

# Minister for Regulation

## Information Release

### Policy Approvals for Progressing a Regulatory Standards Bill

May 2025

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#### Documents in this information release

#	Reference	Title of Document	Date
1	Cabinet paper	Policy Approvals for progressing a Regulatory Standards Bill	No date
2	Annex 1	Summary of Submissions: Consultation on the proposed Regulatory Standards Bill	May 2025
3	Annex 2	Regulatory Impact Statement: proposed Regulatory Standards Bill	26 March 2025
4	Annex 3	Annex Three: The Treaty of Waitangi/te Tiriti o Waitangi Impact Analysis for the Regulatory Standards Bill	No date
5	Annex 5	Annex Five: Summary of departmental feedback	No date
6	CAB-25-MIN-0148	Cabinet Minute of Decision - Progressing a Regulatory Standards Bill: Policy Approvals	5 May 2025

#### Information redacted

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been redacted, no public interest has been identified that would outweigh the reasons for withholding the information.

Sections of the Act under which information has been redacted:

- section 9(2)(a), to protect the privacy of natural persons, including that of deceased natural persons.
- section 9(2)(h), to maintain legal professional privilege.

### **Accessibility**

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Any requests for documents in different accessibility formats will be managed on a case-by-case basis by the Ministry.

## **In confidence**

Office of the Minister for Regulation

Chair, Cabinet Expenditure and Regulatory Review Committee

# **POLICY APPROVALS FOR PROGRESSING A REGULATORY STANDARDS BILL**

## **Proposal**

- 1 This paper seeks:
  - 1.1 final Cabinet decisions on an approach to the Regulatory Standards Bill, aimed at improving the quality of New Zealand's regulation
  - 1.2 agreement to issue drafting instructions to the Parliamentary Counsel Office (PCO) on the basis of this approach.

## **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 Sometimes when a government seeks to regulate, key questions remain unanswered - including whether there's a real problem to solve, whether the benefits of regulating outweigh the cost, and where costs and benefits fall. This can be coupled with a lack of transparency about whether new regulation meets accepted standards and, where it does not meet those standards, why it has still been proceeded with. Furthermore, because rules and regulations stay in place for a long period of time, it is difficult for the public to know who to hold to account for the costs they face from poor quality or unnecessary regulation. Even where regulation may be justifiable at a point in time, a lack of ongoing review and maintenance often create additional costs.
- 4 The volume of regulation has grown substantially over recent decades with no signs of that trend abating at this point. Legislative bids for House time proposed by Ministers and agencies significantly outstretch the capacity of Parliament to consider those proposals. There are real question marks over the quality of the scrutiny that new regulatory proposals receive, and very few resources allocated to reviewing the existing body of regulation to cull unnecessary or ineffective regulation.
- 5 These are the issues that the Regulatory Standards Bill seeks to address.
- 6 On 11 November 2024, Cabinet agreed to release the discussion document *Have your say on the proposed Regulatory Standards Bill* to consult on a proposed approach to the Bill (CAB-24-MIN-0437 refers). That consultation has now been completed, and a summary of submissions is attached as **Annex 1** to this paper.
- 7 After having considered the submissions, I have decided to proceed on the basis of a substantially similar approach to the one set out in the discussion

document. However, I am proposing a number of amendments to the proposal to enhance its workability and effectiveness.

- 8 The Regulatory Standards Bill would aim to reduce the amount of unnecessary and poor regulation by increasing transparency and making it clearer where legislation does not meet standards, bringing the same discipline to regulatory management that New Zealand has for fiscal management.
- 9 The Bill would establish a benchmark for good legislation by establishing a set of principles of responsible regulation in primary legislation, focused on the effect of legislation on:
  - 9.1 existing interests and liberties - including the rule of law; liberties; taking of property; taxes, fees, and levies; and the role of courts
  - 9.2 good law-making processes – including consultation; options analysis; and cost-benefit analysis.
- 10 The Bill would then create requirements for responsible Ministers, administering agencies and other makers of legislation in relation to the assessment of the consistency of proposed and existing legislation (both primary and secondary) against these principles. Ministers and makers of secondary legislation would be required to ensure publication and/or presentation to the House of the results of those assessments and explanations for any inconsistency. Some primary and secondary legislation would be excluded or exempted from these requirements.
- 11 The Bill would also establish a Regulatory Standards Board, with members appointed by the Minister for Regulation, to make its own independent assessments of the consistency of legislation, helping create an incentive for Ministers and agencies to complete robust assessments of consistency with the principles. Appointments to the Board would be made via the Cabinet Appointments and Honours Committee. The Board would carry out inquiries either following a complaint, at the direction of the Minister, or on its own accord into whether legislation is inconsistent with the principles. Any recommendations it makes would be non-binding. The Board would only have a role in relation to legislation that is subject to consistency assessment requirements, and could investigate the consistency of that legislation with the principles in two broad ways:
  - 11.1 it could look at consistency assessments of Bills as introduced into the House, and provide a report to Select Committee on its findings
  - 11.2 it could look at existing legislation and carry out an inquiry into whether the legislation is consistent with the principles, and report to the Minister on its findings.
- 12 Finally, the Bill would seek to strengthen regulatory quality by supporting the Ministry for Regulation in its regulatory oversight role, including by setting new requirements for the Ministry to report on the overall performance of the Regulatory Management System, new regulatory stewardship expectations for agencies, and information-gathering powers for the Ministry to support the efficient and effective conduct of regulatory reviews.

- 13 I propose that the Bill come into force on 1 January 2026. I also propose that transitional arrangements provide for consistency assessment requirements for agencies and Ministers to be brought in via Order in Council but commence no later than six months after the date the Bill comes into force. This will allow time for the development and testing of guidance, and to ensure agencies understand and can prepare to meet the new requirements.
- 14 A Regulatory Impact Statement and Treaty Impact Analysis have been completed by the Ministry, and are attached to this paper as **Annexes 2 and 3**.

## Background

- 15 On 11 November 2024, Cabinet agreed to release the discussion document *Have your say on the proposed Regulatory Standards Bill* to consult on a proposed approach to the Bill (CAB-24-MIN-0437 refers). That consultation has now been completed, and a summary of submissions is attached as **Annex 1** to this paper.
- 16 After having considered the submissions, I have decided to proceed on the basis of a substantially similar approach to the one set out in the discussion document. However, I am proposing a number of amendments to the proposal to enhance its workability and effectiveness.
- 17 **[LEGALLY PRIVILEGED]** s 9(2)(h) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 17.1 s 9(2)(h) [REDACTED]  
[REDACTED]
- 17.2 s 9(2)(h) [REDACTED]  
[REDACTED]

## Overview of proposed Bill

- 18 The Regulatory Standards Bill will aim to reduce the amount of unnecessary and poor regulation by increasing transparency and making it clearer where legislation does not meet selected standards. It will seek to bring the same discipline to regulatory management that New Zealand has for fiscal management by providing:
- 18.1 a benchmark for good legislation through a set of principles of responsible regulation (principles)
  - 18.2 mechanisms to transparently assess the consistency of proposed and existing legislation with the principles (consistency assessment requirements)
  - 18.3 a mechanism for independent consideration of the consistency of proposed and existing legislation, in response to stakeholder concerns, Minister for Regulation direction, or on its own accord (a Regulatory Standards Board).
- 19 The Bill will also seek to strengthen regulatory quality by supporting the Ministry for Regulation in its regulatory oversight role.

## Purpose

- 20 I propose that the purpose of the Bill would be to focus on:
- 20.1 promoting the accountability of the Executive to Parliament in relation to the development of high-quality legislation and regulatory stewardship
  - 20.2 supporting Parliament to scrutinise Bills and oversee the power to make delegated legislation.

## Principles

- 21 I propose that the Bill would include principles of responsible regulation, focused on the effect of legislation on existing interests and liberties, and on good law-making processes. The proposed principles would cover the following areas:
- 21.1 *Rule of law* - The law should be clear and accessible; the law should not adversely affect rights and liberties, or impose obligations, retrospectively; every person is equal before the law; there should be an independent, impartial judiciary; and issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion.
  - 21.2 *Liberties* - Legislation should not unduly diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person.
  - 21.3 *Taking of property* - Legislation should not take or impair, or authorise the taking or impairing of, property without the consent of the owner unless there is good justification for the taking or impairment, fair compensation for the taking or impairment is provided to the owner, and compensation is provided to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment.
  - 21.4 *Taxes, fees and levies* - Legislation should be consistent with section 22 of the Constitution Act 1986 (Parliamentary control of public finance); legislation should impose a fee for goods or services only if the amount of the fee bears a proper relation to the costs of efficiently providing the good or service to which it relates; and legislation should impose a levy to fund an objective or a function only if the amount of the levy is reasonable in relation to both the benefits/risks to that class of payers, and the costs of efficiently achieving the objective or providing the function.
  - 21.5 *Role of courts* - Legislation should preserve the courts' constitutional role of ascertaining the meaning of legislation; and legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.
  - 21.6 *Good law-making* – good law-making should include:
    - 21.6.1 consulting, to the extent practicable, the persons or representatives of the persons that the responsible agency

considers will be directly and materially affected by the legislation

- 21.6.2 carefully evaluating the issue concerned, the effectiveness of any relevant existing legislation and common law; whether the public interest requires that the issue be addressed; any options (including non-legislative options) that are reasonably available for addressing the issue; and who is likely to benefit, and who is likely to suffer a detriment, from the legislation
- 21.6.3 establishing that legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons
- 21.6.4 establishing that legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available.

### **Consistency assessment requirements**

22 For this proposal to make a difference to overall legislative quality, it will need to cover the broad range of organisations and individuals with responsibility for legislation, including secondary legislation. I therefore propose that, with some exceptions set out later in this paper, new requirements for assessing the consistency of proposed and existing legislation with the above principles apply to:

22.1 all administering agencies for legislation (including statutory Crown entities and the Reserve Bank of New Zealand)

22.2 all makers of secondary legislation<sup>1</sup>.

### **Consistency assessment requirements for proposed legislation**

23 I propose that the Minister responsible for a Government Bill must ensure that the Bill's explanatory note includes a statement from the responsible Chief Executive<sup>2</sup> stating that the Bill has been assessed for consistency with all the principles and providing the results of that assessment. The Minister would be required to make a statement explaining the reasons for any inconsistency that was identified by the agency.

24 I also propose that Government amendments to a Bill (i.e. amendment papers proposed by the Government) include the same statements by the responsible Minister and agency, unless the Minister for Regulation certifies that the amendment would not materially change the Bill. However, if it is not practical to complete these statements in the time available, the responsible Minister may present them to the House as soon as possible following consideration of the amendment.

25 I propose that the explanatory note to any proposed secondary legislation should contain the same notices as above – with the assessment of consistency done by the Chief Executive of the administering agency and the

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<sup>1</sup> This includes some Ministers, government agencies, Crown entities, local authorities and a range of non-Crown bodies.

<sup>2</sup> Being the Chief Executive of the agency primarily responsible for leading the development of that Bill.

explanations for any inconsistency provided by the responsible Minister (or other maker).<sup>3</sup>

#### **Consistency assessment requirements for existing legislation**

- 26 Addressing the issue of outdated, unnecessary or poor-quality existing legislation will also be critical in lifting regulatory quality. I therefore propose that administering agencies be required to develop and periodically report against plans to review the consistency of existing legislation (both primary and secondary).
- 27 As agencies complete these reviews for each Act in accordance with their plans, I propose that the responsible Minister would be required to present to the House a statement from the responsible Chief Executive confirming that that Act had been assessed for consistency with the principles, and the results of that assessment. The responsible Minister would also have to present to the House a statement setting out reasons for any inconsistency identified or the proposed actions that would be taken to address the inconsistency.
- 28 Given that applying these review requirements to all existing secondary legislation would likely create significant costs for agencies, I propose that the review requirements initially apply to existing secondary legislation only where:
- 28.1 a consistency assessment has previously been completed for that secondary legislation when it was made or amended, or
- 28.2 the Minister for Regulation issues a notice to specify that a class of existing secondary legislation should be subject to consistency assessment requirements. These notices would need to be approved by the House.
- 29 This approach will allow the scheme to be extended to a broader range of existing secondary legislation over time.
- 30 As agencies complete these reviews in relation to the secondary legislation above in accordance with their plans, the responsible agency must ensure the publication of:
- 30.1 a statement by the Chief Executive of the administering agency that an assessment of the consistency of that secondary legislation has been carried out, and the results of the assessment
- 30.2 a statement by the responsible Minister or maker explaining the reasons for any inconsistency identified or the proposed actions that would be taken to address the inconsistency.

#### **Other proposed provisions in relation to consistency assessment requirements**

- 31 It will be important that, when assessing the consistency of proposed or existing legislation, the responsible agency can make its own robust assessment. For that reason, I propose that the Bill provide that both the responsible Chief Executive and the responsible agency must act

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<sup>3</sup> Noting that, under the Legislation Act 2019, the maker in relation to secondary legislation is the person empowered to formally issue the secondary legislation. If the Governor-General is empowered to make that legislation (e.g. for regulations) the "maker" is the relevant Minister.



independently from the Minister or maker in relation to making the assessments of consistency described above.

- 32 In addition, in order to support agencies making these assessments, and Ministers in making their statements, I propose the Bill provide that the Minister for Regulation may issue guidance jointly with the Attorney-General, including on:

- 32.1 how the principles should be applied
- 32.2 how to review legislation for consistency with the principles
- 32.3 the content and presentation of the statements and plans required.

### **Exclusions or exemptions from consistency assessment requirements**

- 33 As indicated through departmental and Ministerial consultation, there are some types of legislation where it would not be feasible or appropriate to expect consistency assessment requirements to apply. To address this, I propose that the Bill:

- 33.1 excludes some legislation from consistency assessment requirements
- 33.2 enables the Minister for Regulation to issue a notice to specify particular legislation or classes of legislation that should be exempted from consistency assessments. These notices would need to be approved by the House.

### **Legislation where exclusions are set out in the Bill**

- 34 To focus agency resources on legislation where assessments of consistency are most likely to materially improve regulatory quality, and to avoid impacts on any Crown commitments under Treaty settlement legislation, I propose that some types of Government legislation are excluded from consistency assessment, and regular review requirements including:

- 34.1 Imprest Supply Bills or Appropriation Bills
- 34.2 Statutes Amendment Bills
- 34.3 legislation that primarily relates to the repeal or revocation of legislation identified as spent
- 34.4 revision bills prepared by PCO under subpart 3 of Part 3 of the Legislation Act 2019
- 34.5 confirmation bills prepared under subpart 3 of Part 5 of the Legislation Act 2019
- 34.6 Treaty Settlement Bills or any other bill that provides redress for Treaty of Waitangi claims
- 34.7 The Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

- 35 I also propose that the Bill sets out a number of exclusions in relation to specific secondary legislation, which would have the effect of excluding that secondary legislation (or maker when applicable) entirely from the scope of the Bill:

- 35.1 *Secondary legislation made under the provisions of the Defence Act 1990, the Armed Forces Discipline Act 1971 or otherwise issued by the Chief of the Defence Force under any other statutory instrument.* This is intended to ensure the constitutional arrangements for the control of the Armed Forces and the efficient and effective command of the Armed Forces are maintained. The application of this Bill to this secondary legislation would otherwise inappropriately limit the Minister of Defence's control over the Armed Forces, and the Chief of the Defence Force's ability to make timely and efficient decisions necessary for the command of the Armed Forces.
- 35.2 *Secondary legislation made by the Speaker of the House or the House of Representatives.* This exclusion is appropriate to avoid placing requirements on the House or Speaker and reflects the important separation between Executive and Parliament. The exclusion aligns with the purpose of the Act in promoting the accountability of the Executive to Parliament and to support Parliament in overseeing and controlling the use of delegated powers.
- 35.3 *All Court rules, and instruments made by the judiciary that are secondary legislation.* Most court rules are made with the formal concurrence of the relevant Heads of Bench and members of the Rules Committee, reflecting the constitutional principle of separation of powers and recognising the judicial branch of government's responsibility for the orderly and efficient conduct of the courts. While court rules are subject to some Executive and Parliamentary oversight (through the Order-in-Council process for making rules and being subject to disallowance under the Legislation Act 2019), I consider that making court rules subject to the processes under this Bill would represent an unnecessary intrusion into the judicial sphere.
- 36 Finally, to ensure consistency, I propose that the Bill would exclude:
- 36.1 Government amendments where they relate to excluded legislation
- 36.2 Acts resulting from excluded bills, where a bill becomes a principal Act (unless it is an Act made from a Member's Bill)
- 36.3 Amendment Acts (as their provisions would be captured as part of the assessment of the Act that was amended)
- 36.4 any secondary legislation created under an excluded class of primary legislation.
- 37 Local, Private and Member's Bills would not be covered by the proposal. Acts arising from Local and Private Bills, and any associated secondary legislation, would also not be covered.

#### **Legislation exempted under notices**

- 38 The notices issued by the Minister for Regulation and approved by the House that are described above could be used to exempt legislation in a number of cases, including:

- 38.1 where it is not practical or appropriate to undertake consistency assessments (e.g. legislation to be passed in response to an emergency)
  - 38.2 where it is not cost-effective to undertake consistency assessments (e.g. technical or minor legislation that is not already excluded)
  - 38.3 to otherwise help align consistency requirements with relevant Government processes, such as regulatory impact analysis requirements.
- 39 I am aware that there has not been sufficient time for officials to develop a consistent approach to exempting legislation and to use this to identify a full list of legislation that should be exempted from consistency assessment requirements. Areas of concern raised during consultation include secondary legislation made in relation to international agreements, legislation that is issued frequently such as fisheries notices, and legislation that is minor or technical regulation such as regulations setting out school term dates.
- 40 I therefore propose that the Ministry for Regulation work in consultation with agencies while a Bill is before the House to develop an initial list of exemptions that could be included in a notice to be issued as soon as the Bill comes into force.

### **Regulatory Standards Board**

- 41 I propose that the Bill establish a Regulatory Standards Board to make its own independent assessments of the consistency of legislation. The Board would comprise between five and seven members appointed by the Minister for Regulation on the basis of that Minister's assessment of members having the requisite knowledge, skills and experience. Appointments to the Board would be made via the Cabinet Appointments and Honours Committee.
- 42 The Board would carry out inquiries either following a complaint, at the direction of the Minister, or on its own accord into whether legislation is inconsistent with the principles. Any recommendations it made would be non-binding.
- 43 The Board could investigate the consistency of legislation with the principles in two broad ways:
- 43.1 it could look at consistency assessments of Bills as introduced into the House and provide a report to the relevant Select Committee on its findings
  - 43.2 it could look at existing legislation and carry out an inquiry into whether the legislation is consistent with the principles, and report to the Minister on its findings.
- 44 As well as providing an avenue for complaints about legislation that is inconsistent with the principles, the Board would therefore help create an incentive for Ministers and agencies to complete robust assessments of consistency with the principles.
- 45 To ensure that the Board offers a relatively low-cost, agile way to respond to complaints and assess consistency of legislation with the principles, I recommend that the Board would:

- 45.1 carry out inquiries only in relation to legislation that is subject to consistency assessments (noting that exclusion or exemption of legislation from consistency assessment requirements would also mean that legislation is not subject to Board review)
- 45.2 not be able to investigate decisions in relation to individual cases
- 45.3 operate on the basis of reviewing written documents rather than holding formal hearings.
- 46 Board findings and key relevant supporting information would be published (subject to the equivalent provisions of the Official Information and Privacy Acts) to reinforce transparency.
- 47 I also propose that the Board would provide to the Minister for Regulation an annual report summarising its recommendations and findings to present to the House.
- 48 The Chief Executive of the Ministry for Regulation would be responsible for the provision of administrative and secretarial services to the Board.
- 49 It will be crucial that remuneration for the members of the Board reflects the level of technical and legal expertise required to undertake the complex and important role that would have been played by the courts in the 2021 Regulatory Standards Bill. I will therefore be seeking appropriate levels of remuneration when the Board is being established.

## **Ministry for Regulation's regulatory oversight role**

### **Establishing new oversight arrangements**

- 50 I propose that the Bill contain provisions to support the Ministry for Regulation in its regulatory oversight role. I therefore recommend that the Bill:
  - 50.1 set a requirement for the Ministry for Regulation to produce a regular report for the Minister for Regulation to present to Parliament assessing the overall performance of the Regulatory Management System<sup>4</sup>
  - 50.2 set a power for the Ministry for Regulation to require provision of information from public service agencies to support this regular reporting.

### **New regulatory stewardship expectations for agencies**

- 51 Given known issues with New Zealand's stock of legislation, encouraging agencies to more actively steward their regulatory systems will be critical to improving the quality of regulation over time. I therefore recommend that the Bill require public service Chief Executives to uphold a principle to proactively steward the regulatory systems associated with the legislation they administer – this is aligned with current duties under the Public Service Act 2020.
- 52 Agencies could be asked to supply information to the Ministry for Regulation to show what actions they have taken to fulfil the above requirements, as part of the Ministry's power to require provision of information. This would support

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<sup>4</sup> That is the set of policies, institutions, processes and tools used by central government to pursue and maintain good quality regulation.

the Ministry's preparation of its regular report on the Regulatory Management System. More details on the timing of such reports and the processes that would be followed would be set out in guidance.

#### **Provisions to support regulatory reviews**

- 53 One important way in which the Ministry is seeking to influence the quality of New Zealand's regulation is by conducting regulatory reviews to ensure that regulatory systems are achieving their objectives, do not impose unnecessary compliance costs, and do not unnecessarily inhibit investment, competition and innovation. These reviews are initiated by the Minister for Regulation, and terms of reference are set jointly with the responsible Minister(s) where appropriate.
- 54 To support the efficiency and effectiveness of these reviews, I propose that the Bill:
- 54.1 provides information-gathering powers to enable the Chief Executive of the Ministry for Regulation to require information to be provided on request, to support the effective and efficient conduct of the Ministry's regulatory reviews from:
    - 54.1.1 public service agencies as defined in section 10(a) of the Public Service Act 2020)
    - 54.1.2 statutory Crown entities as defined in section 7(1)(a) of the Crown Entities Act 2004
    - 54.1.3 any entity that makes or administers secondary legislation, including local government
    - 54.1.4 any entity authorised by an Act to undertake a regulatory function, for example the Reserve Bank and statutory occupational licensing bodies
    - 54.1.5 any entity contracted by the government to support the delivery of a regulatory function, also known as third-party service providers
  - 54.2 sets a requirement for review reports to be presented to the House together with the Government's response.
- 55 The Bill would specify that the proposed information-gathering powers above would only be used when necessary for the effective and efficient conduct of the Ministry's regulatory reviews. It would also require that:
- 55.1 in relation to information held by third party service providers, the Ministry would first seek this information from the public service agency that holds the contract, or make the request in conjunction with the responsible agency.
  - 55.2 in relation to entities that make or administer secondary legislation and entities authorised to undertake a regulatory function (e.g. the Reserve Bank) the Ministry would make a request following consultation with the responsible public service agency (where relevant). The Bill would also specify that information gathering powers would not override prohibitions or restrictions on the sharing of information already set down in legislation, and would not apply to the House of

Representatives, the Speaker, an Office of Parliament, the Office of the Clerk of the House of Representatives, or the Parliamentary Service.

- 56 I propose that the Bill provides that the information-gathering powers above could be enforced via court order if required, a breach of which would constitute contempt of court. This provision would ensure that failure to comply with the information-gathering powers does not constitute a general contravention of statute under section 107 of the Crimes Act 1961 (which specifies a penalty of imprisonment for a term not exceeding one year for contravening an Act).

