

In Confidence

Office of the Minister for Regulation

Cabinet Chair

Regulatory Standards Bill: Consideration of departmental report

Proposal

- 1 This paper updates Cabinet on the consideration of the Regulatory Standards Bill by the Finance and Expenditure Committee (FEC), and attaches a copy of the departmental report to FEC.

Relation to government priorities

- 2 The Coalition Agreement between the New Zealand National Party and ACT New Zealand includes a commitment to legislate to improve the quality of regulation, ensuring that regulatory decisions are based on principles of good law-making and economic efficiency, by passing the Regulatory Standards Act as soon as practicable.

Executive summary

- 3 On 5 May 2025, Cabinet agreed to a number of policy matters for inclusion in the Regulatory Standards Bill, agreed that it would consider the departmental report before it was submitted to Select Committee, and agreed that it would further consider the Bill as reported back from Select Committee (including consideration of the proposed taking of property principle as well as other matters) (CAB-25-MIN-0148 refers).
- 4 The departmental report on the Regulatory Standards Bill is attached as **Annex 1**. It includes a broad summary of views on the Bill, detailed clause-by-clause analysis of the submissions, and identification of recommended changes for FEC's consideration. All submissions were read in the process of preparing the report. [Refer to the Departmental Report released by the Select Committee on the Parliament website](#)
- 5 I have considered the feedback from the submissions, and my view in most cases is that the current drafting reflects the objectives and intent of the Bill, and amendments are not warranted. However, there are several areas where I am proposing changes to the Bill in response to submitter feedback:
 - 5.1 aligning the coming into force of the provisions for establishing the Board with the coming into force of CAS requirements in clause 2
 - 5.2 amending references in clause 8(c) to *severe impairment* of property rather than *impairment*
 - 5.3 limiting the reference in clause 8(d) to section 22(a) of the Constitution Act, rather than the whole of section 22

- 5.4 adding planning for implementation of legislation to the good law-making principles in clause 8
 - 5.5 simplifying the approach used to give effect to exclusions for classes of primary and secondary legislation provided for in the Bill
 - 5.6 excluding any Bill that brings into effect recognition agreements under the Marine and Coastal Area (Takutai Moana) Act 2011, and any associated secondary legislation
 - 5.7 clarifying that the use of Chief Executive in the Bill applies to whoever occupies the position of Chief Executive, even where that is not the specific job title
 - 5.8 adding provisions to require the Board to act independently when performing its functions as set out in the Bill
 - 5.9 providing that appointments would be made by the Governor-General, on the recommendation of the responsible Minister
 - 5.10 providing that removals will be made for just cause by the Governor-General, on recommendation of the Minister made after consultation with the Attorney-General, and state the reasons for the removal
 - 5.11 providing that members are appointed for a term set out in a notice of appointment, but which is no longer than five years, with the possibility of renewal.
- 6 These recommended changes are reflected in the attached departmental report.
- 7 Given that this paper specifically addresses the proposed Taking of property principle, which was to be considered further by Cabinet once the Bill has been reported back to the House, my view is that there is no need for further consideration of this issue. I therefore recommend that the requirement for that further report back be removed.

Background

- 8 On 5 May 2025, Cabinet agreed to a number of policy matters for inclusion in the Bill. It also agreed that it would consider the departmental report before it was submitted to Select Committee, and would further consider the Bill as reported back from Select Committee, including consideration of the proposed taking of property principle as well as other matters (CAB-25-MIN-0148 refers). On 19 May, Cabinet then agreed that the Bill be referred to FEC and enacted by 31 December 2025 (CAB-25-MIN-0165 refers).
- 9 On 22 May 2025, the Regulatory Standards Bill had its first reading and was referred to FEC for consideration. FEC subsequently resolved to report back to the House by 23 September 2025.

- 10 Consultation on the Regulatory Standards Bill was open for four weeks, closing on Monday 23 June. Approximately 166,000 submissions were received.
- 11 The departmental report on the Regulatory Standards Bill is attached as **Annex 1** to this paper. It includes a broad summary of views on the Bill, detailed clause-by-clause analysis of the submissions, and identification of recommended changes.

