

Have Your Say On

the

Proposed Regulatory Standards Bill

from the

Employers and Manufacturers Association

January 2025

About the Employers and Manufacturers Association (EMA)

Established in 1886, the EMA is New Zealand's largest business association representing more than 7,000 businesses in the upper half of the North Island. Combined, our members are responsible for employing around 25% of the country's workforce.

We are the unapologetic voice of the business community, advocating strongly on behalf of our members and the wider business community to ensure their voices are heard by government and decision-makers. In collaboration with our nationwide network, including BusinessNZ, Business Central, Business Canterbury and Business South, we represent and support over 76,000 member companies.

As a not-for-profit association, we provide trusted, expert and affordable advice to our members. Delivering a wide range of services, including learning and training courses, health and safety advice, employment support, and HR and PX services, we support our members to upskill and build capability in their teams.

More broadly, we aim to create an ecosystem of support for all businesses in New Zealand, enabling them, their people and their communities to prosper.

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Introduction

Regulation and the cost of compliance have been a long-term focus for the EMA and the subject of various reports and campaigns.

Most recently we facilitated sessions for the Minister for Manufacturing to discuss the impacts/costs of regulation and compliance on the manufacturing sector specifically and small business more generally while also facilitating similar sessions for the Minister for Employment Relations and Health and Safety.

The EMA has also been part of a group formed by the BusinessNZ Network, of which we are part, to again examine the costs in time and money of regulation and compliance on the small business community – 97% on New Zealand’s economy.

In 2019 we also commissioned an NZIER report on the costs of compliance and regulation to small businesses. (The Executive Summary of that report is attached as Appendix 1 as it raises many points still relevant to the current Regulatory Standards Bill discussion).

That report found that small business managers or owners may be spending up to 50% of their time just on managing regulation and compliance. Therefore any proposed legislation that has a goal to either reduce regulation or improve the quality of regulation has the support of the EMA.

The EMA also supports feedback from BusinessNZ on the proposed bill and acknowledges the point raised around timing of submissions and the recommendation to set a standardised, best-practice minimum period for public submission consultation.

Comments on proposals

The discussion document poses a number of questions for consideration. This submission doesn’t address all of them directly but does take the view the proposed Regulatory Standards Bill (RSB) will improve regulation overall and should help reduce or cull aged or unnecessary regulation.

The opening set of questions – **6 through 11** – ask for views on the current process. The experience of the EMA, a regular submitter on Government legislation and regulation, is mixed.

As much as anything the proposed RSB will be a success if it simply encourages our Parliamentarians and regulators to stop and think more about the need for regulation before reaching for the regulatory pen.

The extract on Page 17 of the discussion document from the 2009 Regulatory Responsibility Taskforce established to consider what should be in Regulatory Standards Bill, sums up the issues the EMA sees regularly in a succinct way:

“... patchy compliance by policy makers with the guidelines and the regulatory impact analysis requirements, signals the need for a coherent, mandatory regulatory quality regime. Analysis of the scope and scale of the problem, the various options for addressing it, whether legislation is required (and whether existing laws are sufficient) should be the first things examined by policymakers. Yet all too often they are the last.”

Perhaps it is the size of our population, but small problems seem to grow to have a perceived impact and scale, which is much larger than their actual effect.

All too often the impulse and reaction is to create new rules or legislation to manage the perceived major problem. Putting checks and balances in place to manage down that reaction – the fastest lawmakers in the west – is welcome.

All too often the first question that should be asked: *“What is the problem we are actually trying to solve?”* is ignored, unanswered or is of a scale that doesn’t actually need a regulatory response, but it gets one anyway.

Our view is Government intervention should be largely a last resort, not the first, and the scale of the problem should justify Government intervention rather than simply being a response to be seen to be doing something to manage a perceived short-term issue or to oil a squeaky wheel.

There will be short-term issues that should be managed through legislative intervention, but a disciplined framework to respond to those is a good objective outlined in the proposed bill.