### **Commencement and transitional arrangements**

- 57 I propose that the Bill come into force on 1 January 2026. I also propose that transitional arrangements provide for consistency assessment requirements for agencies and Ministers to be brought in via Order in Council, but commence no later than six months after the date the Bill comes into force. This will allow time for the development and testing of guidance, and to ensure agencies understand and can prepare to meet the new requirements.
- 58 The provisions of the Bill would duplicate elements of the current disclosure requirements set out in Part 4 of the Legislation Act 2019. I understand that these provisions are proposed to be repealed as part of the review of the Legislation Act that is currently underway.
- 59 In my view, existing Cabinet-mandated provisions for disclosure requirements for bills and regulatory impact analysis for regulatory proposals can be adjusted where needed to support completion of required consistency assessments and avoid any duplication. I will report back to Cabinet in due course on proposed changes to the Cabinet Office Circulars for Disclosure Requirements for Government Legislation [CO(13)3] and Impact Analysis Requirements [CO(24)7].

### **[LEGALLY PRIVILEGED Provisions to reduce legal risk**

- 60 s 9(2)(h) [REDACTED]  
[REDACTED]  
[REDACTED]
- 60.1 s 9(2)(h) [REDACTED]  
[REDACTED]
- 60.2 s 9(2)(h) [REDACTED]  
[REDACTED]

### **Next steps**

- 61 I propose that a paper seeking approval to introduce the Bill, along with the proposed Bill, proceed directly to Cabinet for consideration on 19 May 2025, so that it can be introduced to the House on the same day.

### **Crown Law Office advice**

- 62 **[LEGALLY PRIVILEGED:** s 9(2)(h) [REDACTED]
- 62.1 s 9(2)(h) [REDACTED]  
[REDACTED]  
[REDACTED]

- s 9(2)(h) [redacted]  
[redacted]
- 62.2 s 9(2)(h) [redacted]  
[redacted]
- 62.3 s 9(2)(h) [redacted]  
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- 62.4 s 9(2)(h) [redacted]  
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- 62.5 s 9(2)(h) [redacted]  
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- 62.6 s 9(2)(h) [redacted]  
[redacted]
- 62.6.1 s 9(2)(h) [redacted]  
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- 62.6.2 s 9(2)(h) [redacted]  
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- 63 s 9(2)(h) [redacted]  
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- 64 s 9(2)(h) [redacted]  
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[redacted]
- 65 CLO's advice is attached as **Annex 4**.

## **Cost-of-living implications**

- 66 There are no cost-of-living implications arising from the proposals in this paper.

## **Financial implications**

### **Agency costs**

- 67 There are financial implications as a result of the proposals in this paper for all agencies with responsibility for administering primary and/or secondary legislation. Those costs will fall unevenly across agencies due to the significant range in the volume of legislation administered by different agencies. For example, 15 agencies likely administer more than 90 percent of all secondary legislation, and at least four agencies (Ministry of Health, Ministry of Justice, Ministry for Primary Industries, and Ministry of Business, Innovation and Employment) administer more than 900 pieces of secondary legislation each.
- 68 These costs would arise from requirements for agencies to comply with new consistency assessment requirements and respond to investigations undertaken by the Regulatory Standards Board.
- 69 There are also likely to be costs arising from the application of the principles to policy initiatives, for example costs associated with more consultation or costs arising from providing compensation for any impairment of property. In addition, there are likely to be other potential costs associated with the risks identified by CLO in its advice.
- 70 These costs could be offset to the degree that:
- 70.1 agencies are already undertaking work to fulfil their current legislative stewardship obligations under the Public Service Act 2020, in which case new requirements could substitute for this work
  - 70.2 there are savings over time from increased consistency of the stock and flow of primary and secondary legislation that results in reduced effort in reviewing and amending legislation and/or operational efficiencies.
- 71 There could also be broader savings beyond the public sector to the extent that the proposal reduces the amount of poor quality or unnecessary legislation.
- 72 Responsible Ministers and agencies will need to consider how to manage any residual resourcing implications within baseline, including trade-offs against other priorities in the absence of additional funding.

### **Ministry for Regulation/Regulatory Standards Board**

- 73 The Ministry for Regulation will have additional costs associated with its new functions to provide system oversight and secretariat support to the Regulatory Standards Board, as well as the costs of Board fees. We have estimated annual costs of approximately \$1.04m - \$1.17m per annum to cover these, dependent on the number of Board members and the level of their fees.



- 74     Resourcing for the Ministry’s system oversight role is likely to be an additional \$1.1m - \$1.4 m per annum. This cost covers the resourcing associated with requirements set out in the Bill for producing and maintaining guidance, regular reporting on the state of the regulatory management system and supporting the responsible Minister to undertake their role in the issuing of notices to the House for classes of bills and legislation that may be exempt from requirements, and providing approvals for exemptions to the requirements for Government amendments.
- 75     The financial implications for the Ministry for Regulation will be managed within baseline.

### **Legislative implications**

- 76     The Regulatory Standards Bill was assigned category 5 in the 2025 Legislation Programme (to proceed to select committee by the end of 2025).

### **Impact analysis**

#### **Regulatory Impact Statement**

- 77     The Ministry for Regulation’s Regulatory Impact Analysis team has determined that a number of proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement. The exemptions are on the grounds that the proposals have minor economic, social, or environmental impacts given the changes are to the internal administrative or governance arrangements of the New Zealand government. Exempted proposals include strengthening regulatory stewardship expectations and parts of the proposal relating to the Ministry for Regulation’s oversight function (excluding information-gathering powers). For the remaining proposals contained in this paper, a Regulatory Impact Statement has been completed and is attached as **Annex 2**.
- 78     A quality assurance panel with members from the Ministry for Regulation, Ministry of Justice, Ministry of Business, Innovation and Employment and the Treasury has reviewed the Regulatory Impact Statement (RIS): Proposed Regulatory Standards Bill produced by the Ministry for Regulation. The QA panel considers that it “partially meets” the Quality Assurance criteria.
- 79     The RIS notes that the scope of the options has been limited by the Coalition agreement and Ministerial direction and as a result, alternative approaches to the proposal have not been explored in detail. However, the RIS clearly outlines the assumptions, limitations, and Ministerial objectives in a way that enables transparency and clarity about the differing views and considerations.
- 80     The information in the RIS suggests that the specific legislative changes sought in this Cabinet paper are unlikely to be the most efficient approach to pursuing the stated objectives. It highlights that, if the recommendations are agreed, regulating in the public interest may be more costly, with an uncertain impact on the underlying behavioural incentives and on the information problems that drive poor regulatory outcomes. The panel notes that the scope of consistency reviews was included after public consultation, and the RIS has limited analysis of impacts, including on local government. This additional requirement has significant estimated costs and potential for crowding out other regulatory maintenance and stewardship activity.

- 81 The Ministry for Regulation has expressed a preference for an alternative approach based on disclosure requirements coming into force through Part 4 of the Legislation Act 2019, supplemented by Ministerial commitments to good regulation and stewardship. The RIS indicates that this would encourage better information and sharpened incentives across regulatory regimes.
- 82 The QA panel's view is that, should this Bill proceed to enactment, more consideration will need to be given to implementation issues, funding, and addressing the risks identified in the RIS.

### **Climate Implications of Policy Assessment**

- 83 The Climate Implications of Policy Assessment (CIPA) team was consulted on the policy proposals and confirmed that the CIPA requirements did not apply, as the threshold for significance was not met.

### **Population implications**

- 84 The Treaty Impact Analysis that accompanies this paper as **Annex 3** includes the Ministry for Regulation's analysis of the proposals from a Treaty/te Tiriti perspective.
- 85 The Treaty/te Tiriti impacts of the proposed Bill will ultimately depend on how the Bill is implemented by decision-makers and the guidelines that are created to support the interpretation of its provisions. **[LEGALLY PRIVILEGED: s 9(2)(h)]**
- 86 A contemporary Te Tiriti claim (Wai 3440) in relation to the proposed Bill is currently before the Waitangi Tribunal. On 28 April, the Tribunal determined that the claim should proceed to an urgent one-day hearing on Friday, 6 June.

### **Human rights**

- 87 I consider that the proposals in the Bill do not present any issues for the fundamental human rights and freedoms of New Zealanders and are not likely to be considered inconsistent with New Zealand's international human rights obligations.
- 88 To ensure consistency with the right to freedom of expression and the right to be secure against unreasonable search and seizure, the Bill would specify that information gathering powers would not override prohibitions or restrictions on the sharing of information already set down in legislation.

### **Use of external resources**

- 89 The Ministry for Regulation has engaged two policy contractors to support the policy development process for the Bill, as well as some external support for analysing the overall view of submissions received through public consultation. Some external legal support has also been engaged.

### **Consultation**

- 90 The following agencies have been consulted during the development of this proposal: the Crown Law Office, Inland Revenue Department, Land Information New Zealand, New Zealand Customs Service, New Zealand

Defence Force, New Zealand Police, Oranga Tamariki, Statistics New Zealand, Te Puni Kōkiri, the Department of Conservation, the Department of Corrections, the Department of Internal Affairs, the Education Review Office, the Government Communications Security Bureau, the Ministry for Culture and Heritage, the Ministry for Ethnic Communities, the Ministry for Primary Industries, the Ministry for the Environment, the Ministry for Women, the Ministry of Business, Innovation and Employment, the Ministry of Defence, the Ministry of Education, the Ministry of Foreign Affairs and Trade, the Ministry of Health, the Ministry of Housing and Urban Development, the Ministry for Pacific Peoples, the Ministry of Justice, the Ministry of Social Development, the Ministry of Transport, the National Emergency Management Agency, the New Zealand Security Intelligence Service, the Office of the Clerk of the House of Representatives, the Office of Treaty Settlements and Takutai Moana: Te Tari Whakatau, the Parliamentary Counsel Office, the Reserve Bank of New Zealand, the Serious Fraud Office, the Social Investment Agency, The Treasury, and Whaikaha – the Ministry of Disabled People. The Department of the Prime Minister and Cabinet has been informed.

- 91 A summary of departmental feedback is included as **Annex 5** to this paper.
- 92 Agencies have asked for the following comments to be included in the paper.
- 93 **Te Puni Kōkiri** considers that the coalition commitment to pass a Regulatory Standards Bill to improve the quality of regulation could be met by passing legislation that respects the diverse range of perspectives and values New Zealanders have, including the perspectives and values of Iwi, Hapū and Māori, and does not elevate values of more importance to some New Zealanders above values of more importance to others. Te Puni Kōkiri does not consider that the proposals in the Cabinet Paper achieve that (which is reflected in the proportion of submissions on the discussion document which oppose the Bill). Te Puni Kōkiri is also concerned:
- 93.1 that the Regulatory Standards Bill (as currently proposed) does not recognise either the rights and interests of Iwi, Hapū and Māori recognised or created by the Treaty/te Tiriti or the constitutional importance of the Treaty/te Tiriti
- 93.2 at the resourcing and cost burden that would be imposed on the public service and, therefore, the Crown by the potential review requirements for classes of secondary legislation.
- 94 The **Office of the Clerk** supports efforts to improve legislative quality. In particular, a statutory requirement for agencies to report on legislative quality matters could be useful. Moreover, a formal process for post-legislative review, supported by an agency with appropriate resources, would potentially be an important development. Some aspects proposed for the Bill would more appropriately be dealt with through the House's rules and practice. The Office of the Clerk would like to feed into consideration of how the proposed Bill would link in with parliamentary scrutiny. As law-making is a constitutional matter, the Office of the Clerk suggests that it would be appropriate to develop the principles for regulation on a cross-party basis.
- 95 The **Ministry of Justice** notes that the principles of responsible regulation describe several concepts differently from existing law and guidance while

omitting others. In particular, the ‘liberties’ principle departs from how rights and freedoms, and the circumstances in which limitations on them may be justified, are expressed in the New Zealand Bill of Rights Act 1990. The principles refer to one role of the courts to interpret legislation but not other important roles. The omission of the Treaty/te Tiriti does not recognise the constitutional significance of the Treaty/te Tiriti, nor the Crown’s positive duty to acknowledge the rights and interests of Māori in the development of policy and legislation. The Ministry of Justice considers certainty and clarity of the law would be better served if the principles more closely aligned with generally accepted legal values and concepts.

96 The **Ministry for the Environment** (MfE) supports improving quality of regulation, but has concerns using legislation where operational adjustments might better address the problem. The policy proposals for the proposed Bill as currently framed (specifically the focus on individual rights in the liberties and taking of property principles), conflict with the principles of New Zealand’s environmental and climate systems which focus on balancing short-term and longer-term interests, and collective, rather than individual, interests. The proposed Bill would have unintended consequences that may inhibit and undermine the ability of MfE’s Ministers and the Secretary for the Environment to deliver on their statutory responsibilities. It may have financial sustainability implications for the Crown and local government, reversing the ‘polluter pays’ onus, increasing future costs due to inaction now, and placing increased uncertainty and transaction costs on firms and individuals that could hamper economic growth. MfE identified solutions that could partially mitigate their concerns (including a public interest qualification), and supports the intent of the legislation, but remains concerned about the current framing of the proposed Bill and specific principles in its current form.

97 The **Public Service Commission** notes that the Regulatory Standards Board is a Ministerial advisory committee, not a decision-making body, and its role, membership and supporting arrangements in the Bill need to be framed accordingly. If its nature is clear, its scope can be managed by its Minister. To keep the constitutional roles of Ministers clear, the Bill should require the Minister for Regulation to obtain the agreement of the relevant portfolio Minister(s) to initiate any regulatory review (whether led by the Ministry or the Board) and determine its scope. Such agreement will drive supply of relevant information by other agencies to the Ministry without specific information gathering powers. It is also inappropriate that a group (the Regulatory Standards Board) appointed by the Minister for Regulation would directly advise Select Committee on legislation that Cabinet has approved for introduction as this cuts across the collective responsibility of Cabinet.

98 s 9(2)(h)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## Public consultation

- 99 Public consultation on the proposal set out in the discussion document ran for just over eight weeks (19 November 2024 to 13 January 2025), with approximately 23,000 submissions received. A summary of submissions is attached as **Annex 1**.

## Communications

- 100 I propose to publicly announce the next steps in the progression of this Bill by media release, once Cabinet decisions have been made.

## Proactive release

- 101 I propose to proactively release this Cabinet paper and substantive advice (including briefings) related to the proposed Bill, with appropriate redactions, once Cabinet decisions have been taken, in accordance with the Government's proactive release policy.

## Recommendations

- 102 The Minister for Regulation recommends that the Committee:
- a. **notes** the summary of submissions made on the discussion document *Have your say on the Regulatory Standards Bill* that Cabinet agreed to release in November 2024 [CAB-24-MIN-0437refers] attached as **Annex 1**
  - b. **notes** that, after having considered the submissions, I have decided to proceed on the basis of a substantially similar approach to the one set out in the discussion document

## Purpose

- c. **agree** that the purpose of the Bill would focus on:
  - i. promoting the accountability of the Executive to Parliament in relation to the development of high-quality legislation and regulatory stewardship
  - ii. supporting Parliament to scrutinise Bills and oversee the power to make delegated legislation

## Principles

- d. **agree** that the Bill would include principles covering the following areas:
  - i. *Rule of law* - The law should be clear and accessible; the law should not adversely affect rights and liberties, or impose obligations, retrospectively; every person is equal before the law; there should be an independent, impartial judiciary; and issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion
  - ii. *Liberties* - Legislation should not unduly diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person

- iii. *Taking of property* - Legislation should not take or impair, or authorise the taking or impairing of, property without the consent of the owner unless there is good justification for the taking or impairment, fair compensation for the taking or impairment is provided to the owner, and compensation is provided to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment
- iv. *Taxes, fees and levies* - Legislation should be consistent with section 22 of the Constitution Act 1986 (Parliamentary control of public finance); legislation should impose a fee for goods or services only if the amount of the fee bears a proper relation to the costs of efficiently providing the good or service to which it relates; and legislation should impose a levy to fund an objective or a function only if the amount of the levy is reasonable in relation to both the benefits/risks to that class of payers, and the costs of efficiently achieving the objective or providing the function
- v. *Role of courts* - Legislation should preserve the courts' constitutional role of ascertaining the meaning of legislation; and legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review
- vi. *Good law-making* – good law-making should include:
  - i. consulting, to the extent practicable, the persons or representatives of the persons that the responsible agency considers will be directly and materially affected by the legislation
  - ii. carefully evaluating the issue concerned, the effectiveness of any relevant existing legislation and common law; whether the public interest requires that the issue be addressed; any options (including non-legislative options) that are reasonably available for addressing the issue; and who is likely to benefit, and who is likely to suffer a detriment, from the legislation
  - iii. establishing that legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons
  - iv. establishing that legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available

#### **Consistency assessment requirements**

- e. **agree** that the Bill apply new requirements for assessing the consistency of proposed and existing legislation with the above principles to:
  - i. all administering agencies for legislation (including statutory Crown entities and the Reserve Bank of New Zealand)
  - ii. all makers of secondary legislation
- f. **agree** that the Bill provide that the Minister responsible for a Government Bill must ensure that its explanatory note includes:
  - i. an independent statement from the responsible Chief Executive stating that the Bill has been assessed for consistency with all the principles and providing the results of that assessment

- ii. a statement from the Minister explaining the reasons for any inconsistency that was identified
- g. **agree** that the Bill provide that, unless the Minister for Regulation certifies that a proposed Government amendment would not materially change a Bill, the responsible Minister must ensure the same statements as in (f) above are included in the explanatory note to that amendment
- h. **agree** that the Bill provide that, if it is not practical for the responsible Minister to complete the statements in (g) above in the time available, the responsible Minister may present them to the House as soon as possible following consideration of the amendment
- i. **agree** that the Bill provide that the explanatory note to any new secondary legislation should contain the same notices as (f) above, with the independent assessment of consistency done by the Chief Executive of the administering agency and the explanations for any inconsistency provided by the responsible Minister (or other maker)
- j. **agree** that the Bill provide that agencies be required to develop and periodically report against plans to review existing legislation (both primary and secondary) that is subject to consistency reviews for consistency with the principles
- k. **agree** that the Bill provide that, as agencies complete the reviews in (j) above for each Act, the responsible Minister would be required to present to the House:
  - i a statement from the responsible Chief Executive confirming that that Act had been assessed for consistency with the principles, and the results of that assessment
  - ii a statement from the Minister setting out reasons for any inconsistency identified or the proposed actions that would be taken to address the inconsistency identified
- l. **agree** that the review requirements in (j) above would only apply to existing secondary legislation either where:
  - i a consistency assessment has previously been completed for that secondary legislation when it was made or amended
  - ii the Minister for Regulation issues a notice to specify that a class of existing secondary legislation is subject to consistency assessment requirements, and that notice is approved by the House
- m. **agree** that the Bill provide that, as agencies complete the reviews in (j) above in relation to secondary legislation, the responsible agency must ensure the publication of:
  - i a statement by the Chief Executive of the administering agency that an assessment of the consistency of that secondary legislation has been carried out and the results of the assessment
  - ii a statement by the responsible Minister or other maker explaining the reasons for any inconsistency identified or the proposed actions that would be taken to address the inconsistency identified

- n. **agree** that the Bill provide that both the responsible Chief Executive and the responsible agency must act independently from the Minister or maker in relation to making the assessments of consistency described above
- o. **agree** that the Bill provide that the Minister for Regulation may issue guidance jointly with the Attorney-General, to support agencies making consistency assessments, and Ministers in making their statements, including on:
  - i how the principles should be applied
  - ii how to review legislation for consistency with the principles
  - iii the content and presentation of the statements and plans required

**Exclusions or exemptions from consistency requirements**

- p. **agree** that the Bill:
  - i exclude some legislation from consistency assessment requirements
  - ii enable the Minister for Regulation to issue a notice to exempt particular classes of legislation from consistency assessment requirements, where that notice is approved by the House
- q. **agree** that the Bill exclude some types of Government legislation from consistency assessments and regular review requirements, including:
  - i Imprest Supply Bills or Appropriation Bills
  - ii Statutes Amendment Bills
  - iii legislation that primarily relates to the repeal or revocation of legislation identified as spent
  - iv revision bills prepared by PCO under the Legislation Act 2019
  - v confirmation bills prepared by PCO under the Legislation Act 2019
  - vi Treaty Settlement Bills or any other bill that provides redress for Treaty of Waitangi claims
  - vii the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019
- r. **agree** that the Bill make specific exclusions in relation to the following secondary legislation, which would have the effect of excluding that secondary legislation (or maker when applicable) entirely from the scope of the Bill:
  - i secondary legislation made under the provisions of the Defence Act 1990, the Armed Forces Discipline Act 1971, or otherwise issued by the Chief of the Defence Force under any other statutory instrument
  - ii secondary legislation made by the Speaker of the House, or the House of Representatives
  - iii all court rules, and instruments made by the judiciary that are secondary legislation
- s. **agree** that, for consistency, the Bill also excludes:
  - i. Government amendments from consistency assessments where they relate to the classes of excluded legislation



- ii. Acts resulting from excluded bills, where a bill becomes a principal Act (unless it is an Act from a Member's Bill)
- iii. Amendment Acts (as their provisions would be captured as part of the assessment of the Act that was amended)
- iv. any secondary legislation created under an excluded class of primary legislation
- v. Member's Bills
- vi. Local and Private Bills, their Acts, and related secondary legislation
- t. **note** that the notices in (p)(ii) above could be used to exempt legislation from consistency assessment requirements including:
  - i. where it is not practical or appropriate to undertake consistency assessments (e.g. legislation to be passed in response to an emergency)
  - ii. where it is not cost-effective to undertake consistency assessments (e.g. technical or minor legislation that is not already excluded)
  - iii. to otherwise help align consistency requirements with relevant Government processes, such as regulatory impact analysis requirements regulatory impact analysis requirements
- u. **agree** that the Ministry for Regulation work in consultation with agencies while the Regulatory Standards Bill is before the House to develop an initial list of exemptions that could be included in a notice to be issued as soon as the Bill comes into force

#### **Regulatory Standards Board**

- v. **agree** that the Bill should establish a Regulatory Standards Board to make its own independent assessments of the consistency of legislation
- w. **agree** that the Bill should provide for the Board to:
  - i. comprise between five and seven members appointed by the Minister for Regulation on the basis of that Minister's assessment of members having the requisite knowledge, skills and experience.
  - ii. carry out inquiries either following a complaint, at the direction of the Minister, or on its own accord into whether legislation is inconsistent with the principles
  - iii. make non-binding recommendations
- x. **note** that appointments to the Board would be made via the Cabinet Appointments and Honours Committee
- y. **agree** that the Bill provide for the Board to investigate the consistency of legislation by:
  - i. looking at consistency assessments of Government bills as introduced into the House, and providing a report to the relevant Select Committee
  - ii. looking at existing legislation and carrying out an inquiry into whether the legislation is consistent with the principles, and reporting to the Minister on its findings

- z. **agree** that the Bill provide that the Board should:
  - i carry out inquiries only in relation to legislation that is subject to consistency assessment requirements (noting that exclusion or exemption of legislation from consistency assessment requirements would also mean that legislation is not subject to Board review)
  - ii not be able to investigate decisions in relation to individual cases
  - iii operate on the basis of reviewing written documents rather than holding formal hearings
  - iv provide to the Minister for Regulation an annual report summarising its recommendations and findings for the Minister to present to the House
- aa. **agree** that the Chief Executive of the Ministry for Regulation would be responsible for the provision of administrative and secretarial services to the Board
- bb. **agree** that Board findings and key relevant supporting information would be published (subject to the equivalent provisions of the Official Information and Privacy Acts)

**Ministry for Regulation's regulatory oversight role**

- cc. **agree** that the Bill would:
  - i require public service Chief Executives to uphold a principle to proactively steward the regulatory systems associated with the legislation they administer
  - ii set a requirement for the Ministry for Regulation to produce a regular report for the Minister for Regulation to present to Parliament assessing the overall performance of the Regulatory Management System
  - iii set a power for the Ministry for Regulation to require provision of information from public service agencies to support this regular reporting
- dd. **agree** that the Bill provide that the Ministry for Regulation must act independently from the Minister in relation to making the regular reports described in (cc)(ii) above
- ee. **agree** that the Bill would provide information-gathering powers to enable the Chief Executive of the Ministry for Regulation to require information to be provided on request, to support the effective and efficient conduct of regulatory reviews from:
  - i public service agencies as defined in section 10(a) of the Public Service Act 2020)
  - ii statutory Crown entities as defined in section 7(1)(a) of the Crown Entities Act 2004
  - iii any entity that makes or administers secondary legislation, including local government
  - iv any entity authorised by an Act to undertake a regulatory function, for example the Reserve Bank and statutory occupational licensing bodies

- v any entity contracted by the government to support the delivery of a regulatory function, also known as third-party service providers
- ff. **agree** that the Bill would set a requirement for review reports to be presented to the House together with the Government's response
- gg. **agree** that the Bill would specify in relation to the proposed information-gathering powers in (ee) above that:
  - i the powers would only be used when necessary for the effective and efficient conduct of the regulatory reviews carried out by the Ministry for Regulation
  - ii in relation to information held by third party service providers, the Ministry would first seek this information from the public service agency that holds the contract, or make the request in conjunction with the responsible agency
  - iii in relation to entities that make or administer secondary legislation and entities authorised to undertake a regulatory function (e.g. the Reserve Bank), the Ministry would make a request following consultation with the responsible public service agency (where relevant)
  - iv the powers would not override prohibitions or restrictions on the sharing of information already set down in legislation
  - v the powers would not apply to the House of Representatives, the Speaker, an Office of Parliament, the Office of the Clerk of the House of Representatives, or the Parliamentary Service
- hh. **agree** that the Bill would provide that the information-gathering powers above could be enforced via court order if required, a breach of which would constitute contempt of court

#### **Commencement and transitional arrangements**

- ii. **agree** that the Bill would come into force on 1 January 2026, with transitional arrangements providing for consistency assessment requirements for agencies and Ministers to be brought in via Order in Council, but commence no later than six months after the date the Bill comes into force
- jj. **note** that I will report back to Cabinet on proposed changes to the Cabinet Office Circulars for Disclosure Requirements for Government Legislation [CO(13)3] and Impact Analysis Requirements [CO(24)7], to ensure alignment with the Bill

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

- kk. **agree** that the Bill include clauses clarifying that:
  - i the purpose of the Bill is only given effect to by the specific provisions of the Bill
  - ii the Bill does not confer or impose any legal rights or duties or affect the validity of any legislation.]