Broad themes from submissions

- 12 The Ministry for Regulation contracted Allen & Clarke to assist with submissions analysis to ensure all submissions were considered and reflected in the departmental report. All submissions were read in the process of preparing the departmental report.
- 13 Across all the submissions made to FEC, the main reasons given for support for the Bill include that submitters consider that the Bill will:
 - 13.1 achieve its purpose to promote greater transparency and accountability in New Zealand's regulatory environment
 - 13.2 improve the quality of regulation, and reduce unnecessary regulatory burden
 - 13.3 better protect property rights
 - 13.4 support greater productivity and economic growth.
- 14 The main reasons given for opposition to the Bill are that submitters consider that:
 - 14.1 the Bill is a breach of the Treaty/te Tiriti and/or submitters are concerned about its absence from the Bill
 - 14.2 the Bill has an ideological basis not supported by the majority of New Zealanders
 - 14.3 there has been inadequate consultation on the Bill (particularly with Māori)
 - 14.4 the Bill is unconstitutional and could have enduring legal impacts
 - 14.5 the Bill weakens environmental and social protections, would erode protections for minority groups, and will have a 'regulatory chill' effect
 - 14.6 the Bill is unnecessary, expensive and could have unintended negative economic impacts.
- 15 The departmental report provides a more detailed summary of the overall sentiment of submitters and the reasons for it.

Feedback on specific provisions of the Bill

- 16 The majority of feedback that was received on specific clauses focused on provision for Treaty of Waitangi/te Tiriti o Waitangi and Māori rights and interests; the principles; the Regulatory Standards Board; and the information-gathering powers.
- 17 Allen & Clarke identified around 1,317 substantive submissions – that is, those submissions that made detailed comment on specific clauses of the Bill, had comprehensive points; discussed nuance or raised new perspectives – out of the approximately 160,000 submissions determined to be in scope.
- 18 The clause-by-clause analysis in the departmental report summarises the feedback from these submissions, provides comment in light of the objectives and intent of the Bill and indicates whether changes are proposed to each clause in response to this feedback.
- 19 It is worth restating the objectives and intent of the Bill, which are that:
 - 19.1 the Bill aims to reduce the amount of unnecessary and poor-quality regulation by increasing transparency and making it clearer where legislation does not meet standards. It intends to bring the same discipline to regulatory management that New Zealand has for fiscal management
 - 19.2 the Bill reflects the Government's intent to support the accountability of the Executive to Parliament for developing high-quality legislation and exercising stewardship over regulatory systems, and to strengthen Parliament's scrutiny of legislation, by:
 - 19.2.1 establishing principles of responsible regulation in primary legislation, based largely on the principles set out in the previous versions of the Regulatory Standards Bill, and focused specifically on the effect of lawmaking on existing interests and liberties and good lawmaking processes
 - 19.2.2 setting legislative requirements on agencies and/or responsible Ministers to identify and transparently report on inconsistencies in most new and existing legislation and reasons for those inconsistencies
 - 19.2.3 establishing an independent assurance mechanism in the Executive to incentivise robust compliance with the Bill's requirements and provide an avenue for people to complain about inconsistencies with the principles
 - 19.2.4 supporting the Ministry for Regulation's regulatory oversight role and strengthening government departments' regulatory stewardship obligations.

Areas where changes to the Bill are proposed

- 20 I have considered the feedback from the submissions analysed to date. My view in most cases is that the current drafting reflects the objectives and intent of the Bill, and I do not think any amendments are warranted.
- 21 One particular theme of submissions was that the Bill would have broad-ranging effects on the ability of the Executive and Parliament to legislate for various public goods. It is important to note that there is no intent for the principles (or any other part of the Bill) to be applied outside the limited scope required by the Bill (e.g. in relation to the completion of CASs for proposed and existing legislation). In addition, the Bill more generally sets other explicit limits on the legal effect of the Bill, including not conferring legal rights or imposing legal obligations (cl 24), not affecting powers to make legislation (cl 25(1)), and not affecting the validity or operation of any legislation (cl 25(2)).
- 22 Instead, the Bill sets in place a series of transparency and accountability measures to shift behaviour so there is a disincentive for responsible agencies, Ministers and other makers of legislation to develop, or allow to continue in place, legislation that is inconsistent with the principles set out in the Bill, unless a sound justification can be made.
- 23 However, there are several areas where I am proposing changes to the Bill in response to submitter feedback.

Commencement

- 24 Submitters raised that there should be adequate time for establishing the Regulatory Standards Board before requirements for Consistency Accountability Statements (CASs) commence.
- 25 As currently proposed, the Board would be established from 1 January 2026, at the same time the Bill comes into force. However, CAS requirements will come into force by Order in Council, no later than 1 July 2026. This delay leaves time for guidance material to be developed and published.
- 26 As the role of the Board will be to assess new Bills and existing legislation against the principles, I agree it would be appropriate for the Board to be established to align with the publication of guidance material and implementation of CAS requirements.
- 27 I therefore propose an amendment to align the coming into force of the provisions for establishing the Board with the coming into force of CAS requirements.
- 28 I note that this amendment may impact on the requirement in schedule 1, part 1 clause 6 for an interim board report covering the period between 1 January 2026 – 30 June 2026, and result in an interim report being unnecessary.

