

IAG Submission

Regulatory Standards Bill

18 August 2011

Introduction

This submission is New Zealand Limited's ('IAG') response to the Regulatory Standards Bill ('Bill') recently sent to the Commerce Select Committee ('Committee') for review. In this submission IAG responds to the Bill and to elements of the recommendations included in the Treasury's 'Option 5'.

IAG would be happy to discuss with the Committee any of the points we raise.

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About IAG New Zealand Limited

IAG New Zealand Limited (IAG NZ) trades under the Lantern, NZI and State insurance brands and underwrites general insurance for some of the country's leading financial institutions (including ASB, BNZ and PSIS). IAG NZ is New Zealand's largest general insurer, with a 34% share of the insurance market, managing 2.6 million policies of 1.1 million New Zealanders. IAG NZ is a wholly owned subsidiary of Insurance Australia Group (IAG), Australasia's largest general insurer.

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Overall Comments

Over the recent years IAG has responded to a wide range of new and updated regulation. We continue to do so today, with some fifteen pieces of regulation directly relevant to our business moving through the policy and parliamentary process.

As a leader in an increasingly regulated industry IAG expects to invest resources in understanding, influencing and complying with regulatory change. Some regulatory changes have however, required a significant commitment of resources to ensure it is fit for purpose and then to comply. For the most part this has been due to the quality of thinking behind the regulation and its implementation.

This extra effort creates additional costs - both real and opportunity, and creates a drag on the productivity and performance of our business. Because of this, IAG is very interested in improving the quality of regulation.

Our priorities

This Bill seeks to incentivise improved law making. As noted by the Hon Rodney Hide, in doing so it will not eliminate all ills from statute books and law making processes. Other changes are needed to counter the unhelpful incentives, pressures and human biases influencing law makers¹.

From IAG's perspective these ills are not the result of breaches of fundamental principles, rather the failure to adhere to sound process. Therefore in considering this Bill, IAG recommends that the Committee consider how improved adherence to sound process can be achieved. There are four specific issues.

Need.

Legislation must be grounded in a compelling need for intervention.

Demonstrating this need involves clearing three simple hurdles; a material problem or opportunity must exist; non-legislative interventions must have been proven ineffective (or are patently so); and the benefits of intervention must exceed the cost.

On too many occasions one or more of these hurdles have not been cleared. While these have mostly been identified and corrected in the policy development phase, doing so has required considerable work by industry. Participating simply to avoid poor policy making – not just unintended consequences, is an unnecessary and inefficient use of resources.

¹ Refer to the Regulatory Impact Statement: Regulating for Better Legislations – What is the Potential of a Regulatory Responsibility Act?, The Treasury

Case Study: Consumer Law Reform: A Discussion Document (June 2010)

This document proposed a wide range of amendments to modernise, simplify and consolidate a number of consumer laws. A key failing of the document was the absence of demonstrable market failures in New Zealand for some proposals, relying instead on Australian experience and analyses to explain the need for intervention. Two examples of this are unfair contract terms and unconscionable or oppressive conduct.

While Consumer Law reform is part of the Government's Single Economic Market agenda, simple adoption of issues and interventions from Australia – even for the purposes of testing need, represents lazy policy development. Thankfully, through consultation these proposals were dropped.

Cost

The compliance costs imposed on business must be justified.

The growing complexity of regulatory interventions increases the importance of understanding the practical changes required of business and the resources needed to implement changes and achieve ongoing compliance. Minor changes – even the selection or placement of individual words, can have significant implications for compliance costs and timeframes.

Case Study: Financial Advisers Act (2008)

The Financial Advisers Act sought to improve the quality, independence and accountability of financial advice and, through that, the confidence of consumers in the financial advice industry.

IAG supported the Act throughout its development, believing in the objectives and that sound financial advice is inherent to good customer service. From the outset we were confident in our ability to comply, but also took advantage of the 'efficiencies' contained in the Act (e.g. IAG is a QFE) to ensure the impost reflected the low risk of IAG's products and advice.

Despite this, implementation of Act cost IAG just under \$1.4m. Annual compliance costs include up to \$185k in FMA levies², at least \$150k for disclosure and 50k FTE hours in training. This is a considerable investment of resources relative to the risk posed and harm generated historically.

Timing

Reasonable timeframes must be set for implementation.

The volume of legislation passing through the house is considerable, with the urgency of changes (and the use of urgency) increasing. As a result a number of legislative interventions over the past few years have come with unreasonably and unnecessarily short consultation and implementation time frames.

² Based on options presented in "Proposed fee and levy changes for the Financial Markets Authority, External Reporting Board, New Zealand Companies Office, and Insolvency and Trustee Service: Discussion Document June 2011" from the Ministry of Economic Development

Case Study: GST Increase to 15% (2010)

The increase in GST from 12.5% to 15% was announced in the 2010 Budget and to be applied from 1 October 2010. In the interim period the GST Advisory Panel was established to work through the issues associated with transition.

The 1 October date and the nature of commercial insurance policy renewals necessitated compliance some two months in advance; before the Advisory Panel had completed its work. This left IAG having to commit to system changes without the surety of how the transition would occur. The Advisory Panel subsequently made transition decisions for insurance products that would have resulted in less cost and risk to IAG.

