



Regulatory Responsibility Bill

(71-1)

Report of the Commerce Committee

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Regulatory Responsibility Bill

Recommendation

The Commerce Committee has examined the Regulatory Responsibility Bill and recommends that it not be passed.

Introduction

Recommendation for the establishment of an expert task force

We recommend that the Government establish a high-level expert taskforce to develop a legislative or Standing Orders option, or both, to improve regulatory review and decision making processes.

The Regulatory Responsibility Bill is a member's bill in the name of Rodney Hide.

The purpose of the bill is to improve statutes and regulations in New Zealand by specifying principles of responsible regulatory management and by applying reporting requirements to the Crown with respect to these principles. In particular the bill addresses the regulatory burden faced by businesses and the concern that neither Acts nor regulations should take people's property or impair their common law rights, without due reason.

We acknowledge the significant public support demonstrated in submissions on this bill for improving the process and framework for making and reviewing regulation. We considered carefully the 189 submissions we received, and sought advice on a number of options for progressing this bill. However, there was little agreement amongst us and submitters as to the appropriate details for such a framework.

Options considered

Following our initial consideration of the submissions we received, we examined in detail three legislative options:

- Option 1 would require the presentation of a regulatory impact statement to the House when a Government bill was introduced or when regulations were tabled. The regulatory impact statement would disclose the underlying policy analysis and predict the impact of the proposed regulation, including business compliance cost implications. At present it is a Cabinet requirement that the explanatory note to most Government bills contain a regulatory impact statement.
- Option 2 would require both the presentation of a regulatory impact statement and ministerial certification as to whether the proposal complied with the Legislation Advisory Committee (LAC) guidelines.
- Option 3 would involve proceeding with the bill as introduced.

We called for further submissions from selected organisations on each of these legislative options. We heard from submitters who supported some form of legislation, consistent

with the LAC guidelines and the regulatory impact statement requirements. We also heard from submitters who expressed doubt as to whether incorporating the principles in the LAC guidelines and the regulatory impact statement requirements into legislation was the best approach. A major concern for these submitters was the litigation risks associated with adopting the principles of the LAC guidelines and the regulatory impact statement requirements into legislation. We share this concern. One submitter proposed that a more appropriate mechanism to deal with the concerns raised by the bill would be amendment of the Standing Orders, to allow the House to assess legislative proposals against those principles.

Committee consideration

Option 1 would involve a cost-benefit analysis to determine the impact of the proposed regulation. As such an analysis would inevitably involve value judgments that are difficult to quantify, we consider that option 1 is not an appropriate remedy for the concerns that the bill attempts to address. We consider that option 2's requirement for ministerial certification of compliance with the LAC guidelines lacks independent verification of compliance.

The remaining options were an enhanced version of option 2, which distils and codifies the essence of the regulatory impact analysis and the LAC guidelines and provides for independent assessment of compliance, and option 3 of proceeding with the bill as introduced. We did not consider that we had sufficient information to endorse either of these options.

All three options raise questions about the best way in which to enhance the information available to members of Parliament about legislative proposals, particularly Government bills, whilst ensuring the appropriate relationship is maintained between the Executive and Parliament.

Expert taskforce

We recommend that the Government establish a high-level expert taskforce to consider options for improving regulatory review and decision-making processes, including legislative and Standing Orders options, but not limited to the options that were placed before us.

We consider that members of this taskforce should each have extensive knowledge of public policy and economic, legal, and constitutional matters; and it could draw on expertise from officials, the LAC, the Law Commission, the Office of the Clerk of the House of Representatives, and people from the private sector who have made major submissions to us on the bill. We also believe that the chair should be an expert who has not been involved in advocating for or against any of the options we considered. We wish to see this taskforce adequately resourced in order to carry out its purpose, and suggest an indicative date for completion of its work might be 1 December 2008.

Conclusion

We consider that the bill as introduced should not proceed. Although we are supportive of improving regulatory review and decision-making processes, we consider that more work is needed before any such legislation should be considered, particularly given the possible

consequences of the legislative options we considered. Once such work has been completed it may be possible to develop appropriate legislation or other mechanisms to ensure that regulatory decision- and law-making processes are more transparent and subject to better guidance.

Appendix

Committee procedure

We called for public submissions on the bill. The closing date for submissions was 10 August 2007. We received 189 submissions and heard 25 of these orally. We called for further submissions from eight organisations.

We received advice from the Ministry of Economic Development and the Parliamentary Counsel Office.

Committee members

Gerry Brownlee (Chairperson)
Gordon Copeland (Deputy Chairperson)
Dave Hereora
Hon Darren Hughes (from 7 November 2007 until 2 April 2008)
Hon Shane Jones (until 7 November 2007)
Hon Luamanuvao Winnie Laban
Simon Power
Hon Mita Ririnui (from 2 April 2008)
Hon Maryan Street (until 7 November 2007)
Hon Paul Swain (from 7 November 2007)
Lindsay Tisch
Dr Richard Worth

Rodney Hide attended for this item of business.