Principles

- 29 Many of the substantive submissions raised concerns with the proposed principles either generally, or with specific principles. In particular, some submitters raised concerns around the Taking of property principle in clause 8(c), which provides that property should only be taken or impaired where there is good justification, with compensation provided to the owner, preferably funded by those who benefit.
- 30 I note that the Regulatory Responsibility Taskforce's report in 2009 explained that their recommendation to include the term "impairment" in this principle was "intended to encompass regulatory actions which, while not amounting to a physical taking of property, severely impair an owner's enjoyment of his or her bundle of property rights. Where the degree of impairment is sufficiently serious, it will amount to a taking."¹ The report goes on to refer to the significant body of Australian case law on the meaning of this type of impairment. The relevant section of the Taskforce's report is attached as Annex 2 to this paper.
- 31 In my view, the inclusion of impairment is essential to the intent of the Bill, which is to focus attention of responsible Ministers and agencies on the impact of proposed or existing legislation on existing interests and liberties, as well as good lawmaking processes. Where Government is considering passing legislation that impairs people's property rights in order to achieve public good outcomes – for instance the creation of Significant Natural Areas or classification of buildings as having heritage status – the nature and extent of that impairment should be made fully transparent, and regulatory relief for that impairment should be considered. My intent is to extend the current position where only those impairments that are akin to a taking should be compensated, to situations where New Zealanders' property is severely impaired by legislation. This is consistent with current thinking being done on the approach to Regulatory Management Act reform, where there is a desire to similarly 'move the dial' on property rights, noting that final policy decisions have not yet been made in relation to how that would be done.
- 32 Where an impairment to a property right is identified, the Bill does not require any action to be taken or any compensation to be paid. The responsible Minister can simply provide a statement giving reasons why they consider such an impairment to be justified, and why they think compensation should not be payable. However, this will make it easy for Parliament and the public to see where property rights are being impaired to achieve a policy goal – with the intent of helping reduce instances where property rights are severely impaired and no compensation paid, without sound justification.
- 33 In my view, this is something that should be of great interest to anyone wanting to promote a sound environment for investment, which is vital for productivity growth and higher wages.

¹ Report of the Regulatory Responsibility Taskforce 2009, p.47

34 However, I acknowledge that it could be made clearer in the Bill that the intent of the Taking of property principle is to capture situations where there is a high degree of impairment, rather than any impairment. I therefore propose amending the principle to refer to *severe impairment* of property.

35 [LEGALLY-PRIVILEGED s 9(2)(h) 





36 s 9(2)(h) 








37 s 9(2)(h) 







38 s 9(2)(h) 








39 s 9(2)(h) 





40 There was also a focus on why there was no provision for Te Tiriti o Waitangi/the Treaty of Waitangi in the principles. In relation to most of the concerns raised, my view is that a Treaty principle is unnecessary and will not aid in good law making. I note that neither the Constitution Act 1986, the Legislation Act 2019, the New Zealand Bill of Rights Act 1990, nor the Public Finance Act 1989 contain a Treaty clause, and I see no reason to include one in this bill.

- 41 I am also proposing some other, minor amendments to the principles:
- 41.1 Clause 8(d) relating to taxes refers to the whole of section 22 of the Constitution Act 1986 (which covers Parliamentary control of public finance broadly) rather than just 22(a) (which concerns taxes). This has likely created some confusion, where submitters have thought that the Bill was attempting to establish principles for the borrowing and spending of money. I therefore propose that the reference should be limited to section 22(a) of the Constitution Act, rather than the whole of section 22
- 41.2 Some submitters suggested that planning for implementation would be a helpful addition to the good law-making principles. I agree that implementation arrangements can be a major determinant of the success or failure of regulation, including the pain points and compliance costs experienced by those affected. I therefore propose that a principle relating to the responsible agency identifying and developing effective arrangements for implementing legislation should be added to the good law-making principles in clause 8. Adding this principle in clause 8 would require consequential changes to clauses 20 and 34, which set out how the good law-making principles apply when the responsible agency or Board is assessing the consistency of existing legislation against the principles. Given that this principle would focus on the process for developing new legislation, I propose that this principle be disapplied in those clauses, in the same way as the consultation principle in 8(i).