Case Study: Financial Advisers Act (2008) – Disclosure Obligations

The Financial Advisers Act requires disclosure to customers prior to, or immediately after, the giving of advice. Delays in finalising the disclosure regulations imposed unnecessarily short timeframes on industry to meet their disclosure obligations.

While compliance was achieved, it was done with a very small number of weeks to spare and at the cost of significant disruption to other important business activity. Also, as with the GST example, had the regulations been available earlier IAG would have saved time and money. This was unnecessary given the reforms were started in 1995 and IAG had participated actively and positively throughout.

The speed of implementation of the financial adviser regime overall is estimated to have added 30-40% to our implementation programme.

Cross Agency activity

Cross Agency connections must be considered when undertaking policy work.

The growing complexity and large volume of legislation increases the risk of important cross agency issues either not being considered or not receiving sufficient consideration.

Case study: Increasing choice in workplace accident compensation

In the lead up to the ACC discussion paper released by the Department of Labour (DOL) in June, IAG, as part of its licensing discussion with the Reserve Bank of New Zealand (RBNZ), sought to understand how it might look to alter the prudential regime (or not). IAG was left with the impression that the DOL and RBNZ had not talked. It is poor that the prudential implications for licensed insurers were not considered when seeking to have them participate in a competitive market for workplace accident insurance.

Proposals

Principles

IAG supports the need for principles to guide the framing of regulation.

It appears that New Zealand already has a reasonably established set of ‘touch points’ to guide and assess the development of regulation. These include the Legislation Advisory Committee Guidelines and the Regulatory Impact Analysis Handbook.

It is unclear to IAG if there is a material gap in the principles and quality assurance criteria contained in the Guidelines and Handbook or whether they would benefit from updating. Individuals and organisations other than IAG are better placed to determine this.

Nevertheless, IAG believes that principles and criteria to guide regulation are important and recommends that the Committee work to settle on an agreed set and to strengthen their role and importance in the policy and parliamentary process.

Certifications

IAG supports using certification to show that proposed regulation adheres to agreed principles and followed a sound development process.

At present the Regulatory Impact Statement is the method for demonstrating the reasoning and quality of proposed regulation. It would make sense that this is used as the basis for a broader attestation of adherence to principles and process.

We note that both sides of the House see the current regulatory impact assessment and reporting as poorly and inconsistently executed. Sign-off by Ministers and Agency Heads will establish greater incentives to comply with this process and other standards. We note the debate about the need for additional resources or focus to achieve adherence, but believe that Ministers and Officials are best placed to resolve this.

IAG recommends that certification should also be included in Select Committee reports to Parliament, as material changes to proposed regulation are often made at the Committee stage. The committee will also need to consider Supplementary Order Papers and Orders in Council.

Declarations

IAG has no fixed view on allowing courts to declare laws as being inconsistent with agreed principles.

IAG is concerned about the possible devaluation of declarations through repeated findings of non-adherence. We are also concerned that rulings will not carry sufficient weight to counter the incentives acting on Ministers and Officials.

IAG believes that there must be consequences for poor law making and recommends that the Committee give careful consideration to this can be introduced to the policy and parliamentary process.

Treasury Recommendations

The Regulatory Impact Statement for the Bill³ recommended alternative to the Bill, being Option 5: Strengthening Parliamentary Review of Legislation. IAG has picked out four elements it sees as worthy.

Greater release of exposure drafts

IAG strongly supports the use of exposure drafts of Bills and Regulations.

Affected stakeholders must be consulted early and meaningfully throughout the policy and parliamentary processes. This should occur formally (discussion documents, exposure drafts and select committees) and informally. While this occurs today, often the periods of consultation are too short given the breadth and significance of the proposals to allow thorough consideration of their effectiveness and efficiency.

Emphasise Parliament's responsibilities as a gatekeeper of legislative quality

This should go with out saying. However, IAG is not convinced that a new committee needs to be established to achieve this. We do agree that Select Committees must have in mind the principle of good legislation when reviewing Bills and their reporting back to the house should include a similar certification that provided when the Bill is introduced (Select Committees can and do make material changes to the structure and content of Bills). Actively stating continued (or new found) alignment with the principle seems seem obvious.

Give Parliament more analytical support

The natural outworking of the point above is that more resource will be needed in Parliament to support the work of select committees. IAG has no firm view on how these should be structured, but is wary of introducing a new Officer of Parliament. Housing the extra resources in the Select Committee Office or Legal Services under the Office of the Clerk would seem the simplest solution.

Reinvent LEG as a more substantive test of the quality of draft legislation

The Cabinet Legislation Committee (LEG) should be scrutinising the quality of policy. To the extent that this is not done, then IAG supports changes to the information presented with draft bills, et al. This should allow the LEG to better access the quality of the policy thinking and decide on the progress of each proposed legislative intervention.

³ Regulatory Impact Statement: Regulating for Better Legislations – What is the Potential of a Regulatory Responsibility Act?, The Treasury