One of the other issues we see is the lack of a regulatory framework to support legislation, poor drafting of the regulations, or gaps in the framework (sometimes deliberate) that cause confusion and additional costs for business.

The lack of definitions and national guidelines in the RMA led to 30 plus years of legal argument and allowed Local Authorities to create almost 70 different interpretations of what the Act meant to them. Similarly, as the Minister has recently found, the regulatory framework to support the Health and Safety Act has been found wanting and open to multiple interpretations of obvious “grey areas.”

These are large-scale failings that have spawned whole new industries based on interpreting the legislative frameworks.

But at the other end of the scale are the numerous well-meaning regulations that simply add costs in time and money to New Zealand’s small business communities for no apparent gains to the businesses.

Another mind-set change that would be welcome is the idea that as a small economy we can be a test or model for world-first legislation and regulation. We’re still waiting for the rest of the world to follow our world-leading environmental regime and the desire to be first in the world in climate change mitigation continues to add costs to our electricity pricing.

The Authority that regulates our electricity market has recently been criticised for aligning itself too closely to the goals of the Government of the day rather than focusing on its core task of regulating the market – underlining the need for independence in regulation.

Meanwhile we've gone from electricity pricing that was a world-leading advantage to pricing that is contributing to business closures.

New Zealand is part of the worldwide regulatory system, but we also need to ensure those worldwide responsibilities are applied here through the lens of impact on New Zealand businesses and their ability to resource and respond to those requirements. A similar lens needs to be applied to trans-Tasman regulation. We are not the same market as Australia as many of our Australian-based members tell us.

Standards for Good Regulation

The EMA is largely supportive of the principles outlined in Discussion One of the proposed RSB and covered by questions **12 through 15**.

How those principles interact with other legislative requirements in specific Acts may be part of working through the legislative process and may require some, but hopefully few exceptions. Health and Safety and AML legislation are possible examples.

The EMA also notes and supports the recommendation from BusinessNZ in regard to **Question 16**.

However, we would also note that changes under consideration to the RMA, The Public Works Act and the status of Earthquake-prone and Heritage Buildings may separately deal with the issues raised.

Does Regulation Meet Standards?

The EMA's experience is that the answer to questions and issues posed through **questions 17-19** is mixed. Some new recent regulation and the RIS reports that support the regulations are thorough others less so. Unintended consequences are always the issue with new regulation a sometimes the work to discover those consequences is just not thorough enough or ignores issues that are raised.

With the focus to RSB puts on quality of regulation you would think the expertise and rigour behind such reports would improve across all ministries.

Similarly with the emphasis the RSB places on reviewing existing and aged legislation you would expect improvements where issues are identified while aged or no-longer fit for purposed legislation should just be cleaned out.

Independent Assessment

In response to **questions 21 through 25**, the EMA supports the establishment of a Regulatory Standards Board although that Board must retain its independence and be wary of political capture.

The Sapere report into the effectiveness of the \$80 million plus Electricity Authority highlights the danger of policy capture to the Government of the day while the recent establishment of a Grocery Commissioner with a staff of more than 20 lawyers seems an overweighted political response to a perceived issue that falls under the Commerce Commission anyway.

Again the BusinessNZ recommendations on a Regulatory Standards Board are supported by the EMA.

Oversight of Regulatory Performance

The Ministry for Regulation is the appropriate body to ensure improved regulatory standards across all government agencies and should have the powers it needs to gather information from those ministries.

Consideration could also be given to applying the scrutiny levels of the RSB to Private Members Bills and to applying some level of required guidance to Local Government.

Private Members Bills are often not as well drafted or subject to the same rigour as Government Bills. They sometimes represent an axe-grinding type of policy that adds little, or costs more than the Bill may intend.

They are, however, an important part of the Parliamentary process and especially important for members testing their mettle. But scrutiny or guidance to ensure a higher level of the understanding for the need for a piece of legislation and better quality of drafting can only be helpful.

Local Government quite rightly deals with local or regional issues and that's where their expertise and focus should lie.