Additional exclusion for the Marine and Coastal Area (Takutai Moana) Act 2011

- 42 Under the Marine and Coastal Area (Takutai Moana) Act 2011, there are two legislative pathways to have recognition agreements brought into effect under section 96 of the Act (alternatively there is an option for recognition to be provided by a Court order under section 94).
- 43 The pathway for agreement to recognise a protected customary right is via Order in Council and is considered secondary legislation. Secondary legislation made under Takutai Moana is excluded from the requirements of the Act, by virtue of being made under an excluded Act. However, recognition of customary marine title can occur via an Act of Parliament and has not been provided for as an excluded Bill, creating an inconsistency between the treatment of primary and secondary legislation giving effect to recognition agreements.
- 44 For consistency with the exclusion currently in the Bill, I propose excluding any Bill that brings into effect recognition agreements under that Act, and any associated secondary legislation. This also aligns with an exclusion from Regulatory Impact Analysis requirements for recognition agreements.

Simplifying the approach to exclusions set out in the Bill

- 45 The Bill currently provides exclusions in relation to specific types of bills (clause 10) and Acts that have been enacted from a Bill of a kind referred to in clause 10. There are also exclusions for secondary legislation issued by the Chief of the Defence Force, made by the Speaker of the House or made by the House as well as for all court rules and instruments made by the judiciary that are secondary legislation.
- 46 The intent is for the specifically identified bills, Acts and secondary legislation to be excluded entirely from the scope of the Bill. The Bill currently achieves this by excluding the identified Bills, Acts and secondary legislation from each of the processes under the Bill (CAS requirements in clauses 10 and 14, regular review in clauses 18 and 19 and board inquiries in clause 33).
- 47 To reduce complexity, provide increased clarity, and ensure there is consistency in providing for the identified exclusions across all of the requirements of the Bill, I propose simplifying the approach to address the exclusions in a consolidated provision, to reflect the intent that these matters are excluded entirely from the scope of the Bill.
- 48 This approach will also provide additional clarity that a notice bringing classes of secondary legislation into regular review requirements (as provided for in clause 19(1)(b)) could not be used to require review of secondary legislation specifically excluded by the Bill.

Providing for situations where Boards are responsible for making secondary legislation

- 49 The External Reporting Board was concerned that the provision in clause 23 relating to Chief Executives acting independently of the Minister does not cover situations where a Board rather than the organisation has the responsibility for making secondary legislation. While this clause does not refer to the maker, I agree that it may be worth clarifying that this clause applies to whoever occupies the position of Chief Executive of a responsible agency, even if that is not the specific job title. I therefore propose broadening the wording of the clause to provide for these situations.

Appointments to the Regulatory Standards Board

- 50 Many substantive submissions raised concerns about the effect, independence and membership of the Regulatory Standards Board. In relation to the concerns raised, my view is that:
- 50.1 the Board does not have decision-making powers and cannot make binding recommendations. Its role is limited to providing reports to select committees and making recommendations to the Minister for Regulation. The Board's recommendations are non-binding and do not prevent or require legislation to be amended or developed in a particular way

- 50.2 the Bill does not provide for the Minister for Regulation to direct the Board to undertake particular inquiries, or to cease any inquiry
 - 50.3 appointments to the Board would be consistent with established processes and will be considered by Cabinet through the Cabinet Appointments and Honours Committee process
 - 50.4 as the Board's functions involve inquiring into legislation covering a broad range of subject matters, it is important that sufficient flexibility is provided to enable appointment of a broad range of expertise over time.
- 51 However, given submitters' concerns about the potential that the Minister can direct the Board, and the intent that the Board would act independently when reviewing CASs and legislation, I propose adding provisions to the Bill:
- 51.1 requiring the Board to act independently when performing its functions as set out in the Bill
 - 51.2 mirroring arrangements for appointments to Independent Crown Entity (ICE) Boards, so that appointments to the Board would be made by the Governor-General, on the recommendation of the responsible Minister
 - 51.3 similarly mirroring arrangements for removal of ICE Board members, so that the Governor-General may remove Board members for just cause, on the advice of the Minister for Regulation, which is given after consultation with the Attorney-General
 - 51.4 providing for members to be appointed for a term set out in a notice of appointment, but which is no longer than five years, with the possibility of renewal.