#### **Financial and other implications**

- ll. **note** that the Bill will have financial implications for all agencies who are responsible for administering primary and/or included secondary legislation

- mm. **note** that these costs could be offset to some degree where new requirements substitute for existing legislative stewardship activity, or where agencies realise savings over time as a result of reduced effort in reviewing and amending legislation and/or operational efficiencies
- nn. **note** that the Ministry for Regulation will have additional costs associated with its new functions to provide system oversight and secretariat support to the Regulatory Standards Board, as well as the cost of Board fees. The financial implications will be managed within baseline

**Next steps**

- oo. **authorise** the Minister for Regulation to instruct the Parliamentary Counsel Office to draft the Regulatory Standards Bill to implement the proposals described in this paper
- pp. **authorise** the Minister for Regulation to make minor or technical policy decisions as needed to support the development of these drafting instructions not inconsistent with the decisions in the paper
- qq. **agree** to proactively release this Cabinet paper and substantive advice (including briefings) related to the Regulatory Standards Bill, with appropriate redactions, in accordance with the Government's proactive release policy
- rr. **agree** that the Minister for Regulation should issue a media release to publicly announce the next steps in the progression of this Bill
- ss. **note** that the Waitangi Tribunal has approved an urgent one-day hearing in relation to the proposed Bill, scheduled for 6 June
- tt. **agree** that a paper seeking approval to introduce the Bill, along with the proposed Bill, proceed directly to Cabinet for consideration on 19 May 2025.

Authorised for lodgement

Hon David Seymour  
Minister for Regulation



# Summary of Submissions

## Consultation on the proposed Regulatory Standards Bill

May | 2025



**Ministry for Regulation**  
**Te Manatū Waeture**



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# Privacy

The Ministry has removed the names and other identifying details of individual submitters and parties who have submitted. If you have concerns with how submissions have been reflected, please contact us at [hello@regulation.govt.nz](mailto:hello@regulation.govt.nz). Additionally, if you submitted and would like a copy of the personal information we hold about you, or to correct any information about you that is incorrect, please make a Privacy Act<sup>1</sup> request in writing to: [privacy.officer@regulation.govt.nz](mailto:privacy.officer@regulation.govt.nz).

<sup>1</sup> The Ministry for Regulation’s guide to making Privacy Act requests can be found [here](#).





## Executive summary

The Minister for Regulation, Hon David Seymour, launched the discussion document titled ‘Have your say on the proposed Regulatory Standards Bill’ on 19 November 2024, with the consultation period closing on 13 January 2025.

The discussion document presented the context and purpose of the proposed Regulatory Standards Bill and sought feedback on a benchmark for good regulation through a set of principles of responsible regulation; a Regulatory Standards Board; and provisions to support the Ministry for Regulation (the Ministry) in its work to improve the quality of regulation.

The Ministry received approximately 23,000 submissions and worked with a specialist consultancy to quantitatively assess support and opposition to the proposed Bill. This analysis showed that 20,108 submissions (around 88 per cent) opposed the proposed Bill, 76 submissions (0.33 per cent) supported or partially supported it, and the remaining 2,637 submissions (almost 12 per cent) did not have a clear position<sup>2</sup>.

The Ministry also qualitatively assessed a sample of submissions<sup>3</sup> to summarise reasons for support and opposition to the proposed Bill and feedback on specific proposals. Common reasons submitters raised for opposing the proposed Bill included that it would:

- attempt to solve a problem that doesn’t exist
- result in duplication and increase complexity in lawmaking
- undermine future Parliaments and democracy
- lack recognition and provision for the Treaty of Waitangi (the Treaty)/te Tiriti o Waitangi (te Tiriti)
- prioritise individual property rights over the collective
- lead to worse social, environmental and economic outcomes.

Common reasons submitters raised for supporting the proposed Bill included that it would:

- reduce the likelihood of unjustified regulations and overregulation
- improve certainty for businesses and investors
- improve the quality of regulation over time by increasing transparency

---

<sup>2</sup> The Ministry has not undertaken any assessment of whether the population of submitters is representative of the population of New Zealand.

<sup>3</sup> The sample of submissions includes all submissions made on behalf of an organisations, iwi or hapū, and any other submissions with over 10,000 characters.



- increase alignment across regulatory systems and with international best practice
- ensure legislation remains fit for purpose over time
- protect private property rights.

Most of the feedback received focused on the principles for responsible regulation. Submitters that opposed the proposed principles raised issues around the lack of provision for Treaty/te Tiriti related principles; considered there are cheaper and more effective ways to increase the quality of regulation; and considered that putting principles in legislation binds current and future governments to an inflexible set of standards and will impede their ability to respond to technological, social, demographic and other changes.

Those submitters that supported the proposed principles considered that they would improve regulatory quality, protect property rights and promote economic growth. Other submitters were positive about the idea of principles in legislation, but disagreed with the ones being proposed, or thought that they needed to be developed in a way that secures multi-party agreement and/or the support of all New Zealanders.

Most submissions opposed the proposed Regulatory Standards Board. These submitters considered that the proposal would provide too much power to the Minister for Regulation; would disproportionately amplify the voices of certain private people or corporations who have the resources to file complaints or whose interests are served by the proposed principles; and would result in Māori being increasingly excluded from decision-making processes that affect them.

Those submitters that supported the proposed Regulatory Standards Board considered that it would be critical for improving transparency and accountability in law-making, would be less costly than the courts, and may be more effective than existing mechanisms.

Submitters generally supported strengthening regulatory stewardship expectations such as requiring the review and maintenance of legislation, however many of these submitters considered the proposal would be unnecessary when stewardship and accountability mechanisms already exist.

In addition to feedback on the proposals, submitters raised issues with the consultation process, including the time provided for consultation, the lack of prior engagement with Māori during the development of the proposal, and the redactions to material released alongside consultation, such as the Ministry's Preliminary Treaty Impact Analysis.

The Government intends to introduce a Regulatory Standards Bill to Parliament later in 2025. There will be a further opportunity to provide feedback on the Bill as it progresses through select committee.



## Section 1: Introduction and methodology

### 1.1 Purpose

1. This document summarises the feedback the Ministry for Regulation received during consultation on the proposed Regulatory Standards Bill.

### 1.2 Background

2. The Minister for Regulation, Hon David Seymour, launched the discussion document titled *'Have your say on the proposed Regulatory Standards Bill'* on 19 November 2024.
3. The discussion document was available online or in paper form on request. Submissions could be made online either by completing an online form (via Citizen Space) or uploading a document, by email, or by post. The submission period closed at 11.59pm, 13 January 2025.
4. The discussion document presented the context and purpose of the Bill and sought feedback on:
  - a benchmark for good regulation through a set of principles of responsible regulation (discussion area one)
  - mechanisms to transparently assess the consistency of new legislative proposals and existing regulation with the principles (discussion area two)
  - a mechanism for independent consideration of the consistency of existing regulation, primarily in response to stakeholder concerns (discussion area three)
  - provisions to support the Ministry for Regulation in its work to improve the quality of regulation (discussion area four).
5. Links to the consultation page along with the discussion document, interim Regulatory Impact Statement, Preliminary Treaty Impact Analysis and the Cabinet paper can be found here: <https://consultation.regulation.govt.nz/rsb/have-your-say-on-regulatory-standards-bill/>.

### 1.3 Overview of submitters

6. The Ministry received 22,821 submissions. This included 16,101 by email and 6,720 through Citizen Space. 22,340 of these submissions were from individuals, 367 on behalf of organisations and 114 on behalf of iwi or hapū. **Table 1** breaks down those submitters that identified as submitting on behalf of an organisation.



**Table 1: Information on types of organisation submitters**

Type of submitter	Number <sup>4</sup>
<b>Environment and community groups and NGOs</b>	115
<b>Other Māori groups</b>	107
<b>Industry and sector groups</b>	44
<b>Other businesses</b>	42
<b>Research groups, consultancies and thinktanks</b>	26
<b>Unspecified/other</b>	15
<b>Local government</b>	9
<b>Other public and statutory agencies (including officers of Parliament)</b>	9
<b>Law firms</b>	2

## 1.4 Approach to analysis

7. This report presents the results of the Ministry's submissions analysis which has two components.
8. First, the Ministry worked with a specialist consultancy to quantitatively assess support and opposition to the proposed Bill in all submissions. This analysis is summarised in **Section 2.1**.
9. Second, the Ministry qualitatively assessed a sample of submissions to summarise reasons for support and opposition to the proposed Bill and feedback on specific proposals. This sample included all submissions made on behalf of organisations, iwi or hapū, and any other submission with over 10,000 characters. This involved the manual analysis of approximately 4.1 per cent of all submissions which is equivalent to 34.4 per cent of all text received.<sup>5</sup> The results of the analysis of this sample of submissions are presented in **Sections 2 and 3**.
10. **Appendix 1** provides an overview of the methodology the Ministry used to complete the submissions analysis.

<sup>4</sup> Note that in some cases a submitter may be tagged as more than one type of submitter.

<sup>5</sup> Due to the significantly longer average length of submissions within the sample of submissions compared to all submissions.



## Section 2: Overall feedback on the proposal

11. The discussion document asked submitters for their views on the problem definition, the current regulatory oversight arrangements, and setting out requirements for regulatory quality in legislation.
12. This section presents the results of quantitative analysis of all submissions and then summarises the range of reasons provided for support or opposition based on the Ministry's analysis of the sample of submissions. These reasons are summarised in no particular order.

### Relevant discussion document question(s)

- What are your overall views on the quality of New Zealand's regulation?
- What are your overall views on the current arrangements in place to promote high quality regulation?
- Do you ever use RISs to find out information about proposed government regulation? If so, how helpful do you find RISs in helping you make an assessment about the quality of the proposed regulation?
- Do you ever use disclosure statements to find out information about a Bill? If so, how helpful do you find disclosure statements in helping you make an assessment about the quality of the Bill?
- What are your views about the effectiveness of the regulatory oversight arrangements currently in place?
- What are your views on setting out requirements for regulatory quality in legislation? Are there any alternatives that you think should be considered?

### 2.1 Stance on the proposed Bill for all submitters

13. Quantitative analysis of all submissions shows that 20,108 submissions (around 88 per cent) opposed the proposed Bill, 76 submissions (0.33 per cent) supported or partially supported it, and the remaining 2,637 submissions (almost 12 per cent) did not have a clear position.<sup>6</sup> **Tables 2 and 3** set out these results by submitter type. **Appendix 1** sets out the methodology for calculating these figures.

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<sup>6</sup> This means that a submission did not express clear support or opposition to the proposed Bill but may still have commented on individual aspects of the proposals.

**Table 2: Submitters' stance on the proposed Bill**

Submitter type	Oppose	Partially Support	Support	Unclear	Total
<b>Individual</b>	19,718	28	28	2,566	22,340
<b>Iwi/hapū</b>	89	0	0	25	114
<b>Organisation</b>	301	11	9	46	367
<b>Total</b>	20,108	39	37	2,637	22,821

**Table 3: Submitters' stance on the proposed Bill as a percentage**

Submitter type	Oppose	Partially Support	Support	Unclear
<b>Individual</b>	88.26%	0.13%	0.13%	11.49%
<b>Iwi/hapū</b>	78.07%	0.00%	0.00%	21.93%
<b>Organisation</b>	82.02%	3.00%	2.45%	12.53%
<b>Total</b>	88.11%	0.17%	0.16%	11.56%

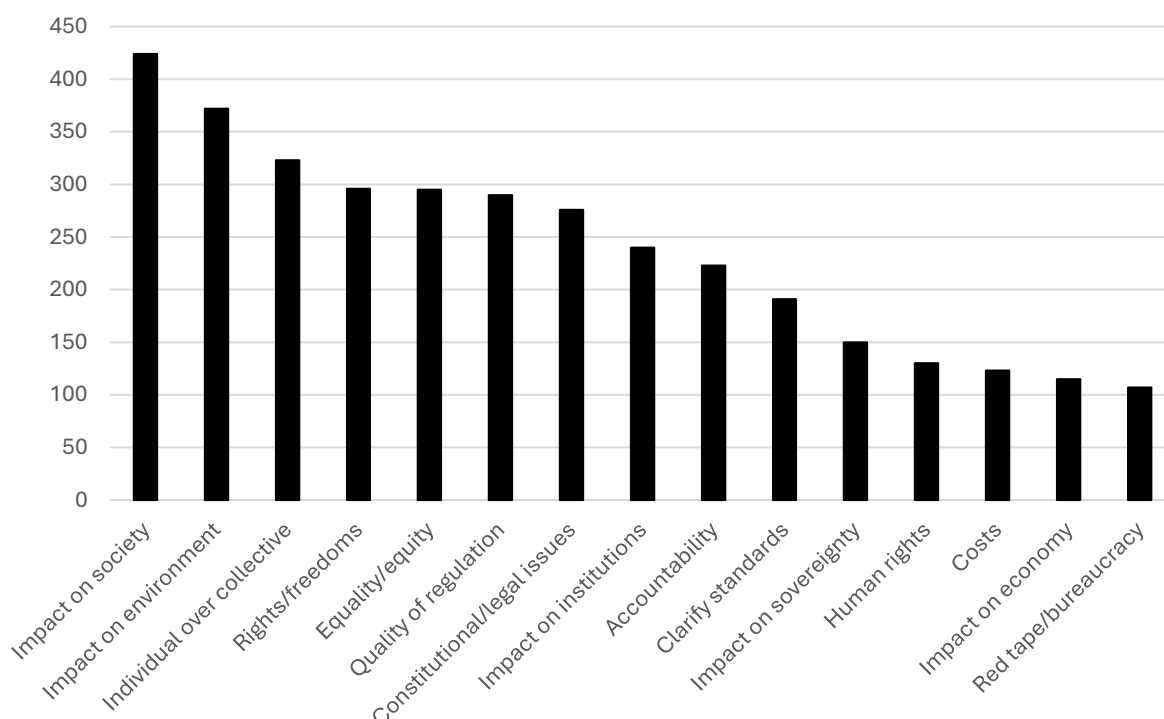
14. Within organisation submissions there were further differences in levels of support or opposition. For example, submissions classified as 'industry and sector groups' had higher levels of support for the proposed Bill than the average of organisation submissions, with 12 per cent supporting and 16 per cent partially supporting the proposed Bill.

## 2.2 Submitters' reasons for opposing the proposed Bill

15. From assessing the sample of submissions, the Ministry has grouped reasons for opposing the proposed Bill into five categories:
- Lack of a problem definition, creating duplication, and increasing complexity
  - Constitutional and legal issues (outside of the Treaty/te Tiriti)
  - The Treaty/te Tiriti and Māori rights and interests
  - Social, environmental and economic outcomes
  - Other
16. **Figure 1** sets out the number of times each reason for support or opposition to the proposed Bill was raised within the sample of submissions. These reasons are discussed in more detail throughout the remainder of this section and **Section 2.3**.



**Figure 1: Reasons for support or opposition to the proposed Bill (from the sample of submissions)<sup>7</sup>**



### 2.2.1 Lack of a problem definition, creating duplication, and increasing complexity

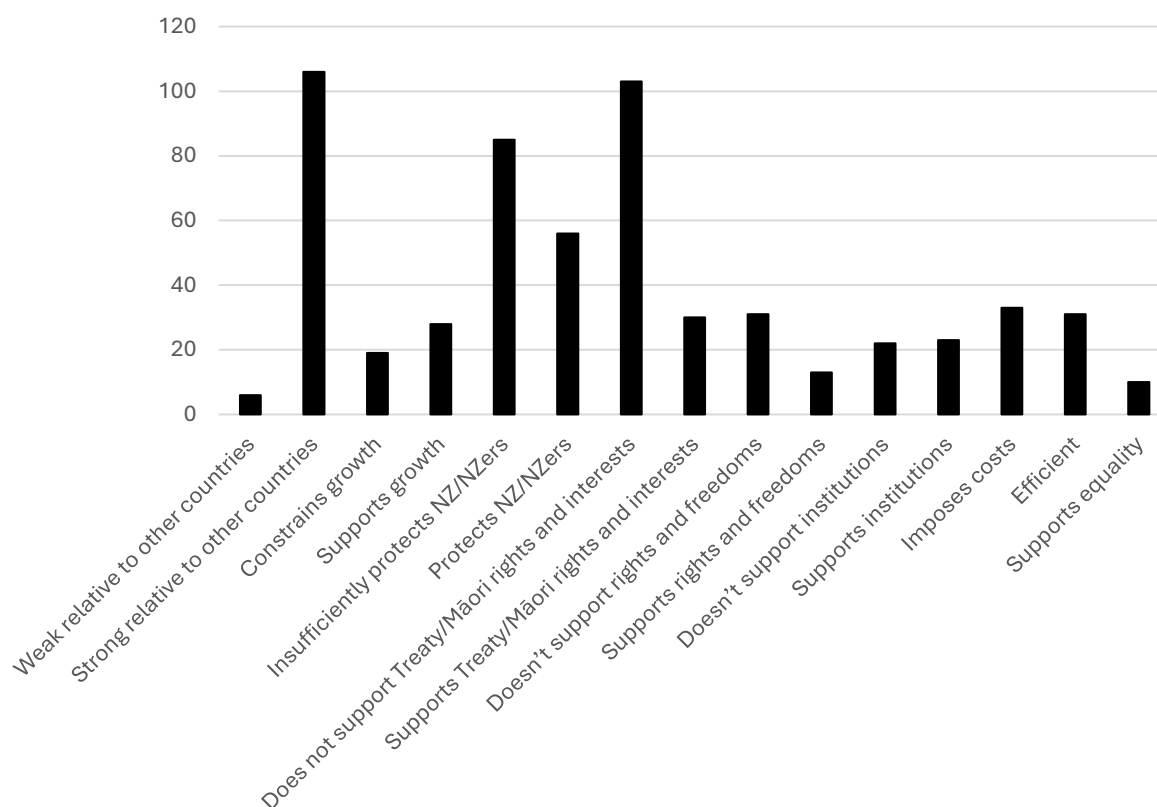
*Attempting to solve a problem that doesn't exist*

17. Submitters that opposed the Bill often considered that there was not a significant problem with New Zealand's current regulatory quality, with several raising that New Zealand is ranked in the top percentile for regulatory quality by the World Bank in its Worldwide Governance Indicators.
18. **Figure 2** summarises the views expressed in the sample of submissions relating to the current state of regulatory quality in New Zealand – significantly more of these submissions considered New Zealand's regulatory quality was strong relative to other countries compared to those that considered it was weak relative to other countries.

<sup>7</sup> Counts include instances of both support and opposition.



**Figure 2: Views on current regulatory quality in New Zealand (from the sample of submissions)**



## *Resulting in duplication and increasing complexity in lawmaking*

19. Submitters stated that the current system already contains mechanisms for improving regulatory quality. Examples raised include:

- the requirement for Regulatory Impact Statements
- the Legislation Act 2019 (including disclosure statements under Part 4)
- the New Zealand Bill of Rights Act 1990
- guidance from the Legislation Design and Advisory Committee
- Parliamentary scrutiny, including through select committees like the Regulations Review Committee
- the Parliamentary Counsel Office (i.e. in drafting legislation)
- the Ombudsman
- the common law
- the Treaty/te Tiriti and its principles.

20. These submitters opposed the Bill on the basis that the issue of improving regulatory quality would be better addressed through improving non-legislative or existing legislative mechanisms. Submitters also considered that the proposed Bill would





duplicate existing mechanisms which would increase complexity and make existing roles and responsibilities less clear.

*Creating uncertainty for business due to a lack of consensus and inflexibility*

21. Submitters raised concerns that taking a legislative approach would be inflexible, risk stifling innovation and make it harder to respond to changing contexts over time, such as evolving societal expectations and advances in technologies. They considered that this would create inefficiencies and additional costs over time. Submitters also stated that the proposed Bill would result in uncertainty for regulated parties, including business, because if the Bill was not supported by a broad consensus there could be no certainty that the changes would endure.

## **2.2.2 Constitutional and legal issues**

*Undermining future Parliaments and democracy*

22. Submitters considered that the proposed Bill was intended to have ‘constitutional effect’ and therefore it shouldn’t progress without bipartisan support. Submitters raised concerns that it would undermine the supremacy of Parliament to make laws and reduce the ability of future parliaments to legislate in the public interest. Submitters also considered that the proposed Bill would negatively impact democracy because it would constrain Members of Parliament from legislating in the best interests of their constituents.

