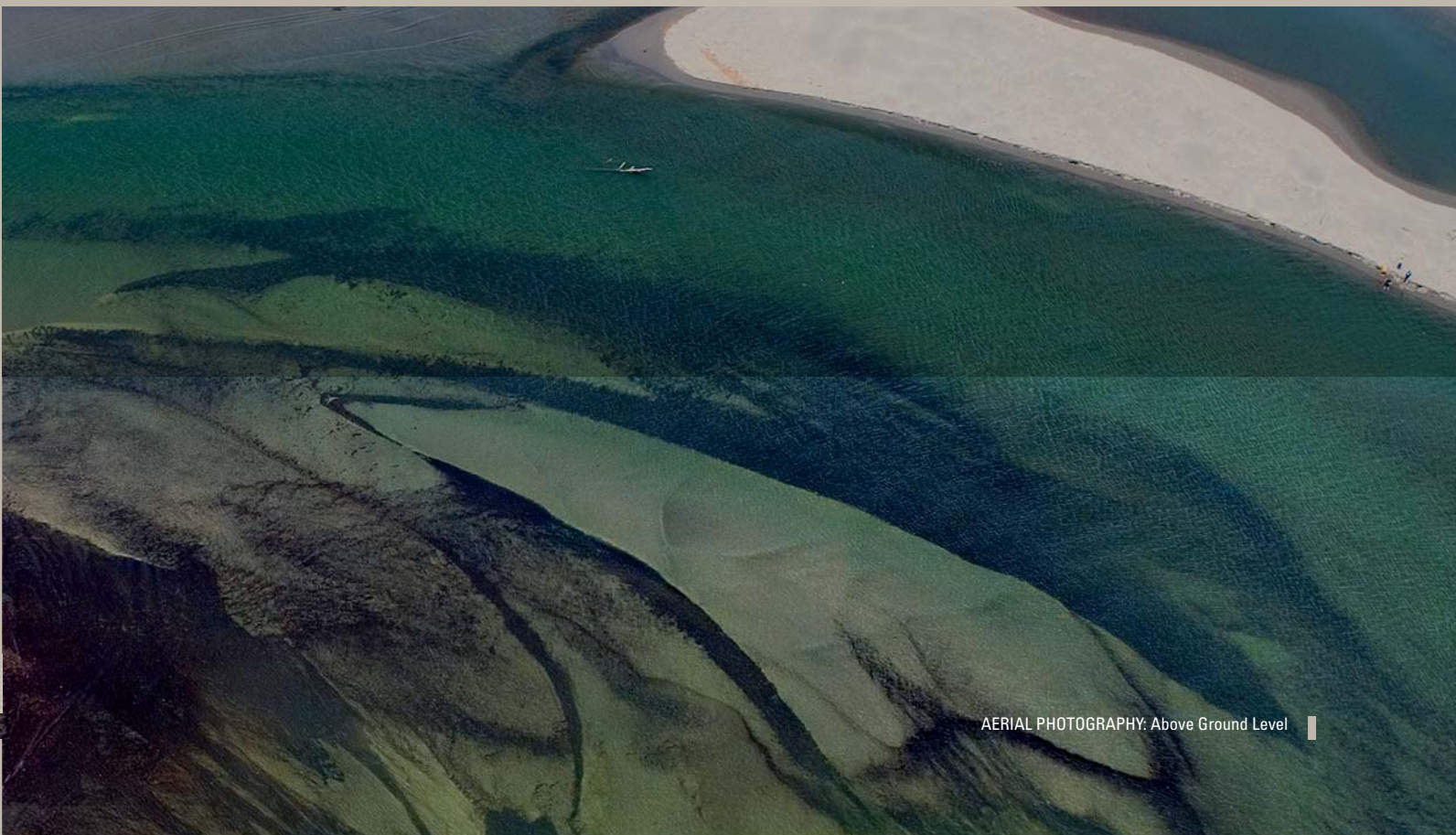
Although self-regulation is by no means completely successful in every case, the examples highlight the fact that self-regulation can work in New Zealand at different levels. There is still considerable scope for more self-regulation and for self-regulation to be the first option considered in industries when new regulatory approaches are introduced or current ones revised. If New Zealand is to change path and experience a drop in government regulatory burden and compliance costs, then a fundamental change in approach is required.

BUSINESS NZ PERSPECTIVE:  
WHAT DOES  
NEW ZEALAND  
NEED TO DO?

GIVEN THE INCREASING BURDEN OF REGULATIONS ON BUSINESS  
– AS EVIDENCED BY THE RESULTS OF THE ANNUAL BUSINESS NZ-KPMG  
COMPLIANCE COST SURVEY – AN ATTITUDE SHIFT  
ON THE PART OF BOTH GOVERNMENT AND  
INDUSTRY GROUPS IS CALLED FOR.

GOVERNMENTS MUST RESIST THE IMPULSE TO IMPOSE REGULATION  
AS A FIRST RESPONSE TO PROBLEMS HOWEVER MINOR.

INDUSTRY GROUPS MUST CONDUCT THEIR AFFAIRS IN SUCH A WAY  
AS TO EARN THE CREDIBILITY AND RESPECT OF  
STAKEHOLDERS IN ORDER TO EFFECTIVELY OPERATE  
A LIGHT-HANDED SELF-REGULATORY REGIME.