Next steps

- 52 Given that this paper specifically addresses the proposed Taking of property principle, which was to be the subject of a further report back to Cabinet once the Bill had been reported back to the House (CAB-25-MIN-0148 refers), I recommend that the requirement for that further report back be removed.

Cost-of-living implications

- 53 There are no cost of living implications as a result of the specific proposals in the paper.

Financial implications

- 54 There are no additional financial implications as a result of the proposals in this paper. Financial implications arising from the Regulatory Standards Bill were previously noted by Cabinet [CAB-25-MIN-0148 refers].

Legislative implications

- 55 The Regulatory Standards Bill is currently before select committee, and the proposals in this paper are reflected in the Departmental Report to the committee.

Impact analysis

Regulatory Impact Statement

- 56 A Regulatory Impact Statement was prepared in accordance with Cabinet's impact analysis requirements and was submitted at the time of the earlier Cabinet approval for the policy [CAB-25-MIN-0148 refers].² The Ministry for Regulation has determined that the further proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor economic, social, or environmental impacts.

Climate Implications of Policy Assessment

- 57 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the threshold for significance is not met.

Population implications

- 58 The specific proposals in this paper have no direct population implications.

Human rights

- 59 The Attorney-General has previously provided advice that the Bill appears to be consistent with the New Zealand Bill of Rights Act 1990.

Use of external resources

- 60 The Ministry for Regulation has appointed Allen & Clarke to assist with analysis of the significant number of submissions received by the select committee hearing the Bill.

Consultation

- 61 The timing of this paper has not allowed for departmental consultation to be undertaken.

Communications

- 62 Following report back by the select committee, the departmental report will be publicly released. I do not intend to make any public statement on the specific proposals in this paper.

² <https://www.regulation.govt.nz/our-work/regulatory-impact-statements/regulatory-impact-statement-proposed-regulatory-standards-bill/>

Proactive release

- 63 I intend that this paper be proactively released as soon as possible after the select committee has reported the Bill back to the House.

Recommendations

- 64 The Minister for Regulation recommends that Cabinet:
- a. **note** that on 5 May 2025, Cabinet agreed to a number of policy matters for inclusion in the Regulatory Standards Bill and agreed that it would consider the Departmental Report before it was submitted to Select Committee (CAB-25-MIN-0148 refers)
 - b. **note** that **Annex 1** to this paper provides a copy of the departmental report on the Regulatory Standards Bill
 - c. **note** that I have considered the feedback from the submissions analysed to date, and my view in most cases is that the current drafting reflects the objectives and intent of the Bill, and amendments are not warranted
 - d. **note** that there are several areas where I am proposing changes to the Bill in response to submitter feedback:
 - i. aligning the coming into force of the provisions for establishing the Board with the coming into force of CAS requirement in clause 2
 - ii. amending references in clause 8(c) to *severe impairment* of property rather than *impairment*
 - iii. limiting the reference in clause 8(d) to section 22(a) of the Constitution Act, rather than the whole of section 22
 - iv. adding a principle relating to the importance of the responsible agency identifying and developing effective arrangements for implementing legislation, and make subsequent provision in clauses 20 and 34 to disapply this principle in relation to reviews of existing legislation by the agency and the Regulatory Standards Board
 - v. simplifying the approach used to give effect to exclusions for classes of primary and secondary legislation provided for in the Bill, to reflect the intent that these matters are excluded entirely from the scope of the Bill
 - vi. excluding any Bill that brings into effect recognition agreements under the Marine and Coastal Area (Takutai Moana) Act 2011, and any associated secondary legislation
 - vii. clarifying that the use of Chief Executive in the Bill applies to whoever occupies the position of Chief Executive, even where that is not the specific job title

- viii. adding provisions to require the Board to act independently when performing its functions as set out in the Bill
 - ix. providing that appointments would be made by the Governor-General, on the recommendation of the responsible Minister
 - x. providing that removals will be made for just cause by the Governor-General, on recommendation of the Minister made after consultation with the Attorney-General, and state the reasons for the removal
 - xi. providing that members are appointed for a term set out in a notice of appointment, but which is no longer than five years, with the possibility of renewal.
- e. **note** that these proposed changes are reflected in the Departmental Report to FEC
- f. **agree** that, given the Taking of property principle has been specifically considered in this paper, there is no need for Cabinet to further consider the Bill as reported back from Select Committee (CAB-25-MIN-0148 refers)
- g. **agree** that this paper be proactively released as soon as possible after the select committee has reported the Bill back to the House.

Authorised for lodgement

Hon David Seymour

Minister for Regulation