*Increasing the complexity of the current legal framework and unintended legal consequences*

23. Submitters raised that the proposed Bill may result in increased litigation, both due to providing an additional avenue for businesses to challenge regulations and because of the increased complexity the proposed Bill would introduce. Submitters also considered that there may be unintended consequences should the courts view the principles as having constitutional significance which could change how they interpret and apply the law over time (see **Section 3.1**).

## **2.2.3 The Treaty/Te Tiriti and Māori rights and interests**

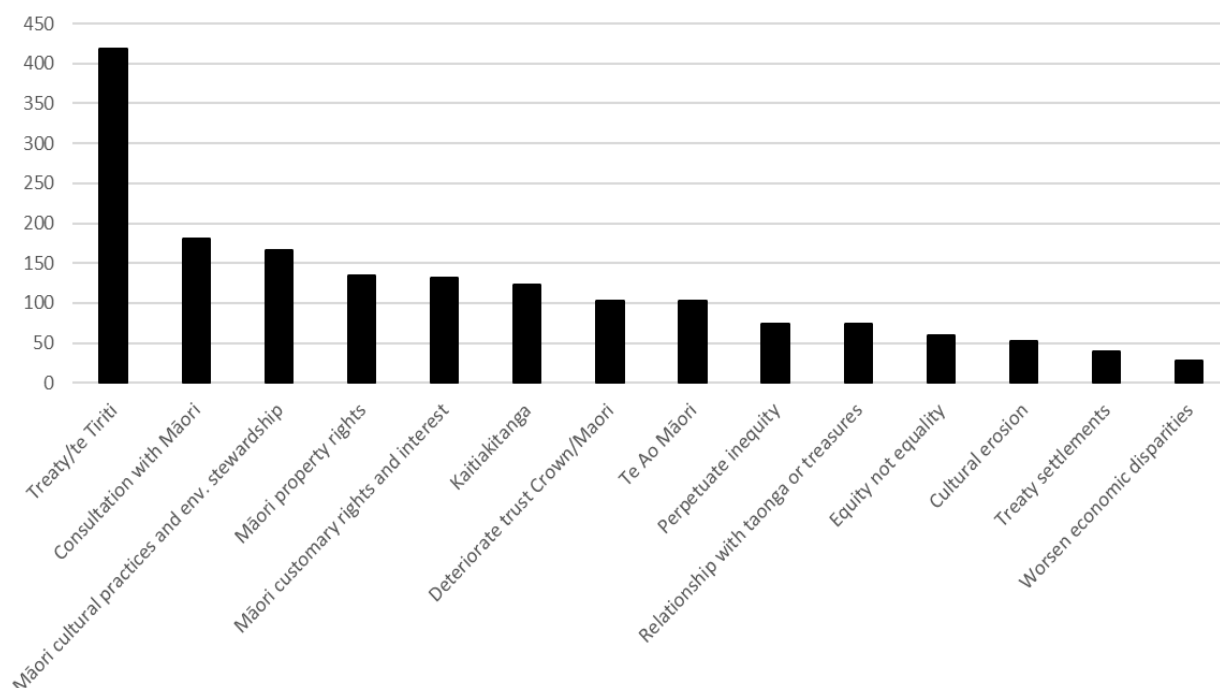
24. The Treaty/te Tiriti was raised in approximately 65 per cent<sup>8</sup> of all submissions. Of submitters that identified they were submitting on behalf of iwi or hapū, none supported or partially supported the proposed Bill, while approximately 78 per cent opposed the Bill and 22 per cent did not state a clear view on the overall Bill (though many of these raised issues with specific aspects of the proposals).
25. Issues relating to the Treaty/te Tiriti were widely raised within the sample of submissions. **Figure 3** provides an overview of these.

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<sup>8</sup> 14,807 submissions mentioned the Treaty or te Tiriti out of a total of 22,744.



**Figure 3: Issues raised relating to the Treaty/te Tiriti or Māori rights and interests (from the sample of submissions)**



*Lack of recognition and provision for the Treaty/te Tiriti*

26. Submitters considered that the proposed Bill does not recognise and provide for te Tiriti/the Treaty, such as by not including a general Treaty/te Tiriti clause, or a regulatory responsibility principle relating to the Treaty/te Tiriti. Submitters considered this to be a crucial omission that could limit Treaty/te Tiriti protections in both current and future laws and did not reflect the constitutional importance of the Treaty/te Tiriti to New Zealand.
27. Submitters emphasised the importance of the Treaty/te Tiriti and the partnership between Māori and the Crown and were concerned that the legislation would breach or lead to breaches of the Treaty/te Tiriti and undermine the balance of kāwanatanga and tino rangatiratanga.
28. Submitters commented that the proposal ignores current legal jurisprudence, and established standards for law and policy making process such as the Legislation Guidelines issued by the Legislation Design and Advisory Committee, which includes reference to the Treaty/te Tiriti.

*Negative impacts on Māori sovereignty, governance and self-determination*

29. Submitters raised the view that the proposed Bill violates Māori sovereignty and autonomy, which contradicts the spirit of the He Whakaputanga o te Rangatiratanga o Nu Tirenī, the Declaration of Independence 1835, by concentrating power in the hands of the Crown and officials.
30. Submitters considered that the proposed Bill would undermine tino rangatiratanga and would not ensure hapū participation in decisions affecting whenua and



resources, and recommended that the Bill establish mechanisms for Māori to exercise tino rangatiratanga over whenua, resources, and affairs that accommodate diverse governance models, including those based on tikanga Māori, partnership or co-governance. Submitters' views on the proposed Bill's impact on kaitiakitanga are summarised in **Section 2.2.4**.

31. Submitters also considered that the proposed Bill would contravene the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and raised concerns that disregarding international obligations undermines the progress New Zealand has made as a global advocate for indigenous peoples.

*Lack of provision for consultation and engagement with Māori*

32. Submitters considered that the proposal does not provide for appropriate, meaningful, and effective engagement and participation for Māori, iwi and hapū as part of the Bill's processes. Submitters were concerned that the absence of these provisions could negatively impact Māori Crown relations, threaten or diminish rangatiratanga, breach the Crown's obligations under the Treaty/te Tiriti and or/undermine Crown commitments arising from Treaty/te Tiriti settlements, resulting in poorer outcomes for the environment and society (see **Section 3.3**).

*Need to uphold Treaty/te Tiriti settlements and arrangements with iwi and hapū*

33. Submitters raised concerns that the proposal would be inconsistent with te Tiriti/Treaty settlements and undermines the partnership reached with the Crown. Submitters were concerned that Treaty/te Tiriti settlements and other arrangements would not be protected if there were no Treaty/te Tiriti provisions in the Bill, and that its generic regulatory standards would override settlement provisions and diminish the mana of agreements tailored to address specific historical grievances. Submitters considered the stated intent in the proposal to exclude legislation relating to Treaty/te Tiriti settlements was inadequate and were also concerned that the proposed Bill would not recognise the rights and interests of groups still negotiating settlements or yet to enter negotiations.
34. Submitters considered that many Treaty/te Tiriti settlement arrangements were interwoven and expressly constructed with reference to existing regulations and policies. Submitters were concerned that the Crown's settlement commitments to engage on policies, proposals or legislative changes which directly or indirectly affect settlement groups might not be upheld, with the Bill circumventing these agreements. For example, submitters raised concerns that current safeguards for Māori rights, such as those under the Marine and Coastal Area (Takutai Moana) Act 2011, could be undermined if there are no explicit protections in the proposed Bill.



## 2.2.4 Social, environmental and economic outcomes

### *Prioritising individual property rights over the collective*

35. Submitters considered that the proposed Bill would establish a hierarchy which prioritises individual property rights over collective wellbeing, which they considered would result in worse social, environmental and economic outcomes. Submitters also expressed this view in relation to Māori collective rights, stating that Māori customary rights, cultural practices, tikanga Māori, mātauranga Māori, and Māori governance structures, that are often exercised collectively through whānau, hapū, and iwi, must be safeguarded in any regulatory framework. Submitters considered that the Bill should acknowledge and ensure that regulatory standards do not inadvertently erode these collective rights by applying a narrow, Western-centric view of individual freedoms.
36. Submitters also raised concerns that the proposed content of the Bill would privilege lobbyists, corporations and the wealthy, as individuals or groups with less resources would not be able to access the mechanisms within the Bill. Analogies were drawn with the system of investor-state dispute settlement, with submitters raising the risk of international corporations challenging New Zealand's domestic regulations, to the detriment of individuals or smaller stakeholders.

### *Negatively impacting social outcomes*

37. Submitters considered that the proposed Bill and its focus on individual property rights would make society more inequitable, such as through weakening safeguards relating to public health, worker protections, health and safety and food safety. Submitters considered that the proposed Bill would make it harder for government to regulate tobacco, alcohol or unhealthy foods through warning labels or other measures, or for the government to enact measures intended to prevent human rights exploitations. Submitters linked this to the principle in the proposed Bill relating to 'takings' (see **Section 3.1.4**).
38. Submitters also considered that a focus on procedural equality might enable structural discrimination such as institutional racism, raising the example of a policy that appears to treat everyone equally but has uneven impacts on particular groups. Submitters considered there was a risk that the proposed Bill would prevent government from regulating in a way that addresses these unequal outcomes.
39. Submitters raised concerns that Māori communities are often at the frontline of such impacts, with poorer access to healthcare, greater exposure to environmental hazards, and higher rates of disease linked to environmental degradation. It was suggested that the social and cultural impact of the Bill on Māori would be significant and would risk deepening the systematic inequalities that already exist, further marginalising Māori communities.



*Leading to worse environmental outcomes and lack of provision for kaitiakitanga*

40. Submitters considered that the proposed Bill would provide corporations with an avenue to challenge environmental regulations including relating to pollution, climate change, water quality and air quality, on the basis of private property impacts. They stated concerns that this would lead to government being hesitant to implement new environmental regulations and may result in the rolling back of existing safeguards.
41. Submitters also considered that the proposed Bill does not recognise kaitiakitanga and the unique relationship between Māori and the environment under the Treaty/te Tiriti, or how tino rangatiratanga is a critical lever for environmental protection. Submitters were concerned that this would risk enabling the degradation of ecosystems, including rivers, oceans, and land which are vital to health and cultural, social, and economic well-being. Submitters considered that Māori knowledge and expertise is crucial for sustainable and equitable governance – particularly in relation to environmental and resource management.

*Leading to worse economic outcomes*

42. Submitters stated that although the proposed Bill may reduce regulatory burdens on regulated parties in the short term due to a focus on individual liberties, there are risks that it may result in longer term economic instability due to weaker government regulation. They considered a reduction in regulation would negatively impact the effective regulation of market failures, including regulations relating to competition, consumer protections, monopolies, externalities, and information imbalances in markets.

## **2.2.5 Other reasons**

43. Submitters raised several other reasons for opposing the Bill, including that it:
  - failed to take account of New Zealand’s international obligations and multilateral treaties the New Zealand Government is a party to
  - would erode the ability of governments to raise revenues and provide infrastructure and public services
  - provides too much power to the Minister for Regulation (see **Section 3.3** on the Board)
  - would not be implemented as government agencies do not have the resources and/or capability.

## **2.3 Submitters’ reasons for supporting the proposed Bill**

44. From qualitatively assessing the sample of submissions the Ministry has grouped reasons for supporting the proposed Bill into three categories:
  - Reducing costs and promoting economic growth and investment



- Improving regulatory quality
- Protecting institutions and property rights

### **2.3.1 Reducing costs and promoting economic growth and investment**

#### *Reducing the likelihood of unjustified regulations and overregulation*

45. Submitters stated that there was a common perception of New Zealand reactively legislating to address problems without adequately considering other alternatives. This issue was raised both in relation to primary legislation and secondary legislation. New and amended secondary legislation was identified by some submitters as often having less oversight and being subject to less rigorous processes than primary legislation.
46. Submitters raised that regulators are often risk adverse and will therefore tend to overregulate or impose stricter rules than necessary to minimise risks to themselves. Submitters considered that regulators did not adequately consider the costs of regulating which are borne by regulated parties. The proposed Bill was seen as a way to ensure regulators and Parliament adequately consider the costs imposed by regulations before imposing new requirements. Some submitters also considered that regulation should only be considered as a last resort after first exploring non-regulatory options.

#### *Improving productivity and growth through reducing the costs imposed by regulations over time*

47. Submitters stated that the proposed Bill is necessary to reduce unjustified costs on businesses over time. This was seen as directly benefiting New Zealand businesses, and also indirectly benefiting consumers where businesses had to pass along the costs of compliance to consumers when they set prices for their goods and services.
48. Some submitters raised that this issue was particularly challenging for small businesses which had to spend a larger proportion of their time and resources on compliance than larger businesses. Overly complex or outdated regulation was also identified by some submitters as negatively affecting competition and smaller players or disruptors entering the market, resulting in less economic efficiency and higher prices for consumers.
49. The proposed Bill was also seen as a way to ensure regulations are workable and able to be implemented by regulated parties. Submitters raised examples of government agencies creating regulations that were unable to be complied with due to practical constraints such as existing information systems or business practices.

#### *Improving certainty for businesses and investors*

50. Submitters raised several examples of regulations causing delays for business, such as when applying for licenses, permits or consents. This was raised as both a cost for businesses but also as making it harder for New Zealand businesses to make



investment decisions and as impacting New Zealand's reputation as a destination for foreign direct investment. Submitters considered that this in turn harms New Zealand's productivity and economic growth.

### 2.3.2 Improving regulatory quality

51. Submitters that supported the proposed Bill generally considered there were significant issues with the quality of New Zealand's regulations, and that the proposed Bill would be an effective way to address this issue.

*Improving the quality of regulation over time by increasing transparency and changing current incentives*

52. Submitters raised that the current incentives around lawmaking did not result in lawmakers or regulators appropriately considering the costs of making bad or poorly designed regulations. The current transparency mechanisms, such as regulatory impact statements and disclosure statements, were seen as too weak to address this issue.
53. Submitters also raised the issue that lawmakers are currently incentivised to make regulations that benefit their constituents or supporters as opposed to benefitting New Zealand as a whole. The proposed Bill was seen as a way to address this issue by ensuring that proposed and existing legislation is transparently assessed against the same standards. Increased transparency around lawmaking was seen as one of the fundamental benefits of the proposed Bill. Submitters also stated that this could increase consensus and buy in for new regulations among regulated parties, where the costs of regulations were transparently justified in terms of their benefits.

*Increasing alignment across regulatory systems and with international best practice*

54. Submitters raised that businesses in sectors such as finance, insurance, telecommunications and minerals are subject to overlapping and often contradictory regulations administered by different regulators with different approaches to applying and enforcing regulations. The proposed Bill was seen by submitters as a way to improve coherence across regulations and regulators, which would in turn reduce costs on businesses and consumers, as well as reducing the need for litigation due to ambiguous legislation. Some submitters raised the example of agencies' approach to setting fees and charges, which was seen as inconsistently applied across government with a lack of transparency (see **section 3.1.4**).
55. Submitters also considered that the proposed Bill would help ensure New Zealand's regulatory approach was in line with international best practice, noting that many larger businesses operate in a 'global regulatory system'. Submitters raised that New Zealand should prioritise international standards before creating its own bespoke standards. Some submitters caveated this with the need for New Zealand to carefully assess whether regulations created in different jurisdictions were in fact appropriate for New Zealand's context.





*Reducing poorly designed regulations, ambiguity and the need for litigation*

56. Submitters raised that when legal frameworks were ambiguous or poorly designed, entire industries could emerge around interpreting and litigating their application. The proposed Bill, through improving the quality of regulation, was seen as a way to minimise or avoid these costs. Submitters raised examples where poor drafting or gaps in legislation caused uncertainty and additional legal costs for regulated parties. They also raised that poorly designed legislation could result in unintended consequences, which subsequently required regulators to enforce new and more costly requirements.

*Ensuring legislation remains fit for purpose over time*

57. Submitters considered that legislation, especially secondary legislation, is not subject to adequate review over time. This was described as a ‘set and forget’ approach which meant that regulation became less and less effective over time as business practices, technologies and economic context evolved. The proposed Bill was seen as a way to ensure that government agencies effectively stewarded their legislation and regulatory systems to ensure they remain fit for purpose over time. Outdated regulations were also raised by submitters as holding back innovation.

### **2.3.3 Protecting institutions and property rights**

*Building trust in institutions and protecting against government overreach*

58. Submitters considered that the proposed Bill was important for ensuring citizens trust New Zealand’s institutions. This was primarily through transparently setting out the standards that government would hold itself to. Submitters considered that trust in institutions was important for social cohesion and the long-term prosperity of New Zealand.

*Protecting private property rights*

59. Submitters considered that the proposed Bill is necessary to protect private property rights. Submitters raised examples of regulatory takings (see **Section 3.1.4**), where they considered the state had unfairly prevented businesses or individuals from using their private property. In these cases, they considered that though the government didn’t directly confiscate property, it had significantly reduced the ability to use that property. Examples raised by submitters included the COVID-19 lockdowns, requirements to upgrade earthquake prone buildings, significant natural areas and other measures under the Resource Management Act 1991.

## **2.4 Feedback on the consultation or policy process**

60. In addition to commenting on the proposals, submitters provided feedback on the consultation process itself. Submitters raised issues around the time provided for consultation and considered that it was difficult for the public to fully engage with the consultation process because it spanned the Christmas and New Year holiday period. This was seen as a particular issue because of the significance and potential





constitutional impacts of the proposals. Some submitters also stated that in light of the process they did not consider the proposed Bill would meet its own standards for developing regulation.

61. Submitters considered that there was no meaningful consultation and engagement with Māori on the development of the proposal, and that this disregarded the Crown's partnership obligations, undermined the intent and spirit of the Treaty/te Tiriti, and showed a lack of good faith. Submitters considered this approach put the Crown in breach of the Treaty/te Tiriti principles and Treaty/te Tiriti settlements and the limited nature of consultation on the policy proposals would be insufficient to meet settlement commitments. Submitters called for the proposed Bill to be abandoned and to instead engage in meaningful consultation with Māori on whether changes are needed and the meaning that the Treaty/te Tiriti takes in any amended or proposed new regulatory setting.
62. Submitters were concerned about the large number of redactions in the Ministry's Preliminary Treaty Impact Analysis, stating that it impacted their ability to engage with the analysis making it virtually unusable. Submitters considered that all information should have been made available given the significance of the proposal.



## Section 3: Feedback on specific proposals

63. This section summarises the feedback from the sample of submissions that commented on specific proposals within the discussion document. Of those that commented on specific proposals, most submitters focused on the proposals relating to the principles for responsible regulation.

### 3.1 The proposed principles of responsible regulation

#### 3.1.1 Discussion document proposal (discussion area one)

64. The discussion document proposed a set of principles that would be set out in primary legislation that the government would consider when developing legislative proposals or exercising stewardship over regulatory systems. These principles would focus primarily on the effect of legislation on existing interests and liberties, along with good law-making process. The Bill would require the Minister for Regulation to release guidelines that would set out in more detail how the principles should be interpreted and applied.

#### Relevant discussion document question(s)

- What are your views on setting principles out in primary legislation?
- Do you have any views on how the principles relate to existing legal principles and concepts?
- Do you agree with the focus of the principles on:
  - rights and liberties?
  - good law-making processes?
  - good regulatory stewardship?
- Do you have any comments on the proposed principles themselves?
- In your view, are there additional principles that should be included?

#### 3.1.2 Feedback on establishing principles in legislation

65. There was limited support among submitters for the establishment of principles in legislation. Analysis of the sample of submissions shows that approximately 3 per cent had a generally positive view of setting principles in legislation while approximately 78 per cent had a negative view.

66. Of those submissions that supported including principles in legislation, their reasons broadly aligned with the overarching reasons for supporting the proposed Bill which are summarised in **Section 2.3**, such as to improve regulatory quality, protect



property rights and promote economic growth. Several of these submissions also considered that the principles should have ‘sufficient weight’ and enforceability in order to be effective.

67. Other submitters were positive about the idea of principles in legislation, but disagreed with the ones being proposed, or thought that they needed to be developed in a way that secures multi-party agreement and/or the support of all New Zealanders.
68. However, most submitters that commented on the proposal were opposed to establishing principles in legislation. In general, this was because they disagreed with the proposed principles themselves (see below), with most of these submissions raising the lack of provision for the Treaty/te Tiriti, and Māori rights and interests both in relation to the process for developing the principles (e.g. a lack of engagement with Māori) and in the principles themselves. These submitters considered the omission of a principle relating to the Treaty/te Tiriti would marginalise Māori voices; undermine the well-established role of the Treaty/te Tiriti as part of law-making; undermine the Crown’s constitutional obligations to Māori, and disregard collective rights. The number and nature of submissions around this subject indicated both strong concerns from Māori and from the general public.
69. Other reasons given for opposing the proposed principles included that:
  - there are cheaper and more effective ways to increase the quality and robust implementation of regulation
  - there are legal and constitutional risks associated with putting principles of this nature in primary legislation
  - many of the principles are already appropriately recognised and/or protected in other ways (especially the New Zealand Bill of Rights Act 1990), and/or there is the potential for duplication, which could cause uncertainty and confusion
  - principles of this nature should be a matter for Parliament, and they would interfere with Parliament’s functions (e.g. the scrutiny of legislation)
  - putting principles in legislation binds current and future governments to an inflexible set of standards and will impede their ability to respond to technological, social, demographic and other changes in an optimal way
  - the principles in their current form do not address how good regulation could stem from te Tiriti/the Treaty and how it should align with existing legal frameworks that recognise and impact Māori rights, such as the Resource Management Act 1991, and with te Tiriti/Treaty settlements.
70. A few submitters noted that the success of the principles would depend on how they were implemented, including how potential tensions between the principles, and



with other legislative principles or requirements in other Acts, would be worked through and resolved.

### 3.1.3 Feedback on the principles proposed in the discussion document

71. Most of the sample of submissions (approximately 90 per cent) had a negative view of the principles proposed in the discussion document, while approximately five per cent were positive.
72. A small number of submitters supported the general focus and content of the principles. Most of these submitters talked about their support for particular principles in their submission (see **Section 3.1.4**).
73. Those expressing negative views toward the principles generally discussed the overall focus and content of the principles in their submissions. Reasons given by submitters for opposing the general focus of the principles included that the principles:
  - reflect a particular ideological position, including a focus on individual rights at the expense of the public good, the Treaty/te Tiriti, Māori rights and interests, collective rights, and equality over equity (see **Section 2.2.3**).
  - are too limited and exclude concepts widely understood to underpin legislative quality (such as obligations under international law or privacy) or values important to many New Zealanders such as social wellbeing and environmental sustainability
  - are expressed as strict legal tests that would be difficult for any legislation to meet, rather than flexible concepts open to interpretation
  - have the potential to conflict with each other, with no clarity as to how such conflicts would be resolved
  - are based on a conceptualisation of regulation as an unwanted limit on rights and freedoms, rather than a tool that Government can use to achieve broader outcomes, limiting the areas in which the government can legitimately legislate
  - duplicate or are inconsistent with other principles or understandings in law (e.g. in the New Zealand Bill of Rights Act 1990) or elsewhere (e.g. the Legislation Guidelines), or would be better provided for by amending other legislation (e.g. the New Zealand Bill of Rights Act 1990)
  - are in many cases hard to define and interpret, leading to uncertainty and an increased risk of litigation
  - are unlikely in their current form to receive broad public or political support and should therefore not be applied to all legislation, or used to try and bind future governments.