However, too often Local Governments decide to intervene or meddle in national level policy. The RMA remains the most egregious example of Local Governments making up their own rules on the implementation of what is national policy.

Perhaps the RSB could look at a specific targeted rule for Local Government that they cannot add or change standards set out in national level legislation to make their own localised, political points.

Conclusion

The EMA welcomes the regulatory Standards Bill as a long overdue tool to improve the quality of regulation in New Zealand.

Appendix One:

Below are the Key Points and Executive Summary from a 2019 report commissioned by the EMA and produced by NZIER investigating the costs of compliance and regulation for SMEs in New Zealand. The full Report and the MED framework referenced in the summary is available on request from the EMA.

Key points: A compliance scorecard

Businesses understand and support effective regulation

Businesses understand that Regulation is important – it ensures that:

- tax revenue is raised
- that workplaces are safe
- that workers are safeguarded and treated fairly
- that the environmental impacts of business activity are mitigated; and
- that citizens and customers are protected by assurances that goods and services are safe and fit for purpose

Working Well

Workplace safety: Employers valued the impact of workplace safety, thought WorkSafe, by and large, did a good job on insufficient resourcing, and that there were positive benefits for staff knowing that management took safety seriously.

Management-Union relationships: Employers find that unions are pragmatic and sensible, and that they understand the dynamics when employees don't "fit". Current system ain't broken.

Tax: Nobody raised tax compliance as an issue with us. It is the biggest area of compliance cost, but IRD is felt to have its act together, and businesses factor it in.

Working Badly

Employment Relations Authority: Those employment disputes that do escalate are fanned by an increasingly litigious legal advocacy business, supported by an Employment Relations Authority that employers believe – with some evidence to back this view – is stacked in favour of employees.

One to watch out for

NZ Building supplies and componentry suppliers are being crowded out by offshore imports. The price difference is material, but there is increasing concern about code compliance. Seems that certification of imports can't always be relied on. Head Contractors are increasingly wary of steel, concrete, cabling and cladding materials

Missing in action

Official government data. We were unable to update 2012 information on business compliance costs, because Statistics NZ and MBIE do not seem to be updating datasets or keeping consistent time-series information.

... and a warning...

The cost of compliance isn't just in cash, it is in management time and "headroom". It's pretty clear that the amount of time dealing with "red-tape" has been steadily increasing, but employers haven't been paying enough attention. Everyone we talked to too has noticed that in some cases up to half their time is dealing with compliance, or they have had to take on specialist staff to handle compliance issues.

This could be an instance where the frog is quietly allowing itself to be boiled. The consequences of lost leadership time will be measured in lost productivity, lost opportunity and management "bum-out".

EXECUTIVE SUMMARY

We have chosen to define business compliance costs for this review as the administrative and paperwork costs created from government regulation (A wider definition would include the economic costs of the distortions created from a regulated business environment). NZIER has found regulation has distorted how firms operate their business. A whole industry of specialist occupations or business has been created to support increased regulation. The creation of new regulation-specific roles has been the market response to the increasing complexity of compliance with Government regulation. That said, successive Governments in New Zealand have sought to review, assess, address and justify the cost of business regulation. There have been a range of initiatives, including the requirement for Regulatory Impact Statements, and the use of the Ministry for Business, Innovation and Employment and Treasury resources to require that any regulatory impost is required to undergo a rigorous assessment to ensure that the benefits outweigh the costs. This study is the result of that work.

Compliance is increasingly a big business

We undertook a short sample of business leaders and employers to gain their views on compliance matters, and the impact it was having on their businesses. The results were something of a surprise to us. Key points made were:

- Business “gets” and supports responsible regulation.
- Businesses are observing that more and more of their time is being spent overseeing regulatory requirements.
- Responsible regulation is good for business – to a point.
- How well a business responds to regulatory requirements is not of great commercial benefit in the market, but it is important for keeping and retaining staff.

Many firms have hired specialist compliance staff, engaged with specialist firms providing services, and increasing portions of senior leadership time and effort are focused on understanding and managing compliance issues.