## What should New Zealand do?

Given the increased regulatory burden on New Zealand enterprises, Business NZ recommends the following actions by governments, government departments or industry groups when considering future regulation:

### Define the problem

Require all proposals for regulation to include clear analysis of the problem to be addressed. Analysis should cover the scale and significance of the problem and consider options other than regulation for addressing it.

### 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' (page 8) 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 – such as the Commerce Act and Fair Trading Act – instead of industry-specific regulation, unless particular exceptional circumstances require an industry-specific approach.

### 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. Self-regulation should be allowed to stand on its merits, and not viewed by officials or others as a process by which more heavy-handed regulation may be imposed in the future.

### Review all regulations

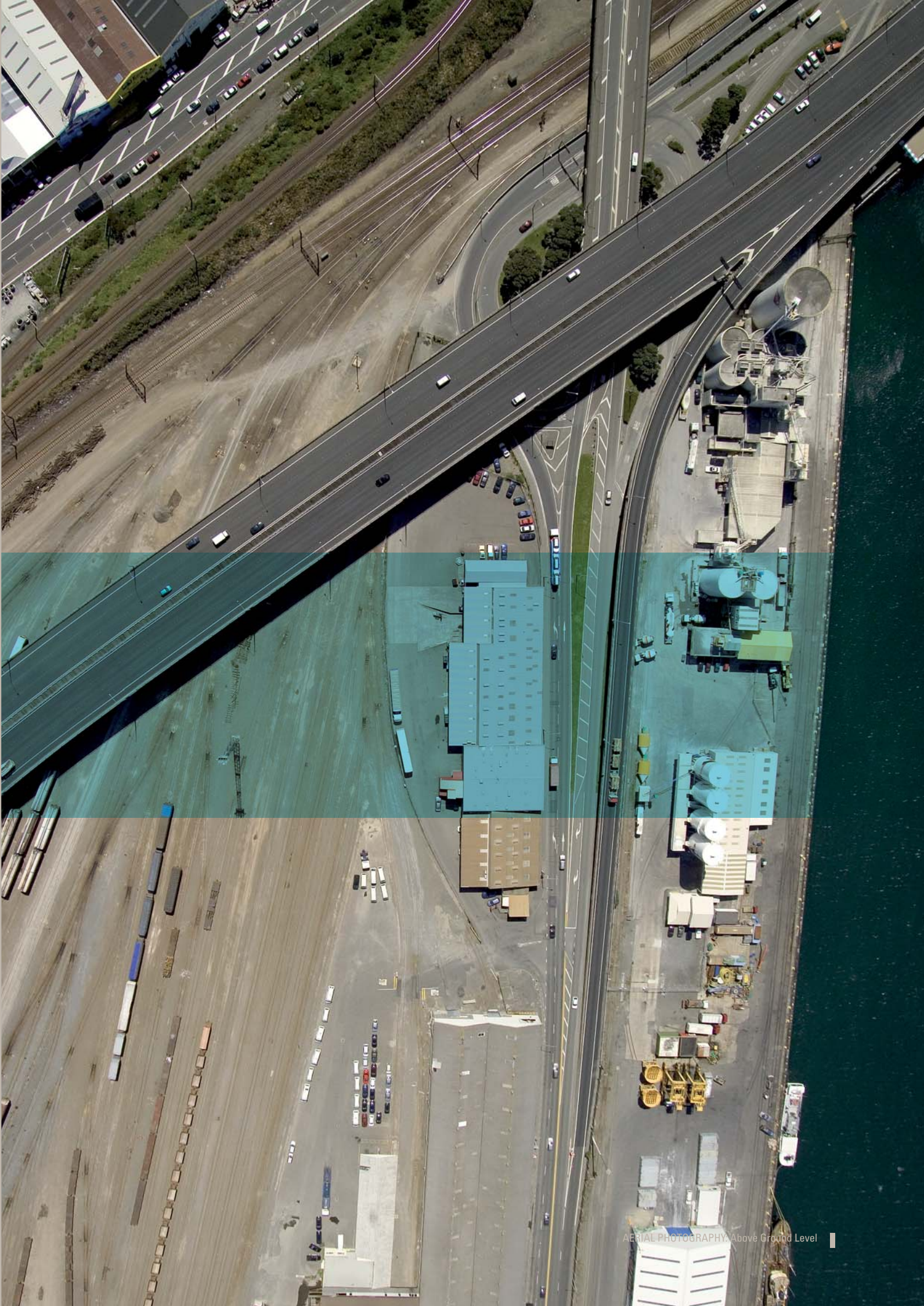
Use an independent agency to undertake regular reviews of regulations to ensure they are achieving the original objective and check whether they are still required.

### Sunset clause

Put a sunset clause – with an expiry date in e.g. five years - in new regulations where appropriate. The point at which the expiry date is reached would be the optimal time to review a regulation.

### Regulatory Responsibility Act

Adopt a Regulatory Responsibility Act that requires adherence to a set of principles to achieve discipline in regulation making, similar to the principles-based disciplines required by the Fiscal Responsibility Act, now part of the Public Finance Act.





*Regulation Perspectives* is the fifth in a series of *Perspectives* publications by Business NZ aimed at providing research and recommendations on current business issues.

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Level 6, Lumley House,  
Cnr Hunter & Victoria Streets  
PO Box 1925, Wellington

Ph 64 04 496 6555

Fax 64 04 496 6550

Email: [admin@businessnz.org.nz](mailto:admin@businessnz.org.nz)

[www.businessnz.org.nz](http://www.businessnz.org.nz)



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