74. Some submitters expressed concern about how the principles had been developed, recommending that, if the principles were intended to reflect fundamental values, they needed to be developed with input from a broad range of New Zealanders.

### 3.1.4 Feedback on individual principles

#### *Rule of law*

75. Some submitters expressed support for a rule of law principle, with submitters stating it was necessary to place limits on administrative discretion and that it would help avoid regulatory takings.
76. Other submitters agreed that the rule of law is an important principle for good law-making, but thought the proposed expression of the principle should be expanded in several ways, including adding in specific references to:
- human rights including all of those set out in the New Zealand Bill of Rights Act 1990
  - the law being intelligible, predictable, and having a clear purpose
  - the ability to monitor and enforce the law
  - that the laws of the land should apply equally to all, except to the extent that objective differences justify differentiation
  - appropriate exercise of powers
  - compliance with international law.
77. Submitters raised concerns with the way that the rule of law is expressed in the proposed principle, for instance:
- The focus on equality before the law was perceived to entrench historical injustices and systemic inequities, particularly for Māori, given the potential for it to undermine affirmative action, equity-based policies, and protections for vulnerable groups (see **Section 2.2.4**).
  - Submitters sought clarity on whether all persons being treated equally before the law would require substantive or procedural equality, or both, and who the decision maker would be – it was suggested that if this was applied procedurally then it would be inconsistent with Article Two of the Treaty/te Tiriti.
  - There was a view that the proposed formulation needed to explicitly provide for the status of Māori as Treaty/te Tiriti partners and their distinct cultural frameworks.
  - The proposed limitations on administrative discretion were seen as potentially making it harder for future governments to respond to emerging challenges



such as climate change, and respond to the broader public's expectations (see **Section 2.2.4**).

78. More broadly, some submissions noted that the exact nature of the rule of law is contestable, and that careful work would be required to ensure that any rule of law principles line up with settled understandings.

#### *Liberties*

79. Some submitters expressed a view that the proposed liberties principle was novel, ambiguous or overly narrow and restrictive. For instance, some submitters thought that the principle was inconsistent with approaches in comparable overseas jurisdictions, and others expressed a view that the concept of absolute property rights on which the principle is based does not have a sound basis in western legal tradition.
80. Other submitters thought that the values expressed in the proposed principle did not have a settled meaning in law, and that this could lead to significant uncertainty.
81. Submitters were concerned that the focus on the liberties principles excluded important concepts - for instance other aspects of liberty (such as political freedom, freedom of religion, freedom of association and freedom of speech) or the rights of the environment as provided for in some settlement legislation. Some submitters saw this narrow focus as undermining protections for Māori cultural practices and legal frameworks rooted in tikanga, which prioritises communal responsibilities alongside individual freedoms.
82. Another common theme was concerns around how this principle could impact on how private property rights and public good objectives are balanced, potentially restricting governments' ability to undertake basic functions (such as enabling the effective and efficient operation of markets) because these would likely be inconsistent with such a restrictive principle.

#### *Taking of property*

83. A small number of submitters expressed strong support for a broad takings principle, including a requirement to compensate businesses or individuals where government actions impact on their ability to use their land, buildings or other property.
84. However, the majority of submitters that commented on the takings principle either did not support or explicitly opposed the takings principle. Concerns raised by these submitters included:
- a lack of definition of key concepts including “property”, “taking”, “impairment,” leading to significant regulatory uncertainty (e.g. for network utility operators or in relation to government-led climate adaptation policies)
  - a failure to recognise collective ownership and customary rights central to tikanga Māori



- significant fiscal and legal risks for the Crown caused by requirements to compensate corporate interests for the loss of a ‘property right’ and consequential limitations on Governments’ ability to regulate to prevent harm to New Zealanders.
85. Many of these submitters also questioned how this would apply to protected Māori land or resources. It was suggested that the Crown could prioritise private or corporate interests over Māori land protections, potentially undermining Māori aspirations for tino rangatiratanga over whenua.
86. Many of these submitters questioned the concept that those who obtain the benefits of a taking or impairment should provide compensation, with submitters expressing views that this would be very difficult to apply in practice, is not a well-recognised concept, and could have a disproportionate impact on certain population groups.
87. Other feedback was that the taking should be subject to a public interest test and that provision for any property right principle should be made through the New Zealand Bill of Rights Act 1990 rather than through the proposed Bill.

#### *Taxes, fees and levies*

88. A small number of submitters supported the inclusion of principles relating to taxes, fees and levies, with a suggestion that transparency relating to the setting, collection and disbursement of fees and levies would improve the efficiency of service provision where cost-recovery regimes operate.
89. The other submitters that expressed a view on this principle did not support its inclusion because:
- it would be difficult and complex to apply, particularly where costs or benefits were difficult to quantify
  - it prioritises economic considerations over social and cultural obligations which could constrain the government’s ability to fund crucial services disproportionately affecting Māori communities
  - many of the concepts are not well-defined and could lead to considerable uncertainty and/or litigation – for instance determining what a “proper relationship” is between a fee and the costs of provision
  - the proposal in relation to levies would compromise the government’s ability to provide safety nets for the most vulnerable and under-resourced people and communities.

#### *Role of courts*

90. There was limited feedback on the role of courts principle. This included submitters recommending reframing the principle in terms of legal scrutiny and accountability for regulatory decision-making rather than in relation to rights and liberties; support



for limiting administrative discretion; and a concern that the wording of the principle oversimplifies a complex concept.

#### *Good lawmaking*

91. There were a range of views on the proposed good lawmaking principles. There was some support for a focus on a good problem definition as the most important stage of good regulation, including a view that regulatory measures must avoid permanent or widespread market distortion and mitigate the risk of unintended consequences – and should be used only where the public interest test has been met, such as significant market failure.

92. Other feedback included views that:

- good law-making should include consistency with the Treaty/te Tiriti, and there should be specific provision for meaningful engagement with Māori
- the consultation principle does not go far enough and should focus on ‘effective’ or ‘meaningful’ consultation (including providing sufficient time and giving people’s views serious consideration)
- consultation should be broader than just those that Government “considers” are substantially affected by the legislation, including people having the ability to self-identify as being affected
- costs and benefits need to be defined broadly beyond economic costs (i.e. social or environmental costs)
- the tests in the principles are worded too strongly – for instance, the costs and benefits principle leave insufficient room for value judgement even though decisions about benefits and costs routinely involve these types of judgements, and it will not be possible to determine whether legislation is the most effective, efficient and proportionate response available.

#### *Regulatory stewardship*

93. Most submitters which commented on the regulatory stewardship principles were broadly supportive. Feedback included views that good regulatory stewardship is an area that needs increased focus, and that these principles were likely to be the most impactful.

94. However, other submitters expressed a view that effective stewardship must incorporate a Treaty/te Tiriti and tikanga-centred approach that recognises the interconnectedness of people, land, and future generations, and must actively include and elevate Māori perspectives to ensure the sustainability and inclusivity of regulatory frameworks.

95. Other submitters were concerned about how ‘undue costs’ might be defined in the context of preventing harm to New Zealanders.





*Issuing of guidance*

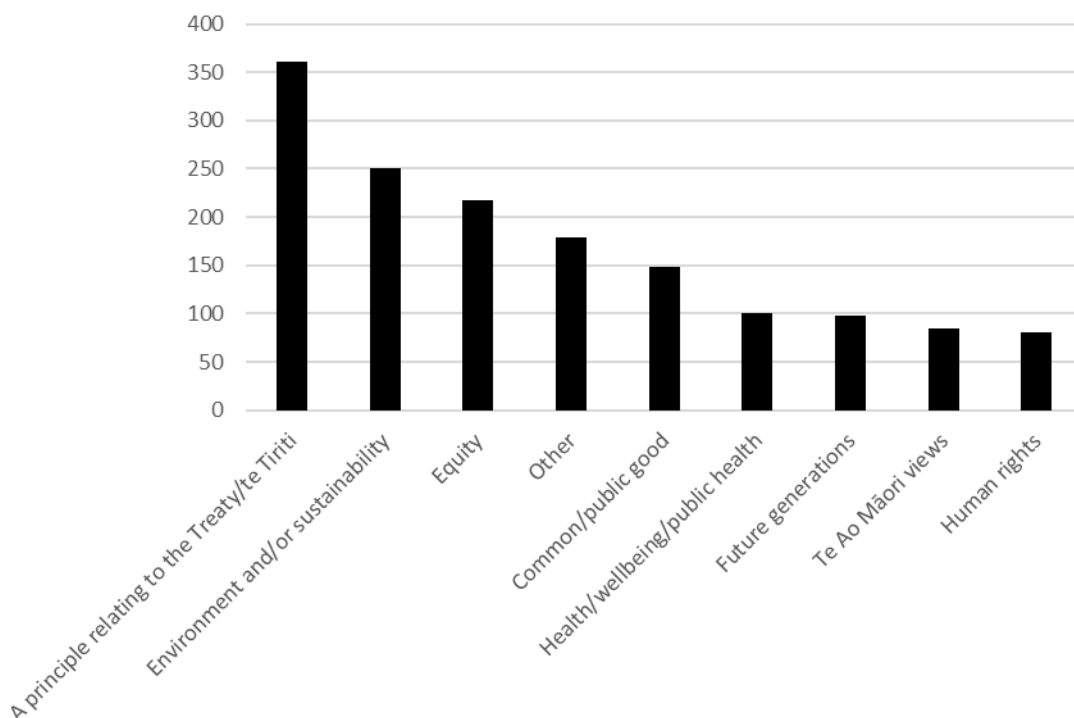
96. A small number of submissions questioned whether the proposed provision for guidance (to support the application of the principles) would allow for sufficient transparency or public scrutiny, and/or whether it would give the Minister for Regulation too much power.

### **3.1.5 Feedback on alternatives or improvements**

97. Many submissions included suggestions for additional or alternative principles, including:
- provision for Treaty/te Tiriti related principles
  - provision for meaningful Māori participation
  - a stand-alone principle for proportionality
  - protections for democracy and strengthened accountability, for example that regulatory powers should be exercised in good faith and requirements for public participation, transparency and open government
  - protections in relation to the wellbeing of future generations, the environment, social equity, human rights and health and safety (this included variations of principles relating to minimising public harm, distributive justice, and sustainability)
  - adopting a precautionary approach where there is uncertainty or in the absence of adequate evidence
  - principles relating to protecting privacy, data and Māori knowledge
  - public good, collective good and long term good
  - provision for New Zealand's obligations under international conventions, such as the United Nations Convention on the Rights of the Child, and the United Nations Convention on the Rights of Persons with Disabilities, and UNDRIP
  - principles relating to workability and compliance, where all legislation should be able to be complied with
  - other legislative design principles such as certainty, proportionality, flexibility, and technological neutrality, with submitters often referring to the Legislation Guidelines from the Legislation Design and Advisory Committee.
  - principles to support increased productivity.
98. **Figure 4** sets out the number of submissions which raised alternatives within the sample of submissions.



*Figure 4: Views on additional or alternative regulatory responsibility principles (from the sample of submissions)*



## 3.2 Mechanism for ensuring consistency with the principles

### 3.2.1 Discussion document proposal (discussion area 2)

99. The discussion document proposed that the Bill would provide for a new consistency mechanism, which involves assessing new and existing legislation against the principles. For new legislation, consistency assessments would take place before a proposal comes to Cabinet and when legislation is introduced or published. For existing legislation, consistency assessments would take place as part of the duty on government agencies to review the stock of legislation they administer.



### Relevant discussion document question(s)

- Do you agree that there are insufficient processes in place to assess the quality of new and existing regulation in New Zealand? If so, which parts of the process do you think need to be improved?
- Do you think that the new consistency checks proposed by the Regulatory Standards Bill will improve the quality of regulation? Why or why not?
- Do you have any suggested changes to the consistency mechanisms proposed in this discussion document?
- Which types of regulation (if any) do you think should be exempt from the consistency requirements proposed by the Regulatory Standards Bill (for example, regulation that only has minor impacts on businesses, individuals, and not for-profit entities, legislation that corrects previous drafting errors, or legislation made under a declared state of emergency)?

### 3.2.2 Feedback on the proposed process

100. Submitters expressed mixed views around the proposal to assess consistency against the proposed principles of the Bill, particularly in relation to the legislative design principles.

101. Submitters that supported the concept of a new consistency mechanism often did so on the basis of improved transparency and accountability in the development and maintenance of legislation (see **Section 2.3.2**). They also raised concerns that the proposed process should not become a ‘tick-box exercise’ and that for it to be successful it would require a shift in how officials provide advice on regulations. These submitters also raised the importance of capability building for officials to enact the new process.

102. Submitters that opposed the proposed process expressed concern around inefficiencies and costs associated with the consistency assessment process. These concerns included a duplication of the role of existing mechanisms and institutions (e.g. the roles of the Parliamentary Counsel Office and the Legislation Design and Advisory Committee in legislative development), additional time and cost for Ministers and agencies incurred in producing consistency assessments (and explaining inconsistencies), and the view that consistency checks would impose undue burdens affecting the efficiency and timeliness of law-making. Some of these submitters raised concerns that the proposed role of the Minister in providing guidance around the consistency process would result in uncertainty should it be able to change at a whim.



103. Many submitters raised concerns about the lack of consultation provisions for Māori or reference to the Treaty/te Tiriti (see **Sections 2.2.3 and 2.4**).

### **3.2.3 Feedback on exemptions**

104. Submitters had mixed views on the categories of legislation that should be exempt from consistency mechanisms, though noted that a consistent approach is needed to ensure robust levels of scrutiny and accountability. Suggestions for exemptions included:

- any legislation that relates to the protection of rights guaranteed under Article Two of the Treaty/te Tiriti, along with Treaty/te Tiriti settlements.
- emergency legislation in the case of natural disasters or public health emergencies (some submitters considered this should be subject to ex post review)
- legislation with minor impacts, for example that corrects drafting errors
- regional rules and local bylaws, with some submitters stating this would place unreasonable costs on local government
- more technical requirements such as notices, codes, guidelines, standards and rules.

105. Some submitters considered that the public should be consulted on proposed exemptions based on set criteria developed by the Ministry. Amongst submitters that supported the proposed process, some were concerned that exemptions or exemption powers would reduce the efficiency of the proposed Bill.

### **3.2.4 Feedback on alternatives or improvements**

106. Submissions generally expressed support for existing arrangements that support transparency in the law-making process, including regulatory impact statements and disclosure statements (see **Section 2.2.1**). Feedback noted that existing arrangements could be improved through increasing public participation, requiring compulsory Treaty Impact Assessments, incorporating a Treaty/te Tiriti and tikanga centred approach, improving the quality of impact analysis, and embedding additional analytical frameworks (e.g. rights and freedoms, sustainability) in the law-making process.

107. Submitters emphasised the importance of maintaining the existing stock of legislation, such as through Regulatory Systems Amendment Bills, and the need for government agencies to be properly resourced to carry out this function.



## 3.3 Regulatory Standards Board

### 3.3.1 Discussion document proposal (discussion area three)

108. The discussion document proposed a Regulatory Standards Board that would consider complaints from the public about inconsistencies between existing regulation and one or more of the proposed regulatory standards principles, and consider the operation of regulatory systems (e.g. how well regulation is being implemented).

#### Relevant discussion document question(s)

- Have you used any of the existing mechanisms described above to raise issues or bring complaints about the quality of regulation to the Government? If so, did you find them effective?
- Do you think that New Zealand needs a new structure or organisation to consider complaints about the quality of regulation? Why or why not?
- If a new structure is created specifically to consider complaints about regulation:
  - do you think a Regulatory Standards Board would be the best mechanism to do this?
  - are there any alternatives that you think would be preferable to the proposed Board for investigating complaints about regulation?
- Do you have any views on the detailed design of the proposed Board, including how it would operate and the proposed number of members?
- In your view, what individual skills or experience should Board members have?

### 3.3.2 Feedback on the proposed Regulatory Standards Board

109. A small number of submitters noted support for specific aspects of the proposed Board's design. They agreed with the proposed structure of the Board which facilitates decision-making by an independent committee, and the Board's role to produce non-binding recommendations.

110. These submissions considered that the proposed Board could mitigate the incentives to maintain the status quo by actively focusing the attention of Ministers and agencies on improving the quality of existing legislation and regulatory stewardship, including by raising the profile of whether proper processes have been followed. Submitters also considered that using a Board to assess consistency with the proposed principles for responsible regulation would be less costly than the courts, would expand the range of avenues for the public and businesses to voice complaints about existing



legislation, and may be more consistent and effective than existing mechanisms (e.g. courts and agencies' processes).

111. Some submitters that supported the Board considered that for it to be effective it needed to be fully independent from Ministers and officials responsible for the regulatory regimes it would assess.

112. The majority of submitters that commented on the proposed Regulatory Standards Board opposed the concept. A common concern raised in the sample of submissions was that it would fail to recognise the constitutional role of the Treaty/te Tiriti because the proposed Bill makes no provision for te Tiriti/the Treaty or Māori rights and interests. Submitters raised concerns that without such a provision, the Board would breach te Tiriti/the Treaty (see **Section 2.2.3**). More specifically, submissions considered:

- that under the Bill, Māori would be increasingly excluded from decision-making processes that affect them, and this may reinforce systemic inequities
- that the lack of hearings and the ability for the Board itself to determine what constitutes 'reasonably available information' would enable the Board to dismiss the collective rights of Māori without the public having the opportunity to scrutinise the process or affect its outcome
- the absence of provisions to ensure Māori representation within the decision-making process could undermine the principle of partnership and the Crown's duty to actively protect Māori interests.

113. Submitters raised concerns that the Minister/Ministry for Regulation would have too much power if the Minister for Regulation appoints all the Board members, uses the proposed exemption criteria too freely (as this may result in politicised decisions) or has a role to interpret other agencies' legislation both through the Board and the Ministry for Regulation. Similarly, submitters raised concerns that the Board would fail to be representative, unbiased and transparent; in particular that that the Board would be politically motivated, have no requirements for diverse representation, have no oversight, and have too much freedom to undertake reviews at its own behest.

114. Submitters considered that the proposed Board would disproportionately amplify the voices of certain private people or corporations who have the resources to file complaints or whose interests are served by the proposed principles (see **Section 2.2.4**). Submitters also expressed their view that the Board would remove or limit the role of the courts in providing regulatory oversight and/or interpretation of laws.

115. Other issues with the proposed Board raised in the sample of submissions included:

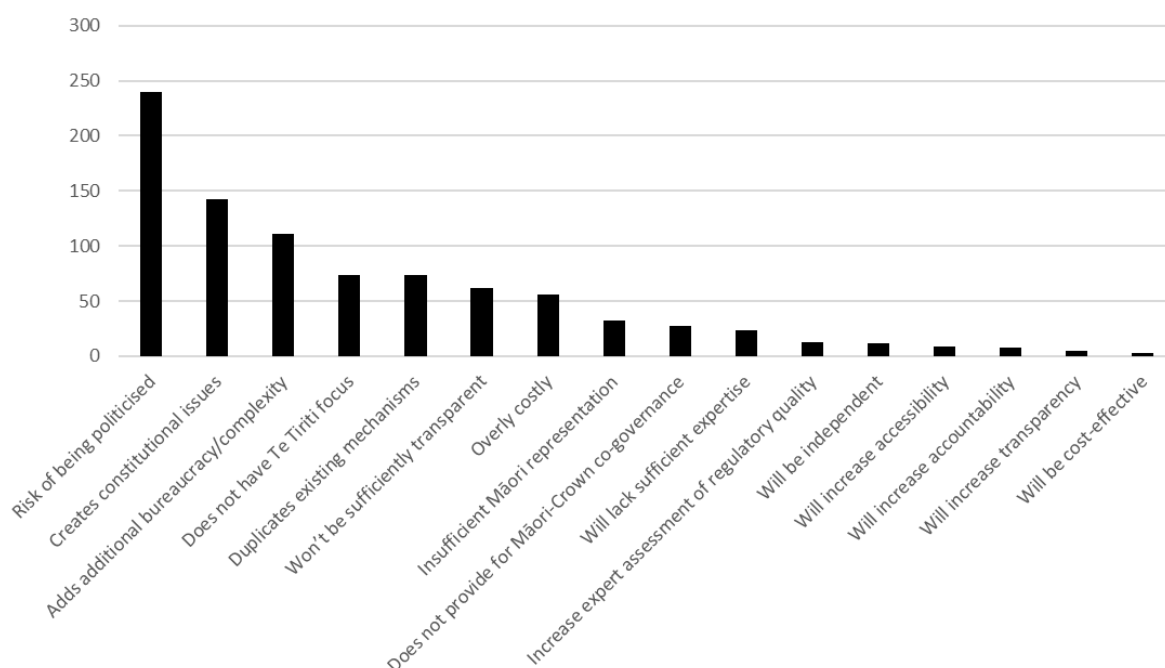
- that it would duplicate existing assurance mechanisms, without maintaining transparency and accountability (see **Section 2.2.1**)



- that it would be too separate from regulatory realities to make practical recommendations, and may introduce legal complexities to existing regulatory processes
- that the work of the Board would add to workload pressures for agencies which would result in resources being diverted away from other work
- questioning whether it could operate as a low-cost mechanism - submitters considered it would add unnecessary costs, bureaucracy and complexity, and would slow the passage of legislation through Parliament
- that it would be ineffective due to its proposed design, function and makeup, especially considering its recommendations are non-binding, and
- that it would face constant challenges due to the high workload demand and the complexity of the issues and trade-offs it must assess, considering the principles it has to apply would be too broad which would generate uncertainty.

116. **Figure 5** summarises the strengths and weaknesses of the proposed Regulatory Standards Board raised in the sample of submissions.

*Figure 5: Views on the design of the proposed Regulatory Standards Board (from the sample of submissions)*



117. Some submitters made suggestions they considered would improve the proposal for the Board, including:

- the Board should include Māori cultural and legal advisors, or establish a separate Māori body within it that would be tasked with ensuring Treaty/te Tiriti obligations are met



- the Board should be required to consider te Tiriti/the Treaty principles in their assessments alongside the proposed principles for responsible regulation
- the Board's complaint process should be clear, culturally appropriate, and accessible to all communities, including Māori, to ensure barriers to participation are minimised
- the Board should host oral hearings to support their consideration with input from affected parties and to hear about a wider range of impacts and effects
- the Board should be required to consult with the Attorney-General on issues related to the rule of law
- the Board should have the power to consider complaints about specific regulatory decisions, as these decisions may be evidence of systemic issues
- the Board should have robust appointment and membership policies, including term limits and whether members can sit on the Board for multiple terms
- there should be constraints to prevent politically driven inquiries commenced at the Minister's direction or at the Board's own accord
- the Board should be required to consider the Treaty/te Tiriti principles in their assessments alongside the proposed principles for responsible regulation, and
- the Board should have a narrower scope with constraints to prevent its scope from being increased at a later date by the Minister for Regulation.