The most important observation we can make is that most of the firms we talked to haven’t reflected on how much more of their leadership time is being allocated to managing compliance.

We see this as the elephant in the room for business and for government. At a time when we are urging businesses to improve productivity, we are also requiring increased focus on compliance with government requirements, that individually are regarded as reasonable, but in aggregate represent a significant and increasing workload, that is reducing management “headroom”.

Nobody is keeping the score

In previous work, NZIER assessed that the cost of compliance with business regulation in 2012 to be \$6.2 billion. That is, in 2012 approximately 3% of GDP was consumed meeting Government requirements (tax, labour market, environment, and public safety).

We were disappointed to find that it is not possible to use official New Zealand government data sources to identify how much compliance is costing small to medium businesses in 2018, or indeed that the 2012 data is still the most up-to-date available.

We found that the key Government agencies, Statistics New Zealand and the Ministry for Business, Innovation and Employment are not collecting data in a timely manner or making it available in a form that is able to be used in aggregate. In many cases there is no more recent information than 2012.

Statistics NZ and MBIE databases have not been updated, in some cases the base for collecting information has changed. Additionally, the important work done in 2001 to improve the quality of Regulatory assessment appears to have lapsed.

It is not clear that any part of the New Zealand government system is currently compiling information on, let alone addressing compliance issues in a systemic or systematic manner.

The construction sector seems to be entering a consolidation phase

While not strictly within our brief, we record that there was considerable commonality in the themes arising from firms we interviewed in the construction sector:

1. All are concerned about the number of business failures in the sector.
2. Most face significant staff issues- it is very hard to find willing and motivated New Zealanders.
3. Most prefer to hire full-time staff, and to limit the use of casuals.
4. Migrant labour is not a reliable substitute for trained New Zealand staff, as they are less familiar with NZ building codes.
5. Most firms have experienced growth over the last two years and are looking to pause and consolidate. Taking on more work when they can’t find skilled staff or leadership for is seen as too risky.
6. Getting staff prepared to work in Queenstown is next to impossible – the shortage of accommodation makes working there unattractive almost at any price.
7. Sub-contractors are still struggling to meet Workplace safety requirements, and Head Contractors are having to put a lot of support in for them.
8. Offshore sourced product is an increasing problem:
 - a. It is so much cheaper than NZ product that it has to be taken seriously
 - b. The uptake of offshore product is pressuring NZ manufactured product out of the market
 - c. quality is unreliable. Some firms won’t warrant offshore componentry, certification systems are flawed and there seems to be fraudulent certification in the market

Workplace safety regulation is universally supported. Employers felt that WorkSafe is doing a good job but is under-resourced for the task. Sub-contractor businesses, however needing a lot of support to come up to speed and retain compliance. This cost is being borne by Head Contractors. Respondents also felt that Workplace safety has had a positive impact on their businesses – it sends a tangible message that management cares about safety and takes it seriously.

Employment relations

turns up a number of key findings:

1. Most workplaces are harmonious, relationships with staff, management and unions are good. Unions are regarded as business partners.

2. There is a remarkably strong preference to hire New Zealanders, for permanent staff and for limiting the use of contractors.
3. There are critical shortages of New Zealanders with the skills to fill roles, particularly in construction, and this is a handbrake on a firm's ability to grow, or willingness to expand.
4. The employment relations area has become increasingly litigious, lawyers have moved into the advocacy market, and the Employment Relations Authority is seen as stacked against employers. Most employers will do almost anything to avoid going to mediation or the Tribunal.
5. In December 2018, when the survey was undertaken, none of the businesses we talked to had got their heads around the Government's proposed reforms to the Employment Relations Act.

Environmental regulation was a non-issue. Every business we talked to understood that it matters and supported the intent.