### 3.3.3 Feedback on the skills and experience of Board members

118. Submitters who commented on the skills and experience that Board members should have, focused on four core themes:

- **Māori rights and interests:** Submitters considered that the Board should be suitably large enough to include Māori cultural and legal advisors, or establish a separate Māori body within it, tasked with ensuring Treaty/te Tiriti obligations are met. Some submitters suggested that board members should also have expertise in Māori law and governance, and cultural impact assessment as well as experience with consultation and engagement with Māori communities.
- **Professional backgrounds:** Submitters suggested a range of professional backgrounds should be represented on the Board. These included regulatory policy, business, legal, finance and economic professions. Many submitters noted the importance of Board members having some private sector experience. Some suggested submitters that the Board could seek advice from people with technical expertise in the specific regulations under review.
- **Specific subject matter expertise:** Submitters also suggested that the proposed Board seek members who have specific expertise including: cost-





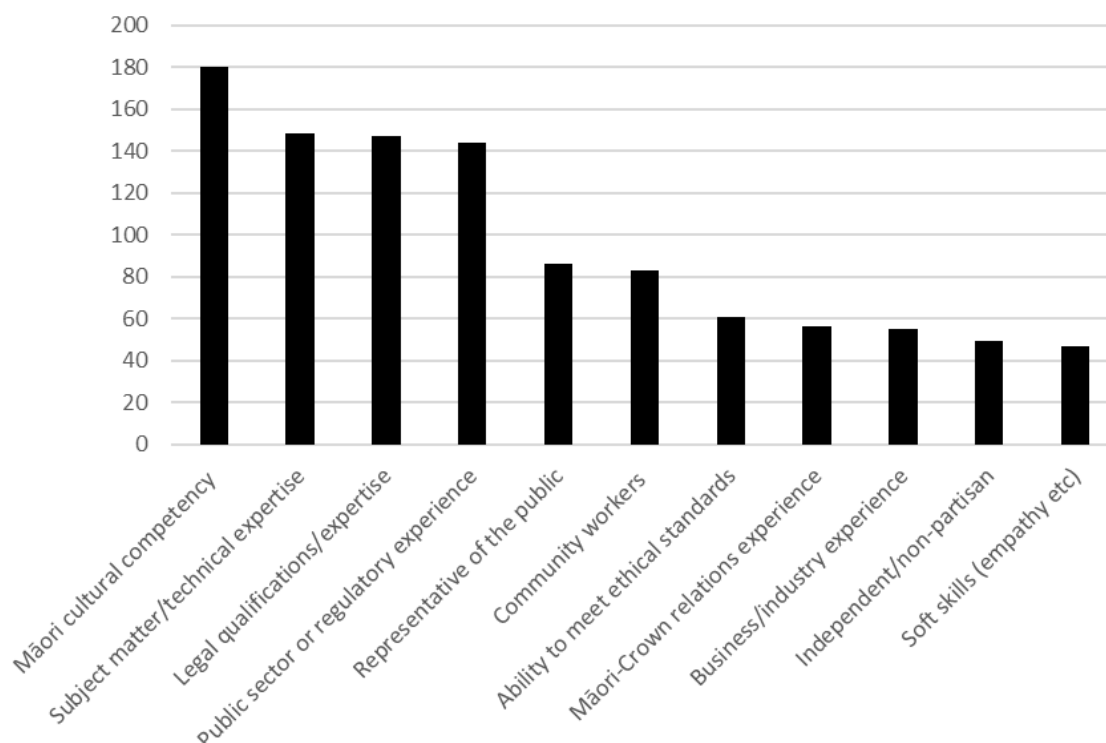
benefit analysis, environmental management, social policy, human rights, international development, community sector, infrastructure, local government, and regulatory policy in other markets. Comparisons were made by submitters with the Legislation Design and Advisory Committee which includes a broad range of expertise across health and safety, taxation, Crown law, employment, international obligations, and governance.

- **Community representation:** Some submitters suggested that it would be beneficial for the Board to either include a member of the community or consult community members to bring in representative views of parties who are affected by specific legislation and regulations under review.

119. Submitters also suggested that it is important for Board members to not have overt political affiliations or conflicts of interest and raised the need for Board members to meet ethical standards so they can be relied on to act in good faith. Some submitters noted there would need to be external oversight of the Board, potentially including independent reviews to ensure it remains effective.

120. **Figure 6** summarises the views expressed within the sample of submissions of what expertise and experience the proposed Board should have.

*Figure 6: Views on required expertise and experience of the proposed Regulatory Standards Board (from the sample of submissions)*



### 3.3.4 Feedback on alternatives to a Regulatory Standards Board

121. Submitters raised several alternatives to the proposed Board.



- **Strengthening existing mechanisms for Parliamentary oversight:** Some submitters pointed to existing mechanisms such as the Regulatory Impact Analysis process and input from the Legislation Design and Advisory Committee. It was also suggested that, if the proposed Board is established, its reports should be subject to scrutiny by the Legislation Design and Advisory Committee or a similar body.
- **A Parliamentary Commissioner, such as the Ombudsman:** Some submitters raised that the proposed Board may overlap with the Ombudsman's existing functions including how the Ombudsman can form an opinion that an agency is acting in accordance with a law which is inconsistent with fundamental regulatory principles; and investigate any act or decision of a government agency that is within jurisdiction, and could form an opinion that the act or decision was based on an unreasonable law.
- **The Courts:** Some submitters that suggested this alternative noted their preference for the Courts to maintain their current functions regarding the testing of legislation in response to legal proceedings while some warned that the functions of the proposed Board may impinge on the role of the Courts.
- **A Parliamentary select committee:** Some submitters acknowledged the Regulatory Review Committee (RRC) and suggested this as an alternative with the advantage of its members being democratically elected. Other submitters proposed that the role of the RRC could be expanded to take on the functions of the Board.
- **An independent Iwi Māori-led body:** Some submitters suggested such an oversight body could be Treaty/te Tiriti based to ensure Iwi Māori perspectives on the evaluation of regulations are prioritised. These submitters suggested it could apply a framework that focusses on evaluating regulatory quality through a holistic framework that considers cultural, social, environmental, and intergenerational impacts, alongside economic factors.
- **A co-governance model:** This was suggested by submitters to be a regulatory oversight body co-governed by Māori and Crown representatives to support high-quality regulatory development.
- **Members of Parliament and responsible government agencies:** Some submitters noted that they have used this existing mechanism to raise complaints about the quality of regulation with mixed results. There were a range of submissions advising that government agencies should be better resourced to allow for more frequent review of the legislation they administer.
- **The Ministry for Regulation:** Some submitters that suggested this alternative pointed to the range of regulatory reviews that have commenced, noting the



Ministry's role to consider the quality of regulation across government, and that this alternative would be more cost-effective than establishing a Board.

- **A Citizens' Assembly:** A few submitters presented the alternative of a citizens' assembly. This would be a group of members of the public that meet periodically to review regulation quality and impact and make proposals to the government on how to make improvements.

## **3.4 The Ministry for Regulation's oversight role and regulatory stewardship**

### **3.4.1 Discussion document proposal (discussion area four)**

122. The discussion document proposed that the Bill include provisions to support the Ministry's regulatory oversight role. These provisions would include a requirement for agencies in relation to the regular review, maintenance, and improvement of the legislation they administer, and requirements for the Ministry to regularly report on the overall performance of the Regulatory Management System.

123. The discussion document also proposed giving the Chief Executive of the Ministry information-gathering powers to require information from a range of entities for the purposes of conducting regulatory reviews. Entities within scope of the power would include public service agencies, statutory Crown entities, local government, entities that make or administer secondary legislation, entities that undertake a regulatory function and third-party service providers contracted by government to support the delivery of a regulatory function. Information-sharing powers would not override prohibitions or restrictions on the sharing of information already set down in legislation.



#### **Relevant discussion document question(s)**

- Do you support the proposals in this section for strengthened regulatory stewardship expectations on agencies to be set out in a Bill?
- Do you agree that there may be some situations where a power for the Chief Executive of the Ministry for Regulation to obtain information will be required to help decide whether a regulatory review is warranted and to inform regulatory reviews?
- Do you agree that the proposed information gathering powers are justified for the purpose of informing regulatory reviews? Do you think the powers should apply to all the types of entities listed above, or only some?
- Do you think the information gathering powers are broad enough to enable the Ministry for Regulation to undertake regulatory reviews effectively and efficiently?
- Do you think any safeguards or procedures should be applied to limit how the information gathering powers are used by the Ministry for Regulation? What safeguards do you think should be put in place?
- Do you support the proposals in this section in relation to the Ministry for Regulation's broad oversight role?
- Are there any other measures you think a Bill should contain to support the quality of regulation?

### **3.4.2 Feedback on the Ministry for Regulation's broad oversight role**

124. Some submitters supported the intention of the Ministry's regulatory oversight role, including to undertake regulatory reviews. However, there were caveats that included ensuring a framework for Māori participation, including consultation when regulatory reviews impact Māori rights and interests and a concern that the focus will be on legislation rather than reviews and overall regulatory stewardship. Some submitters suggested that quantitative analysis should be a key input to the Ministry's role to ensure it is evidence-based.

125. Submitters that opposed the proposal raised concerns that the Minister and Ministry would be given disproportionate power or influence over other government entities to set expectations and influence legislative and regulatory decision making without adequate accountability mechanisms. Several submitters questioned what oversight would be in place to ensure the Ministry is fulfilling its role appropriately. Some submitters also raised whether there needed to be additional powers considering the Ministry already undertakes regulatory reviews without them.



### **3.4.3 Feedback on the strengthened regulatory stewardship expectations and reporting**

126. Submitters generally supported strengthening regulatory stewardship expectations such as requiring the review and maintenance of legislation. Submitters supported strengthening the ex-post evaluation (as identified by the OECD) and ensuring regulatory bodies have sufficient capability to carry out their roles, however submitters also noted the effectiveness of increased oversight measures may be reduced when there is a lack of funding or investment into regulatory capability. Some submitters were concerned that the proposed expectations focused too much on legislation and should focus more broadly on regulatory systems.
127. Some submitters supported the need for regulatory stewardship but considered the proposal would be unnecessary when stewardship and accountability mechanisms already exist to scrutinise the development and quality of legislation. Mechanisms submitters pointed to were Parliamentary scrutiny, the use of subject matter expertise within individual agencies and existing legislation such the Legislation Act 2019, Crown Entities Act 2004 and Public Service Act 2020. These submitters raised the risk that additional requirements could create uncertainty where these overlap with existing requirements.
128. Submitters also raised concerns that the reporting requirements might divert agencies resources away from the core work of regulatory stewardship.

### **3.4.4 Feedback on information gathering powers**

129. Some submitters were broadly supportive of the Ministry having access to information it needed to undertake a regulatory review function. Submitters agreed there needed to be provisions to ensure the powers did not override existing prohibitions or restriction in legislation. There was also a view that an extension of the powers to the private sector would be an overreach.
130. Concerns were raised about the reasons for the powers and the need for the legislation to clearly articulate when they would be used to avoid the perception of or actual misuse. Some submitters considered that there should be safeguards, including consultation requirements, in instances where information is about or affects Māori rights and interests.
131. Some submitters noted that information gathering powers should only be used as a last resort, and that the Ministry should primarily rely on collaborative and cooperative approaches to gather information from other agencies. Others noted that powers are not necessary as mechanisms exist to seek information through the Official Information Act 1982 and Privacy Act 2020 or through voluntary mechanisms.
132. Concerns were raised about the compliance costs of requests including the resource and financial implications for agencies and local government. Submitters raised



concerns that those costs would impact on agencies and local government's ability to deliver on their key functions. Some submitters raised an option of the Ministry for Regulation covering the cost of resourcing responses to information requests or making sure requests are made to the relevant central government agency instead of local government.



## Appendix 1: Methodology

1. This section provides an overview of the process the Ministry for Regulation undertook to analyse submissions on the discussion document ‘Have your say on the proposed Regulatory Standards Bill’. It covers:
  - Submission management: how submissions were received and triaged for analysis
  - Quantitative analysis: how all submissions were analysed for stance on the proposed Bill utilising a Large Language Model (LLM)
  - Qualitative analysis: how the sample of submissions was manually analysed for themes using Citizen Space
2. The Ministry worked with a specialist consultancy, Public Voice, on the submissions management and quantitative analysis components. The analysis employed a combination of tools and technologies:
  - **R programming language:** Used for data cleaning, transformation, and initial analysis
  - **Python:** Used for advanced text processing and classification
  - **Natural Language Processing (NLP):** Employed for personal identifiable information (PII) detection and language identification
  - **Machine Learning:** Fine-tuned language models used for stance classification and submitter typing
  - **Data Visualisation:** Used to present submission patterns and trends
  - **Stata:** Used for data cleaning, data management and stance analysis.
3. Information, including private information, submitted to the Ministry was managed in line with the Ministry’s Information and Records Management Policy, and the relevant provisions of the Privacy Act 2020.

### Submissions management

4. The Ministry received a large volume of submissions and worked with Public Voice to implement several submissions management measures to support analysis.

#### *Receiving submissions*

5. Submissions were received via email and Citizen Space (a digital consultation tool that utilises an online form for submissions). All submissions received before 11.59pm, 13 January 2025 were included, and further email submissions were included if they were sent within 32 hours of submissions closing or if an extension



was granted. Re-submissions were accepted up to 17 January 2025 where the original submission was received in an inaccessible format.

#### *Triaging submissions*

6. Duplicate submissions were removed. Where a person submitted as an individual via both Citizen Space and email, these were combined into a single submission. Where one email contained multiple separate submissions, each was treated as a separate submission. Where one submission was on behalf of multiple people/contained multiple signatures, we treated it as a single submission.
7. Some emails were received that were submissions on other policy proposals under consultation. These senders were notified and redirected towards the appropriate contact point for the intended policy proposal.
8. AI and other tools were used to identify potential instances of duplicate and multiple submissions, submissions made in te reo Māori, submissions containing Official Information Act requests, and submissions that did not relate to the proposed Regulatory Standards Bill. This was then confirmed manually. Where multiple emails were received from the same email address this was also confirmed manually whether they were separate or duplicate submissions.
9. Submissions made in te reo Māori were translated.

#### *Classifying types of submitters*

10. Submissions were classified as being from an individual, on behalf of an organisation, or on behalf of iwi or hapū. For Citizen Space this was a collected field. For emails, AI was used to assign a type of submitter, which was manually confirmed in each case where a submitter was classified as not an individual.

## **Quantitative analysis**

11. The Ministry worked with Public Voice to classify support and opposition to the proposed Bill for all submissions.
12. All emails and Citizen Space submissions were assigned a preliminary classification by Public Voice using a LLM that followed a logic model created by the Ministry.
13. Submissions were classified as either:
  - **Support:** Clear indication of support for the Bill
  - **Partial Support:** Support with significant reservations or suggested modifications
  - **Oppose:** Clear indication of opposition to the Bill
  - **Unclear:** No definitive stance or mixed messaging preventing clear classification





14. A sample of submissions was then manually assigned a classification by Ministry staff. The LLM was then refined until it produced results that closely matched the manual classification of the sample.
15. Further quality assurance measures included regular review and validation of automated classification results; and cross-checking of results between different analysis methods. This methodology enabled efficient processing of a large volume of submissions while maintaining analytical rigour and consistency across different submission formats and content types.

## **Qualitative analysis**

16. The Ministry undertook qualitative analysis of a sample of 939 submissions to analyse the themes raised in submissions and feedback on specific policy proposals.
17. The sample of submissions included any submission exceeding 10,000 characters or made on behalf of an organisation, iwi or hapū – this included 482 individual submissions, 357 submissions on behalf of organisations and 100 submissions on behalf of iwi or hapū.
18. In addition to these 939 submissions, there were 605 submissions that met the criteria above but used text of another submission or the publicly available submission of another individual or organisation; these were identified and grouped together to ensure that they were analysed consistently. Note that Figures 1-6 in this document do not include these further 605 submissions.
19. The qualitative analysis process involved several staff across the Ministry manually reviewing the sample of submissions (both email and Citizen space submissions) and applying thematic tags. This involved the manual analysis of approximately 4.1 per cent of all submissions which is equivalent to 34.4 per cent of all text received (this is due to the significantly longer average length of submissions within the sample compared to all submissions). Thematic analysis completed through this process was then collated into topic area reports which fed into the summary of submissions. Where possible, the results of tagging were also represented visually.



# Regulatory Impact Statement: proposed Regulatory Standards Bill

<b>Decision sought</b>	This analysis is produced for the purpose of informing final Cabinet decisions on a proposed Regulatory Standards Bill.
<b>Agency responsible</b>	Ministry for Regulation
<b>Proposing Ministers</b>	Minister for Regulation
<b>Date finalised</b>	26 March 2025

The Regulatory Standards Bill (the proposed Bill) aims to:

- promote the accountability of the Executive to Parliament for the development of high-quality legislation and regulatory stewardship
- support Parliament to scrutinise bills and oversee the power to make delegated legislation.

The proposed Bill will seek to achieve this by:

- providing a benchmark for good regulation through a set of principles of responsible regulation that all legislation should comply with
- establishing a requirement for agencies to assess consistency of legislation with the principles to give them effect
- requiring disclosure of the reasons for any identified inconsistencies
- establishing a statutory Board to carry out inquiries in relation to the consistency of proposed and existing legislation
- strengthening regulatory system stewardship requirements
- supporting the Ministry for Regulation in its work to improve the quality of regulation<sup>1</sup>

## Summary: Problem definition and options

### What is the policy problem?

The quality of regulation is important, but there are competing drivers and insufficient incentives to deliver consistently good regulation. Competing drivers include strong pressures to act fast. There are insufficient incentives for careful scrutiny, monitoring and review. These factors are exacerbated by some systematic human biases and sometimes

<sup>1</sup> With the exception of the information-gathering powers addressed in Section 2A of this RIS, the other powers and expectations for the Ministry for Regulation and regulatory stewardship expectations for agencies were exempted from the regulatory impact analysis requirements (per Cabinet Office circular (24) 7), under the criteria minor or limited economic, social, or environmental impacts.

insufficient understanding of what is required to deliver quality. Views also differ on what ‘quality’ means.

Over time, governments have introduced expectations, tools and processes that make up the current Regulatory Management System (RMS) that build on or complement scrutiny processes developed by the House. However, these have had limited effectiveness to date.

We do not expect that there will be major changes in Parliament’s own scrutiny arrangements or scrutiny capacity. There appears, however, to be scope for some further development and strengthening of the RMS, particularly relating to the monitoring, review and maintenance of existing legislation and regulatory systems, where few RMS tools are currently in place. The OECD iREG survey results for New Zealand tend to support that assessment.

During public consultation on a proposal for a Regulatory Standards Bill, submitters were asked for their views on whether there are issues with regulatory quality in New Zealand. Most submitters who commented on this considered there were no, or only minor, issues with regulatory quality and that the current mechanisms, such as Regulatory Impact Analysis (RIA) requirements, would be a better way to address any issues.

A small number of submitters did consider there is a significant issue with regulatory quality in New Zealand, raising specific examples of what they perceived as poorly designed and/or overlapping regulations. Views raised by these submitters included that the current incentives around lawmaking did not result in lawmakers or regulators appropriately considering the costs of making bad or poorly designed regulations.

#### **What are the policy objectives?**

The policy problem is broad, multi-faceted and difficult to address. Other countries also struggle with the same issues. As such, the options assessed in this RIS do not attempt to solve the entirety of the policy problem. Rather, the options seek to identify feasible steps forward in relation to this broad policy problem through changes or enhancements to current RMS tools and processes, including new legislative provisions.

In particular, the options assessed in this RIS aim to increase the quality of regulation by:

- increasing the attention of the government on the monitoring, review and maintenance of existing legislation and regulatory systems
- improving the quality of new and amended legislation through strengthening expectations, tools and processes, and increasing the level of compliance with current expectations, tools and processes.

#### **What policy options have been considered, including any alternatives to regulation?**

Preferred policy packages include:

- setting standards for regulatory quality by establishing legislative design and good law-making principles in primary legislation; requiring assessments of proposed and existing legislation for consistency with these principles, unless exempted; providing for a regulatory oversight role for the Ministry in legislation; and establishing a statutory Board to independently consider the consistency of proposed and existing legislation  
**(Minister’s preferred package)**
  - In this package, the majority of proposed primary and secondary legislation, as well as existing primary legislation, would be in scope of the consistency assessment requirements. There are some specific exclusions (e.g, for Statute Amendment Bills, and Budget-related legislation), as well as the ability to exempt

additional classes of legislation in the future. Whereas, existing secondary legislation is initially not in scope by default, with the expectation that some classes of secondary legislation will be brought in (via a Notice) at a later date.

- setting standards for regulatory quality in secondary legislation by building on the disclosure statement regime (through Part 4 of the Legislation Act 2019 coming into force); requiring disclosure against those standards for proposed primary legislation and selected secondary legislation; providing for a regulatory oversight role for the Ministry in legislation; and EITHER establishing a statutory Board to independently consider the consistency of proposed and existing legislation OR having the Ministry fulfil this role. **(Ministry's preferred package)**

*Other options considered – standards for regulatory quality:*

- setting standards through administrative mechanisms, such as Ministerial guidance, rather than in primary legislation
- establishing a narrower set of principles in primary legislation focused solely on good lawmaking
- establishing a few very broad principles in primary legislation that cover the full range of standards set out in the *Legislation Guidelines*, with more detail set out in administrative guidance
- establishing a few very broad principles in primary legislation that cover the full range of standards set out in the *Legislation Guidelines*, along with examples of the application of these principles, with more detail set out in administrative guidance

*Other options considered – assurance function:*

- establishing a new Officer of Parliament
- expanding the scope of the Regulatory Reviews Committee or establishing a new select committee
- establishing a new Crown Entity

## **What consultation has been undertaken?**

### **Public consultation**

A discussion document was released on 19 November 2024 (CAB-24-MIN-0437 refers), with public consultation open for just over 8 weeks.

Most public submissions (around 88%) opposed the proposal for a Regulatory Standards Bill, with key reasons being the perceived narrow focus of the proposal in strengthening individual rights and liberties at the expense of other objectives, the lack of provision for the Treaty/te Tiriti and broader Māori rights and interests and the likely costs relative to effectiveness.

0.33% of submissions supported or partially supported the proposal for a Regulatory Standards Bill. Submitters identified as generally supporting the proposal thought the proposed Bill would improve regulatory quality, reduce costs on business, promote economic growth or investment, or help protect institutions and property rights. Almost 12% of submissions did not have a clear position.

Of those that expressed a clear position, submissions analysed tended to prefer existing arrangements that support transparency and accountability in the law-making process, including RISs and disclosure statements, with feedback noting these could be strengthened. Submissions included suggestions for additional or alternative principles.

Submissions also suggested improving the proposed assurance function, identifying specific desirable features and processes. A summary of submissions has been provided with the Cabinet paper.

Feedback regarding the public consultation process was that it was inadequate in terms of length and timing, noting that there needs to be a broader public discussion of appropriate principles if they are to be set in legislation.

#### **Agency consultation**

Drafts of the Cabinet paper, RIS, and Treaty Impact Analysis were circulated to government agencies<sup>2</sup> for consultation. The main themes from the departmental feedback included some broad support for the objectives of the proposal, but a general preference for these to be achieved in other ways, such as strengthening regulatory impact analysis requirements or Parliamentary mechanisms. Agencies also raised concerns about the proposed principles and their application to specific regulatory systems; costs and resourcing implications; the role and makeup of the proposed Regulatory Standards Board (Board); the exclusion of provision for Treaty principles and Māori rights and interests; and the process and timing of consultation.

In particular:

- the components of the proposed Bill would duplicate, or add complexity, to existing RMS tools that support regulatory quality and transparency – for example, the proposed Regulatory Standards Board could duplicate elements of the role of the Regulations Review Committee and cut across individual Ministerial responsibility where the Board has a role in reviewing legislation before the House
- the proposed regulatory responsibility principles deviate from similar concepts in existing guidance, or conflict with objectives within existing legislation and regulatory systems
- the lack of recognition of the rights and interests of iwi, hapū and Māori due to there being no specific reference to the Treaty/te Tiriti, or its constitutional importance
- if all secondary legislation (in addition to new or amended primary legislation) was included in the requirement to assess consistency with the principles there would be significant cost and resourcing implications for agencies (and currently uncoded costs on local government, should bylaws be in scope of consistency assessments). Nearly all agencies indicated it would be challenging or unworkable to undertake the work involved within existing baselines without impacting on future government priorities and legislative programmes
  - several agencies provided feedback around classes of secondary legislation that should be excluded from the requirements for consistency assessment on the basis that it would be costly and add little value.
  - some agencies further noted that the proposed requirements would detract from resources available to undertake stewardship of the regulatory systems they administer, given that consistency assessments have a considerably narrower focus on legislation.

We note that agencies provided feedback at a point where the proposal included a requirement that all existing primary and secondary legislation be reviewed for consistency

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<sup>2</sup> Consultation on the draft Cabinet paper was primarily undertaken with government agencies within the core Crown.

with the principles within 10 years (unless exempted). This requirement no longer forms part of the proposal to be considered by Cabinet.

**Is the option in the Cabinet paper the same as the Ministry's preferred option in the RIS?**

Whilst the Minister's preferred option in the Cabinet paper is different to the Ministry's preferred option in the RIS there are elements that are consistent in both. The Ministry supports the overall objectives that the Cabinet paper proposal is seeking to achieve, but its preferred option would include a different variation of both legislative and non-legislative mechanisms to achieve those objectives. The key differences are as follows:

- The Cabinet paper proposal is to establish standards by establishing a set of legislative design and good law-making principles in primary legislation. The Ministry's preferred option is that there should be provisions for the making of standards in primary legislation, but that those standards themselves should be set in secondary legislation (that is, bringing Part 4 of the Legislation Act 2019 into force).
- The principles that would be established under the Cabinet paper proposal are selective (i.e. they do not cover all aspects of good legislative design and lawmaking that are currently covered in the *Legislation Guidelines*) and some of them are novel (in that they do not align with, or go further than, generally accepted legal values and concepts in New Zealand and relevant overseas jurisdictions). If principles are to be set in primary legislation, the Ministry's preferred option is to instead establish very high-level principles that more comprehensively cover all aspects of regulatory quality (e.g., all matters covered in the *Legislation Guidelines*), with further detail about their application set through non-legislative mechanisms.
- The Cabinet paper proposal includes a requirement that existing primary legislation within scope of the new requirements is reviewed for consistency with the principles, with the ability to include classes of existing secondary legislation by notices issued by the Minister, after approval by resolution of the House. In the Ministry's preferred option, these reviews would focus more broadly on the stewardship of regulatory systems in line with a broader set of regulatory quality standards, rather than assessing individual pieces of legislation for consistency with principles.
- The Cabinet paper proposes that new secondary legislation is included by default in the requirements to assess legislation for consistency with the principles, with provision for notices to be issued excluding classes of secondary legislation (as well as classes of primary legislation). The Ministry's preferred option would be to exclude all proposed and existing secondary legislation by default, and allow selected classes of secondary legislation to be brought into scope over time, to enable a smoother transition and ensure that agencies can focus on reviewing legislation where there is the potential for most benefit.
- The Cabinet paper proposal includes the establishment of a statutory Board (the Regulatory Standards Board) to independently review the consistency of proposed and existing legislation, acting as an incentive for Ministers and agencies to undertake robust assessments. The Ministry considers that the same objective could be achieved by the Ministry for Regulation playing an assurance role in relation to assessments of consistency (which could have the benefit of less cost, more flexibility and potentially greater stakeholder trust/buy-in), but acknowledges that there are also advantages to a statutory Board playing this role (which could have the benefit of being more effective as an incentive for Ministers/agencies to ensure robust assessments have been completed). The Ministry's preference is that the assurance function should be limited to reviewing existing legislation rather than proposed legislation, regardless of who is carrying it out –

however we have not been able to fully reflect the rationale of this view in the options analysis in the time available (see the *Limitations and constraints on analysis* section below).

Both packages include strengthening regulatory stewardship requirements for agencies and providing for the Ministry's regulatory oversight role in legislation.

## Summary: Minister's preferred option in the Cabinet paper

### Costs (Core information)

The Minister's preferred option will incur costs to the Ministry for Regulation and agencies.

The primary costs are:

*Agencies with responsibility for administering legislation:*

- Reviewing all proposed primary and secondary legislation against the principles in the proposed Bill and producing consistency statements.
- Reviewing all existing primary legislation and selected secondary legislation within scope of the new requirements against the principles, after classes of secondary legislation that warrant these assessments are set by notice.<sup>3</sup>
- Strengthened regulatory stewardship expectations for all agencies responsible for administering legislation.

The net cost to agencies is very difficult to assess and may change over time. We have estimated the minimum level of resource required to undertake high quality analysis and used data available on the known number of pieces of primary and secondary legislation to determine an indicative cost for the public service to meet the requirements set out in the proposed bill.

However, we note this data does not directly translate to the assessed difficulty of review because legislation differs significantly in scale and complexity and we have very few precedents to look to for evidence of how much effort will be necessary.

This approach to calculating costs does not account for several potential factors that could reduce costs:

- The proposed Bill provides an avenue for some classes of legislation being excluded from requirements. It is expected that there will be additional proposed legislation that may be excluded via this mechanism.
- There may be savings from the ability to use technology to support analysis.
- We also have not determined current resourcing levels dedicated to reviewing the stock of legislation (separately to other stewardship activities), which we would expect to partially offset this figure.

Without discounting for these various factors, we estimate that it would cost around \$18 million per year across the Public Service – based on the following assumptions:

<sup>3</sup> Future impact analysis should be undertaken to support Cabinet's decision-making on the content of the notice, as this is secondary legislation. Therefore, the types and classes of existing secondary legislation to be included in the scope of the Bill are not covered in this RIS.



- approximately 1 FTE is required for each review of existing primary legislation and agencies review approximately half of existing primary legislation (500 Acts) within the first ten years of the Bill coming into effect; and
- 60 hours of work is involved for producing a CAS for new legislation.

The costs would not be distributed evenly across the Public Service. For example, we understand 15 agencies are responsible for 90% of all secondary legislation.

If additional funding is not provided for reviewing legislation, any costs would need to be managed by agencies within existing baselines and choices and trade-offs will need to occur. This is likely to result in opportunity costs through a reduction in the scope of other policy work being undertaken, or agencies planning to undertake review work on longer timeframes if that is the trade-off chosen.

There are also likely to be costs associated with [LEGALLY PRIVILEGED: s 9(2)(h)]

#### *Ministry for Regulation*

- Resourcing to develop guidance material and support agencies to implement the principles and associated mechanisms and support the Ministry's reporting requirements as part of the proposed oversight role. The resourcing required is likely to cost between \$1.1 million and \$1.4 million per annum.
- Establishment and ongoing operation of a Regulatory Standards Board including secretariat and analytical support. Depending on the size of the Board and associated support, this is likely to incur costs between \$1.04 million and \$1.17 million per annum.

There are no direct costs to the wider public and any indirect costs (e.g., time and cost of engagement with government agencies to inform reviews of consistency for proposed or existing legislation) are variable. Regulatory reviews or stewardship activity carried out by agencies may impact on the level of costs borne by the public under that regime, either positively or negatively. Notably, the principles as contained in Annex One would require costs to the public from the regulation under review to be actively considered and justified as a part of that review.

#### **Benefits (Core information)**

The Minister's preferred option is expected to result in greater transparency of whether legislation meets the specific standards expressed as principles of responsible regulation and of justifications for inconsistencies. This transparency, along with the incentive effect potentially added by the proposed Regulatory Standards Board, could influence decisions made during the development, implementation and stewardship of legislation, and ultimately increase the amount of legislation that is consistent with the principles over time. However, as with the Ministry's preferred option, delivery of these benefits will depend heavily on the impact of competing incentives and the effectiveness of implementation (including allocation of appropriate funding/resourcing).

If the proposed Bill were to have the impact described, this would be in relation to the principles as currently proposed (see **Annex One**). Given the selective nature of the



principles and the fact that they do not include many of the aspects of regulatory quality covered in the Legislation Guidelines (as noted by a number of submitters to the public consultation process), it is difficult to assess the impact on overall regulatory quality even if there are high degrees of compliance with new requirements under the Bill.

The strengthened regulatory stewardship requirement in the proposed Bill could also reduce the incidence, or severity, of regulatory failure – through greater monitoring and evaluation activity.

### **Balance of benefits and costs (Core information)**

The size of the benefits of all options presented in the RIS are challenging to assess, given the focus of the proposal on influencing the decision-making of agencies and Ministers – rather than directly changing a piece of legislation or regulatory system.

For the Minister's preferred option, the size of the benefits largely depends on a) the quantity and nature of decisions on regulation that are impacted by the need to undertake consistency assessments; and b) the difference between any such decision with the proposed Bill in force, compared with the same decision in the absence of the Bill.

Similarly, given the Board's role is to report its non-binding findings and recommendations following inquiries into whether legislation is consistent with the principles, it is not possible to identify policy outcomes amounting to specific benefits at this stage.

### **Implementation**

The proposed Regulatory Standards Bill is intended to be introduced in May 2025 and passed before the end of 2025, in line with the National-ACT Coalition Agreement to pass the Regulatory Standards Act as soon as practicable. Transitional arrangements have been allowed for in the proposal.

The Ministry for Regulation will be responsible for supporting the Minister to prepare guidance and developing additional material to inform and support agencies to discharge their obligations under the Act.

The Minister will need to appoint Board members (in consultation with Cabinet). The Board will be established with support from the Ministry for Regulation, which will also provide ongoing operational support. The establishment process is likely to take a minimum of three months. The Ministry's support role could be provided through new resourcing or reprioritising existing resources and work.

Government agencies and other entities with responsibility for primary or secondary legislation will be required to comply with consistency requirements for new legislation, develop plans to periodically review existing primary legislation and included existing secondary legislation against the principles, and undertake those reviews. The impact of implementing this will vary depending on agencies' current capacity and capability and the volume of legislation each is responsible for. Consistency assessments are proposed to align where possible with existing processes, to minimise this impact.

### **Limitations and Constraints on Analysis**

As indicated above, the inherent characteristics of this proposal mean that it is challenging to assess the size of the benefits and compare them to costs.

The challenges associated with assessing the benefits of options include the following:

- It is difficult to estimate shifts in decision-making across government, noting that there is no mechanism being proposed that would prevent legislation being passed (or legislation

continuing in place) that is inconsistent with the principles, and that these requirements would be introduced within a context of strong, competing, and likely ongoing incentives (e.g., pressures to quickly progress regulatory proposals) and agency capacity constraints.

- The standards set for regulation inevitably reflect value judgements about what good regulation looks like and about the value of regulation itself. This will be exacerbated to the extent that the standards are selective (rather than more comprehensive) in nature.
- The extent to which the proposed Bill improves regulatory quality in specific regulatory systems depends on the existing regulatory and operational settings within those systems.
- Any benefits from the options are generally intangible, less able to be monetised, and often only able to be realised in the long term.

Although some costs of implementing the proposed Bill are more immediate, tangible and quantifiable, there are also limitations on assessing costs more broadly, including:

- The difficulty with assessing the opportunity costs and where they fall – e.g., the crowding out of other activity, or the fact that some good regulation principles may receive less attention if they are not specifically provided for in legislation.
- [LEGALLY PRIVILEGED] s 9(2)(h)

[LEGALLY PRIVILEGED]s 9(2)(h)

Ministerial decisions taken after public consultation resulted in the following changes or clarifications to the proposal:

- Proposed secondary legislation is included by default, with the ability to exempt classes via a notice.
- Extension of the assurance mechanism to consider proposed primary legislation (i.e, bills before the House), in addition to existing primary and new secondary legislation.

These policy design aspects were not explicitly publicly consulted on. Ministry staff were not able in the time available to conduct detailed analysis on the full range of impacts of those proposals, such as unintended consequences, whether they deliver the policy objective, alternative options, and how they might be implemented.

### Summary: Ministry for Regulation's preferred option

### Costs (Core information)

The Ministry's preferred option would also incur costs for the Ministry for Regulation and agencies compared with the status quo. However, it is expected to be less costly than the Cabinet paper proposal, primarily because:

- It would build on existing elements of the Regulatory Management System (e.g Part 4 of the Legislation Act 2019);
- [LEGALLY PRIVILEGED: s 9(2)(h) ]

### Benefits (Core information)

The Ministry's preferred option would have a similar aim as the Minister's preferred option in terms of desired benefits. However, using a government notice as a vehicle for setting standards provides flexibility for the principles to evolve over time, while providing for some House input and [LEGALLY PRIVILEGED s 9(2)(h) ] This mechanism also provides for a broader range of standards to be set if desired (for instance, all the matters set out in the *Legislation Guidelines*), likely enhancing buy-in and therefore durability.

The Ministry's preferred option may enable a higher focus on regulatory system stewardship, which is where the biggest gaps in the RMS currently exist. Although the provisions relating to regulatory stewardship are similar across both options, the Ministry's preferred option:

- would not include requirements for existing legislation to be explicitly assessed against standards, and
- would include exploring non-legislative means of achieving a targeted programme of agency-led reviews into broader regulatory systems.
- 

As broader context, several initiatives aimed at improving the quality of regulation are still in their early stages (such as the new functions of the Ministry for Regulation – e.g., early engagement on regulatory proposals, and Ministry-led regulatory reviews). In time, the Ministry expects to be able to evaluate the benefits of these initiatives and reassess them relative to the problem definition.

### Balance of benefits and costs (Core information)

As for the Minister's preferred option, the size of the benefits of the Ministry's preferred option are difficult to assess.

An approach blending existing legislation (Part 4 of the Legislation Act 2019) with Ministerial guidance issued via notices and established policy processes (such as the RIA requirements) is comparatively low-cost with similar potential benefits compared with other options. However, there is a risk that this option would not provide sufficient incentives to compete with other drivers impacting regulatory quality.

In relation to the assurance function, the proposed statutory Board could prove an effective way to support implementation of the changes in the RMS provided for in the proposed Bill. However, a function within the Ministry would cost less than establishing a new mechanism and would allow for more flexibility to adapt in changing circumstances.

### Implementation



Under the Ministry's preferred option, implementation would occur by the bringing into force of Part 4 of the Legislation Act 2019 (by April 2026) and through the development of new legislation to support the Ministry's regulatory oversight role and strengthen regulatory stewardship requirements

As for the Minister's preferred option, the Ministry would support the Minister for Regulation and the Attorney-General to issue notices and guidance, as well as create and promote supporting material on reporting against the set standards. The Ministry would also support agency compliance with the new stewardship duty for the monitoring, review and maintenance of regulatory systems.

For a Ministry-led assurance function the implementation steps are mostly the same as for a statutory Board. The main difference is that for a Ministry-led assurance function the Ministry's Chief Executive could appoint an internal manager, whereas a Regulatory Standards Board would be appointed by the Minister and set up with support from Ministry staff.

### Limitations and Constraints on Analysis

Limitations and constraints on analysis are the same as under the Minister's preferred option above.

**I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.**

**Responsible Manager(s) signature:**

s 9(2)(a)

**Pip van der Scheer**

**Manager, Regulatory Management  
System**

**22 April 2025**

### Quality Assurance Statement

#### Reviewing Agency:

Joint quality assurance panel with members from the Ministry for Regulation, Ministry of Justice, Ministry of Business, Innovation and Employment and the Treasury.

#### QA rating:

Partially meets

#### Panel Comment:

A quality assurance panel with members from the Ministry for Regulation, Ministry of Justice, Ministry for Business, Innovation and Employment and the Treasury has reviewed the Regulatory Impact Statement (RIS): Proposed Regulatory Standards Bill produced by the Ministry for Regulation. The QA panel considers that it "partially meets" the Quality Assurance criteria.

The RIS notes that the scope of the options has been limited by the Coalition agreement and Ministerial direction and as a result, alternative approaches to the proposal have not been explored in detail. However, the RIS clearly outlines the assumptions, limitations, and Ministerial objectives in a way that enables transparency and clarity about the differing views and considerations.

The information in the RIS suggests that the specific legislative changes sought in this Cabinet paper are unlikely to be the most efficient approach to pursuing the stated objectives. It highlights that, if the recommendations are agreed, regulating in the public interest may be more costly, with an uncertain impact on the underlying behavioural incentives and on the information problems that drive poor regulatory outcomes. The panel notes that the scope of consistency reviews was included after public consultation, and the RIS has limited analysis of impacts, including on local government. This additional requirement has significant estimated costs and potential for crowding out other regulatory maintenance and stewardship activity.

The Ministry for Regulation has expressed a preference for an alternative approach based on disclosure requirements coming into force through Part 4 of the Legislation Act 2019, supplemented by Ministerial commitments to good regulation and stewardship. The RIS indicates that this would encourage better information and sharpened incentives across regulatory regimes.

The QA panel's view is that, should this Bill proceed to enactment, more consideration will need to be given to implementation issues, funding, and addressing the risks identified in the RIS.

## Section 1: Diagnosing the policy problem

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### What is the context behind the policy problem?

#### *The nature of regulation*

1. The New Zealand government holds the primary responsibility for the initiation, design, implementation, operation, monitoring, review and ongoing care and maintenance of an extensive range of regulation.
2. Regulation as a concept and practice is about seeking to order or influence how people behave or interact in support of a desired policy goal. It is more than just legislation. A piece of legislation by itself does not change behaviour. It also requires one or more actors to take actions (such as information provision, approvals, investigations, or prosecutions) to give effect to that legislation, often utilising dedicated powers and resourcing.
3. All these elements – rules, actors, resources and activities - are required for regulation to influence behaviour. And when these elements have a common focus or policy goal, we call that combination a regulatory system.

#### *Regulatory quality is important...*

4. Regulation affects significant parts of the lives of all New Zealanders, and sometimes in quite significant ways. In some cases, it can tell us what we must or cannot do and punish us severely if we fail to comply.
5. The quality of our regulatory systems therefore matters. Well-designed and implemented regulation can reduce disputes, minimise harms, uphold freedoms, support investment and innovation, protect the environment, and enhance personal and community wellbeing. On the other hand, poor regulation can fail to achieve its objectives, impose unnecessary costs, create uncertainty or unfairness, limit freedoms, stifle innovation and produce other unexpected or unintended consequences.

#### *... but quality has many dimensions and can be difficult to assess*

6. We can't judge the quality of a piece of legislation or a regulatory system just on whether its objectives have been met. People can reasonably have different views on the merits of the objectives. Other unrelated factors, including chance, can also affect the outcomes.
7. We also want regulation to meet other criteria, such as good process, public awareness, clarity, predictability, simplicity, fairness, proportionality, flexibility, resilience, cost, consistency with related regulatory arrangements and constitutional norms, and minimising unintended consequences. None of these is simple to assess, and assessment is even harder at the design stage. As a consequence, we often use various rules of thumb as rough proxies to judge regulatory quality – e.g., whether proposed legislation is consistent with the *Legislation Guidelines* published by the Legislation Design and Advisory Committee, or whether the public have had meaningful opportunities to provide input on proposed regulatory changes or reviews of existing regulatory systems.

#### *New Zealand regulation rates reasonably well in international comparison...*

8. Despite the measurement difficulties, a few international organisations attempt to assess the quality of regulation across countries. Understanding the methodology and data is important to properly interpreting the results, but New Zealand consistently ranks well for different aspects of regulatory quality, even among advanced countries.
  - Before it was discontinued, New Zealand was one of the top-rated countries in the World Bank's Ease of Doing Business survey, and remained one of the top-rated

countries for regulatory quality in the World Bank's Worldwide Governance Indicators for 2023<sup>4</sup>

- New Zealand ranked 6<sup>th</sup> in the World Justice Project's Rule of Law Index for 2024, including for the regulatory enforcement component<sup>5</sup>
- New Zealand scored better than the average in the OECD's Product Market Regulation survey for 2024<sup>6</sup>, though our ranking has been falling as other countries have improved faster in recent years. Ironically, more regulation in areas such as digital markets and political lobbying would much improve our Product Market Regulation ranking.

**... but New Zealand could still do much better...**

9. Some of these international measures just assess the existence and nature of relevant rules, and do not consider levels of compliance and how well they work in practice. Poorly designed or implemented regulation has been implicated in a number of major New Zealand disasters resulting in huge costs or lives lost – e.g., failed finance companies, leaky buildings, the Pike River mine explosion.
10. Survey work done by the NZ Productivity Commission in 2014<sup>7</sup> found that “two-thirds of regulator chief executives reported they had to work with legislation that is outdated or not fit-for-purpose” and also that “only 23% of the 1,526 businesses surveyed agreed or strongly agreed that regulatory staff are skilled and knowledgeable”.
11. The Rules Reduction Taskforce in 2015<sup>8</sup> reported that they were “struck by the number of instances where the good intentions of the rule-makers are somehow lost in the translation to the real world”.
12. We have no reason to think that matters have improved in the interim. We still know very little about the state and performance of our major regulatory systems, as there is no systematic approach to the monitoring and review of most systems. If we don't know how well they are working, it's unlikely we are managing them well.

**... and the scope and complexity of New Zealand regulation continues to grow...**

13. Recent Parliamentary Counsel Office (PCO) data<sup>9</sup> indicates that NZ has around 1000 Public Acts. While that number has been relatively stable for a few years, PCO reports that the number of words in those Public Acts has grown at an average net rate of 2.4% per year over the last 15 years and currently stands at around 23 million words.
14. PCO also publishes around 2500 pieces of secondary legislation, whose collective word count has also grown at an average net rate of 2.3% per year and currently stands at around 9.7 million words. PCO estimates there are a further 7200 pieces of agency secondary legislation published elsewhere within the State sector, for which we lack data on word count or growth rate.

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<sup>4</sup> Accessed at <https://www.worldbank.org/en/publication/worldwide-governance-indicators>

<sup>5</sup> Accessed at <https://worldjusticeproject.org/rule-of-law-index/>

<sup>6</sup> Accessed at [https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/product-market-regulation/New%20Zealand\\_PMR%20country%20note.pdf](https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/product-market-regulation/New%20Zealand_PMR%20country%20note.pdf)

<sup>7</sup> New Zealand Productivity Commission, Regulatory institutions and practices - Final report, June 2014

<sup>8</sup> Rules Reduction Taskforce, The loopy rules report, Aug 2015

<sup>9</sup> Parliamentary Counsel Office, Annual Report on Legislative Practices 2023-2024, January 2025, accessed at <https://www.pco.govt.nz/corporate-publications/annual-report-on-legislative-practices/annual-report-on-legislative-practices-2024>

15. As of October 2023, there were also approximately 900 bylaws referred to on council websites across New Zealand.
16. In this issue of scope and complexity New Zealand is not alone – the same pressures exist in all developed countries. Australian federal legislation shows a similar growth rate<sup>10</sup>.