Consumer protection regulation turned up a number of important issues:

1. Businesses understood the importance of safety, and the need to demonstrate that goods were fit for purpose
2. New Zealand manufactured building materials and componentry are considerably more expensive than sourcing offshore.
3. There is increasing concern that building componentry being imported, particularly from China is not compliant with Australian and New Zealand codes. Issues brought up with us were reinforcing and construction steels, cabling and wiring, building facades.
4. There is real concern that as New Zealand sourced product is replaced with imported, there will be large liability issues for NZ head contractors, who have relied upon certification that is not trustworthy.

The amount of time spent by management and leadership on compliance is increasing but is not always apparent in the moment.

Complying with regulatory **change** was costly. The points of contention for most businesses we interviewed was not how much regulation they were responding to, but how they were addressing **changes** in regulation.

Because regulatory change is usually incremental, it is sometimes hard to step back and see how much management effort has over time been diverted to complying with regulation. Business leaders seem to exhibit a high level of trust in regulators, but don't seem to appreciate the quantum of costs that Government imposes.

We observed that business leaders tend to identify compliance cost at the point when regulations change. But, it is very rare to pause and reflect that:

- increasingly more management effort has been diverted from managing the business to managing the compliance,
- new employment roles have had to be created within organisations to address the regulatory change,
- new expense is incurred, sometimes explicitly to a new compliance-focused business offering a solution to the regulatory need,
- new manners of service delivery or performances are less productive than they used to be.

These "shifts in allocative efficiency" – second best solutions for how a business would otherwise operate – have become the new normal and become accepted as "just another aspect of running a business".

Like the proverbial "Frog in Boiling Water"¹ the collective impact of increasing regulation and the penalties for non-compliance, is increasing distortions to businesses around how they operate; increasing non-productive costs they face; opportunity for more output they lose; and the unrecompensed transfers they provide to Government through doing its paperwork. It's fair to ask: is business getting enough fair from this relationship?

Challenge for government: measure the burden

The challenge for the Government is to understand its compliance burden: does the Government really understand how much regulation costs, and how costs are changing with new regulation and time?

The main difficulty NZIER faced in this project was measuring business total compliance costs. The Inland Revenue Department undertake research into tax compliance burden, but similar research does not exist in other compliance cost areas chosen in this study - labour market regulation, health and safety, and consumer protection - despite these being regulatorily-active areas.

Compliance measurement can be subtle. The cost of increase labour market regulation is not how many more hearings occurred in the Employment Relations Authority – an easily measured administrative record – but rather:

- The increased number of threats of action resulted from the legislation change
- The increased volume of documentation generated for each incident
- The increased risk of getting compliance wrong and being penalised by Central Government or private sector agents.

The Government has the right tools in place for measuring compliance cost.

Every regulation change involves a Regulatory Impact Assessment (RIA) undertaken by the responsible Government department.² These are a natural data source or "questionnaire" that could serve as a basis for systematically measuring compliance.

The Ministry of Economic Development (MED) - now MBIE - had previously taken the lead on compliance cost reduction. In 2001, MED issued its "Business Compliance Cost Statement: Guidelines for Departments" to support Cabinet's directive on compliance cost reduction. The guidelines offered sound practical advice to departments.

¹ https://en.wikipedia.org/wiki/Boiling_frog

² <https://treasury.govt.nz/information-and-services/regulation/impact-analysis-requirements-regulatory-proposals>

Treasury has taken over responsibility for setting the RIA guidelines which incorporate some aspects of the MED guidelines.³ The former MED emphasis on the non-quantifiable effects of needing to comply with government requirements and uncertainty about obligations, often referred to as "psychic costs", are not included in Treasury's guidelines. Neither the MED or Treasury guidelines including measuring the economic costs of regulation; however, our conversation with business suggest the economic costs are a very real aspect of a regulation's total compliance cost. Business are responding to economic costs as much as they're responding to compliance costs, on the MED definition. NZIER has included a copy of the 2001 MED Guidelines as an appendix to this document because NZIER believes its guidance is still relevant for regulators and legislators. It is disappointing that this initiative appears to have been allowed to lapse.

³ <https://treasury.govt.nz/sites/default/files/2018-03/ia-bestprac-guidance-note.pdf> on page 13.