***... often for good reasons, but with flow-on consequences for quality***

17. There are many reasons for this growth, and not all support a conclusion that more words mean greater regulatory burden. For example, plain language drafting is intended to improve the readability and understanding of legislation but tends to increase the number of words used. And there is increased demand for smarter, more tailored and more flexible regulation, but this also tends to require more words.
18. There are other contributing factors. For example, new scientific knowledge about harms from human activities, ongoing technological developments, increased international connections, new disruptive business models etc, all naturally lead to the expanding and deepening of regulatory systems, with consequently more words. Changing attitudes to risk may also increase the demand for regulation, but may be a natural consequence of increasing wealth (people have more to lose) and increased beliefs that risks can be anticipated and managed and not just accepted.
19. However good the reasons, this increased scope and complexity does have consequences. As PCO has noted, it represents an “increased challenge for citizens and businesses to understand the sum total of legislation in the areas that impact on them”.<sup>11</sup> And while New Zealand tends to want to regulate the same range of issues as other developed countries, we lack the economies of scale of larger countries when it comes to public resources available to invest in the development, communication, and ongoing care and maintenance of those regulatory systems.

***Good regulatory design and implementation is demanding...***

20. Independent of the question of scope, designing, developing and maintaining effective regulatory systems is demanding work:
- Information about the nature and extent of the problem we are seeking to address may be limited or unreliable.
  - The motivations and reasons for behaviour that the government is trying to influence may be complex and tend to vary between people depending on context, capability, personality and attitude. Consequently, how people initially respond to regulatory efforts and then adapt over time is inherently hard to predict and can lead to unexpected outcomes.
  - Any chosen regulatory intervention will have costs as well as benefits, and these will fall differently on different groups. Their identification and appropriate weighting depend on decision-makers’ values and may be politically contested.
  - Any assessment of costs and benefits must be relative to a counterfactual (what would happen in the absence of the regulatory intervention), but the world is complex and dynamic and so future counterfactuals are difficult to assess.

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<sup>10</sup> See Gill, Shipman & Simpson (2025) The Growth in the Size of the New Zealand Statute Book, VUW Policy Quarterly, accessed at <https://ojs.victoria.ac.nz/pq/article/view/9710/8575>

<sup>11</sup> Parliamentary Counsel Office, Annual Report on Legislative Practices 2023-2024, January 2025 (see 6)



- Design and operational details matter for effectiveness and getting the details right demands expert input and collaboration across a range of disciplines.

**... and regulatory decision-makers, advisers and implementers are human.**

21. Further complicating matters, we all have cognitive limitations and systematic biases. For example, we are prone to jump to conclusions about the nature of the problem or a preferred solution because we systematically overestimate our understanding of how things actually work, and we are prone to limit our scrutiny of those conclusions because of confirmation bias and optimism bias.
22. We also have incentives that can conflict with the demands of good regulation. As noted in the RIS for the 2011 Regulatory Standards Bill<sup>12</sup>, Ministers face strong pressures to:
- respond quickly and decisively to the latest risk, accident or misdeed
  - commit to concrete action, even without evidence that the action will address the problem or that the benefits are likely to exceed the costs
  - stick to a political commitment once made and
  - deliver on the commitment as soon as possible.
23. It's not just Ministers. There are limited incentives for Members of Parliament to carefully scrutinise and improve proposed legislation as it does not usually bring them media attention - and may not align with party political positions. It can be challenging for public servants to meet their statutory obligation to provide free and frank advice, while navigating Ministerial relationships, particularly where the agency view differs from that of a Minister and is likely to become public. Agencies can be working in silos and find it challenging to allocate scarce resources to invest in a whole-of-government perspective. And nobody who promoted a particular regulatory change has great incentives to look for and disclose evidence that it isn't working as intended.

***The RMS is the response of successive governments to some of these enduring challenges***

24. Given the challenges discussed above, governments interested in the quality of regulation have, over time, approved a range of expectations, tools and processes to try to support good regulatory decisions and more effective regulation. We call this the Regulatory Management System (RMS).
25. These measures are in addition to the legislative scrutiny arrangements of the House of Representatives set out in Standing Orders (select committee consideration, public submissions, specialist Regulations Review Committee, provision for disallowance, provision for petitions).

***Current RMS tools and processes are mostly focussed on the development of legislation***

26. The most long-standing and successful of these is the requirement to use the expert legislative drafting resource located in the Parliamentary Counsel Office. This is the intervention with the most concrete impact on the legislative development process. Another long-standing requirement is for the Attorney-General to advise the House on identified inconsistencies with rights and freedoms contained in the Bill of Rights Act 1990. Both these requirements are enshrined in legislation passed by Parliament.
27. Other than some commitments to good regulatory practices in recent comprehensive free trade agreements (such as the NZ-EU FTA), most of the remaining RMS expectations, tools

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<sup>12</sup> [Regulating for Better Regulation - What is the Potential of a Regulatory Responsibility Act? - 15 March 2011 - Regulatory Impact Statement - The Treasury](#)

and processes are administrative arrangements set by Cabinet for Ministers and the public service. They are essentially voluntary self-regulation that Ministers can ignore if they wish. They include:

- the expected provision of impact analysis for proposed legislative changes, produced by the lead policy agency and independently quality assured, to accompany a Minister's Cabinet paper and to be published when the relevant government Bill or Order in Council is introduced or made<sup>13</sup>
- an expert Legislative Design and Advisory Committee (LDAC)<sup>14</sup> that provides advice to government agencies on legislative design questions and publishes the Legislation Guidelines, which Cabinet has adopted as the government's key reference point for assessing whether legislative proposals are consistent with accepted legal and constitutional principles
- the expected provision of a disclosure statement to accompany government Bills on introduction that brings together information intended to support Parliamentary and public scrutiny of key aspects of the proposed legislation<sup>15</sup>
- a set of formal Government Expectations for Good Regulatory Practice,<sup>16</sup> which cover both expectations for the design of regulatory systems and for regulatory stewardship (the ongoing care of regulatory systems) by government agencies
- stewardship responsibilities for Chief Executives under the Public Service Act 2020.<sup>17</sup>

28. More recently the government has established the Ministry for Regulation to lift support for the operation of the RMS, including conducting regulatory reviews and providing regulators with resources and support to build their regulatory capability.

### **How is the status quo expected to develop?**

#### ***Current trends and pressures are expected to continue***

29. While we can expect cycles of deregulatory efforts, the most likely long-term trajectory is continued growth in the scope and complexity of New Zealand regulation. The growth could be at a slower rate, but unless there is a significant shift in public attitudes and expectations the same regulatory pressures will remain. Good regulatory design and implementation will continue to be demanding and the growth in the scope and complexity of regulation will further stretch the capacity of the New Zealand government to monitor its performance and keep it current and fit-for-purpose.

30. Short of increased resources and capacity, we do not expect to see major changes in Parliament's own scrutiny arrangements. Any efforts to further tackle the limited incentives and capability issues that currently exist will likely require action through the government's RMS.

#### ***RMS improvements are also expected but will be constrained by fiscal pressures on agencies***

31. The RMS is expected to continue to evolve in the absence of further reforms. The disclosure requirements in Part 4 of the Legislation Act 2019 will eventually come into force and

<sup>13</sup> [Regulatory Impact Analysis \(RIA\) | Ministry for Regulation](#)

<sup>14</sup> [The Legislation Design and Advisory Committee](#)

<sup>15</sup> [Disclosure statements for government legislation | Ministry for Regulation](#)

<sup>16</sup> <https://www.regulation.govt.nz/assets/Uploads/Government-Expectations-for-Good-Regulatory-Practice.pdf>

<sup>17</sup> [Public Service Act 2020, section 12 Public service principles](#)

provide a statutory replacement for the current Cabinet-mandated disclosure statement, allowing for expanded coverage and enhanced disclosures, along with more Parliamentary input on what matters should be disclosed.

32. Good regulatory practice commitments in recent free trade agreements will also increase the pressure for more systematic reporting of plans for changes to secondary legislation, for periodic reviews of existing legislation, and for a more systematic commitment and approach to public consultation.
33. We also think PCO's work to improve the accessibility of secondary legislation they do not already publish will eventually allow quicker and better analysis of the full scope and characteristics of our existing regulatory systems. The additional resources now going into the Ministry for Regulation, if sustained, should also modestly increase the pressure and support for better practice, at least within government agencies.
34. However, the tight fiscal situation in the next few years will likely affect the ability of government agencies to improve their regulatory practices. It may also increase the level of regulatory failures and under-performance, and delay work to identify and act on legislation that is no longer fit-for-purpose unless it is a Ministerial priority of the day.

### **What is the policy problem or opportunity?**

#### ***Incentives and knowledge deficits undermine regulatory quality***

35. In our view, the key policy problem is the competing drivers and insufficient incentives on government decision-makers and advisers, and sometimes limited awareness of what it takes, to develop and maintain good quality legislation and regulatory systems. The nature of some of the key incentives and the demanding nature of good regulatory design and implementation are briefly outlined above.
36. The political priority for speed, in particular, conflicts with the amount of work desirably undertaken to design and deliver good quality legislation and regulatory systems. Pressure on resources, organisational silos and an inadequate assignment of responsibilities for different elements of regulatory systems also encourage a "set and forget" approach to regulatory change – until any problems can no longer be ignored. Frequent turnover in Ministerial positions and government agencies and a longstanding lack of investment in monitoring and evaluation undermines available system knowledge and regulatory expertise to inform proposals for change.
37. The problem does not seem to be confined to or focussed in particular areas of regulation, and therefore is likely to affect all New Zealanders. Well-resourced and connected people and organisations may be able to better manage any adverse impacts, but where the costs, including opportunity costs, of poorer regulation likely fall is difficult to judge.

#### ***Current RMS tools and processes have provided only limited mitigation***

38. The government's regulatory management system (RMS) tries to lean against some of those incentives and deficits. For example, requirements for impact analysis are an attempt:
  - to reduce the potential for solution-jumping and analytical biases by introducing a systematic framework for presenting agency policy advice on proposed regulatory changes that prompts for advice that is evidence-informed, is clear about assumptions and limitations, has tested the nature and scope of the problem, has identified and carefully considered the relative merits of a range of options and has benefited from the views of subject matter experts and interested parties

- to make the results of that analysis available to Ministers to better inform their decisions on recommendations for regulatory change
  - to subsequently make the results of that analysis available to Parliament and the public to better inform their scrutiny of the proposed regulatory change.
39. Unfortunately, the political imperative for speedy policy decisions, exacerbated by deficits in agency system knowledge and analytical expertise, significantly undermines the first two objectives. Cabinet can choose to waive or ignore its own requirements and policy decisions are generally not delayed due to the absence or poor quality of available impact analysis. In particular, the quality of analysis is frequently compromised by Ministerial timeframes, is usually produced too late (and perhaps not in an easily digestible form) to inform Ministerial recommendations and potentially complicates their decision-making if taken seriously, so is often not valued by them.
40. Impact analysis does seem to be valued by opposition MPs for House debates (in the absence of better information), but this transparency function potentially further undermines Ministerial support for its production when analysis does not fully support the proposal. Regardless, the political and reputational costs of publishing poor impact analysis seem to be low, given how frequently it is tolerated by Ministers and agencies.
41. Bill of Rights Act 1990 vetting and disclosure statements also serve a transparency function, intended to support Parliamentary scrutiny of government legislative proposals. Website statistics suggest that MPs and interested members of the public find this information useful to inform debates and submissions, but the government so dominates Parliament that the information's direct impact on legislative quality seems to be limited. For example, experience shows that Governments are willing to promote legislation, and Parliaments are willing to pass that legislation unchanged, even when clearly informed of incompatibilities with the rights and freedoms in the Bill of Rights Act 1990.

***There is scope for the RMS to do more to support the development of better regulation***

42. For example, current tools and processes give only limited attention to implementation issues. There is also no public reporting on impact analysis quality and compliance at a system level. Expectations and advice on analysing different types of impacts (e.g., effects on competition or business compliance costs) are very limited. The accuracy of information in disclosure statements and about consistency with the Legislation Guidelines is not independently checked. Commitments to public consultation, including providing advance notice of proposed reviews and regulatory proposals, could be usefully strengthened.
43. This is supported by the results of the OECD's indicators of regulatory policy and governance (iREG) survey. New Zealand rates above the OECD average for its regulatory impact assessment practices and stakeholder engagement but is not among the OECD leaders and is well below the maximum score, indicating room to improve.

***There is more scope for the RMS to support the review and maintenance of existing regulation***

44. As already noted, New Zealand currently has few expectations, tools and processes for the review and maintenance of existing legislation and regulatory systems. New regulatory proposals get most of the public and political attention, but the state of our significant and growing stock of existing regulation gets very little.
45. This would seem to present considerable opportunities for improvement, in response to a growing need. At present we only have the regulatory system stewardship expectations in

the government's expectations for good regulatory practice, and stewardship obligations for Chief Executives under the Public Service Act 2020. The stewardship expectations are unsupported by more specific tools and processes (aside from some historical reporting requirements for a few major regulatory agencies, currently suspended) and consequently receive practical attention from only a limited number of government agencies.

46. The potential to do more in this area is supported again by the results of the OECD's iREG survey. OECD country scores for governance practices supporting the review of existing legislation are much lower on average than for regulatory impact assessment or stakeholder engagement, but New Zealand scores well below that average, and considerably lower than countries we normally compare ourselves against.
47. Unlike for the development of regulatory proposals, the political demand for speed is likely to be less of a problem for the effectiveness of any specific stewardship tools and processes. The level of agency resources and Ministerial support for the use of agency resources for that purpose are likely to be the main challenges to overcome.

### **What objectives are sought in relation to the policy problem?**

48. The policy problem described above is broad, multi-faceted and difficult to address. Other countries also struggle with the same issues. As such, the options assessed in the remainder of this RIS do not attempt to solve the entirety of the policy problem. Rather, the options seek to identify feasible steps forward in relation to this broad policy problem through changes or enhancements to current RMS tools and processes, but without upsetting existing constitutional arrangements or relationships between the three branches of government.
49. In particular, the options assessed in this RIS aim to increase the quality of regulation, by:
- increasing the attention of the government on the monitoring, review and maintenance of existing legislation and regulatory systems
  - improving the quality of new and amended legislation through strengthening current expectations, tools and processes, and increasing the level of compliance with current expectations, tools and processes.
50. However, as noted above, there are difficulties to defining the 'quality of regulation' in this context, given the subjective nature of the judgements required (including even whether regulation has met its intended purpose), the wide variety of dimensions involved (ranging from the process by which regulation was developed, to the design of any legislation and the quality of its implementation) and the complexity of assessment across these dimensions.

### **What consultation has been undertaken?**

#### ***Public consultation***

51. The consultation process on the *Have your say on a proposed Regulatory Standards Bill* discussion document opened on 19 November 2024 and closed on 13 January 2025, with approximately 23,000 submissions received. The submission process asked for feedback on what a Bill should aim to do and what it should include, rather than the specific provisions or wording of a Bill. The public consultation process was supported by an accompanying interim Regulatory Impact Statement, and interim Treaty Impact Analysis.<sup>18</sup>

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<sup>18</sup> [The Regulatory Standards Bill | Ministry for Regulation](#)

52. Most public submissions (around 88%) opposed the proposal for a Regulatory Standards Bill, with key reasons being the perceived narrow focus of the proposal in strengthening individual rights and liberties at the expense of other objectives, the lack of provision for the Treaty/te Tiriti and broader Māori rights and interests and the likely costs relative to effectiveness. 0.33% of submissions supported or partially supported the proposal for a Regulatory Standards Bill. Submitters identified as generally supporting the proposal think the proposed Bill would improve regulatory quality, reduce costs on business, promote economic growth or investment, or help protect institutions and property rights. Almost 12% of submissions did not have a clear position.

53. Feedback from consultation on specific proposals is in subsequent sections.

### ***Agency consultation***

54. Drafts of the Cabinet paper, RIS, and Treaty Impact Analysis were circulated to government agencies<sup>19</sup> for consultation. The main themes from the departmental feedback included some broad support for the objectives of the proposal, but a general preference for these to be achieved in other ways, such as strengthening regulatory impact analysis requirements or Parliamentary mechanisms. Agencies also raised concerns about the proposed principles and their application to specific regulatory systems; costs and resourcing implications; the extension of the proposal to secondary legislation; the role and makeup of the proposed Regulatory Standards Board (Board); the exclusion of provision for Treaty principles and Māori rights and interests; and the process and timing of consultation.

55. In particular:

- the components of the proposed Bill would duplicate, or add complexity, to existing RMS tools that support regulatory quality and transparency – e.g., the proposed Regulatory Standards Board could duplicate the role of the Regulations Review Committee and cut across individual Ministerial responsibility where the Board has a role in reviewing legislation before the House
- the proposed regulatory responsibility principles deviate from similar concepts in existing guidance, or conflict with objectives within existing legislation and regulatory systems
- the lack of recognition of the rights and interests of iwi, hapū and Māori due to there being no specific reference to the Treaty/te Tiriti, or its constitutional importance
- if all secondary legislation (in addition to new or amended primary legislation) was included in the requirement to assess consistency with the principles there would be significant cost and resourcing implications for agencies (and currently uncoded costs on local government, should bylaws be in scope of consistency assessments). Nearly all agencies indicated it would be challenging or unworkable to undertake the work involved within existing baselines without impacting on future government priorities and legislative programmes
  - several agencies provided feedback around classes of secondary legislation that should be excluded from the requirements for consistency assessment on the basis that it would be costly and add little value.
  - some agencies further noted that the proposed requirements would detract from resources available to undertake stewardship of the regulatory systems

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<sup>19</sup> Consultation on the draft Cabinet paper was primarily undertaken with government agencies within the core Crown.

they administer, given that consistency assessments have a considerably narrower focus on legislation.

56. We note that agencies provided feedback at a point where the proposal included a requirement that all existing primary and secondary legislation be reviewed for consistency with the principles within 10 years (unless exempted). This requirement no longer forms part of the proposal to be considered by Cabinet. Future impact analysis should be undertaken to support Cabinet decision-making on the inclusion of secondary legislation.

## **Section 2A: Assessing options to address the policy problem – regulatory principles and accompanying measures**

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### **What scope will options be considered within?**

57. This section is in two parts. **Subpart One** analyses options for setting standards for responsible regulation and mechanisms for encouraging and assessing compliance with standards. **Subpart Two** analyses options for establishing standards as principles in primary legislation.
58. The option sets in Subpart One also include some accompanying measures to further support regulatory quality.
59. This RIS will use the status quo (Option One) as a baseline for assessing the set of options, given that Part 4 of the Legislation Act 2019 has not yet come into force and comparative assessments would require several assumptions around its impacts at a future point in time.

### **What criteria will be used to compare options to the status quo?**

60. The following criteria will be used to compare options to the status quo:
- **Effectiveness:** whether the option is likely to improve the quality of legislation and regulatory systems. This criterion also includes risks of unintended consequences and whether these risks undermine the option.
  - **Durability:** whether the option would have broad buy-in while having sufficient flexibility to evolve to respond to new information and changing circumstances.
  - **Cost:** estimated fiscal costs, including set-up and ongoing costs, who bears these costs, comparable affordability, and whether the ongoing costs have a reliable source of funding.
  - **Feasibility and efficiency:** whether the option can be easily implemented, including whether it can be implemented using features and/or processes in the existing machinery of government, and whether it would be efficient in delivering the intended outcomes.

### **Subpart One: What options are being considered – overarching approach**

#### **Option One – Status Quo**

61. Option One is the status quo at the time of writing and reflects what will happen in the absence of any further intervention. However, it should be noted that it will likely deliver a degree of improvement over time, due to measures already underway, such as the full effect of the new Ministry for Regulation, the increased ability to analyse secondary legislation due to better accessibility, and prompt for more regulatory system stewardship work arising out of our recent international commitments on good regulatory practices.

### **Standards for regulatory quality**

62. The status quo includes a mix of statutory and non-statutory measures intended to set standards for regulatory quality. These standards relate to processes for good lawmaking, legislative design and regulatory stewardship and include:
- the regulatory impact analysis (RIA) requirements, set out in Cabinet circular [CO \(24\) 7](#), and accompanying by [guidance](#) issued by the Ministry for Regulation, which set out requirements and considerations to encourage a systematic and evidence-informed approach to policy development
  - the Legislative Design and Advisory Committee (LDAC), which advises departments on legislative design issues and consistency with fundamental legal and constitutional principles. It also publishes the Legislative Guidelines, which have been endorsed by Cabinet in [CO \(21\) 2](#) which are the government's key reference point for assessing whether legislative proposals are consistent with accepted legal and constitutional principles
  - the [Government Expectations for Good Regulatory Practice](#), which establish expectations for the design of regulatory systems and regulatory stewardship. Some government agencies also publish resources to support aspects of regulatory stewardship, such as improving regulatory system capability
  - section 12(e) of the Public Service Act 2020, supported by non-legislative [guidance](#) issued by the Public Service Commission, which establishes considerations for stewardship of legislation administered by agencies.

### **Mechanisms for encouraging and assessing compliance with standards**

63. A range of existing mechanisms focus on encouraging agencies to comply with the standards above and assessing whether they are being met.
64. Cabinet's RIA requirements, set out in CO (24) 7, set out a non-legislative expectation for RISs to be independently quality assured and for QA panel assessments to be included in Cabinet Papers. However this relates to the quality of the analysis, not the proposal itself.
65. Non-legislative requirements for disclosure statements for Government-initiated legislation are set out in Cabinet Office Circular [CO \(13\) 3](#). This establishes a process for agencies to provide information to support Parliamentary scrutiny of proposed legislation, with a focus on existing government expectations for the development of legislation and significant or unusual features that should be used with care.
66. The Ministry of Justice and/or Crown Law vet Bills against the Bill of Rights Act 1990 and provide advice to the Attorney-General on consistency. Where inconsistency with the Bill of Rights Act 1990 is identified and not resolved prior to the introduction of a Bill, the Attorney-General must notify the House.
67. In Cabinet papers seeking approval to introduce a government Bill, departments are expected to identify whether any aspect of the Bill departs from the default approach in LDAC's Legislation Guidelines and to justify any departures. LDAC also examines some government Bills after introduction, assessing for inconsistency with the Legislation Guidelines. LDAC may make submissions to Parliamentary select committees if substantial inconsistency is identified.

### **Accompanying measures**

68. The Ministry for Regulation has several internal functions that are intended to provide oversight of and support the functioning of the RMS. This includes providing early



engagement, established by [CO \(24\) 7](#), reviewing bids for the 2025 Legislation Programme, as per [CO \(24\) 6](#), and providing second opinion advice on regulatory proposals for agencies.

69. Under Option One, there would not be a statutory power that enables the Ministry for Regulation to gather information for the purpose of initiating and conducting regulatory reviews. Information required for reviews would continue to be obtained through co-operation between agencies and the use of engagement and consultation processes.

## **Option Two – Principles set out in primary legislation (Minister’s preferred option)**

### **Standards for regulatory quality**

70. Under this option, standards would be set via ‘principles for responsible regulation’ established in primary legislation. **Subpart Two** of this section contains options analysis for different approaches to establishing principles in primary legislation.

### **Mechanisms for encouraging and assessing compliance with standards**

71. This option would establish new requirements for responsible Ministers in relation to proposed legislation that is subject to consistency requirements to ensure that:

- the explanatory note to a Government Bill or to proposed secondary legislation not excluded from the proposed Bill includes an independent Consistency Accountability Statement (CAS) - that is, a statement from the responsible Chief Executive stating that the Bill has been assessed for consistency with all the principles, and providing the results of that assessment - and a statement from the responsible Minister explaining the reasons for any inconsistency identified
- the explanatory note to a Government amendment includes a CAS unless the Minister for Regulation has given an exemption on the grounds that the amendment would not materially change the Bill.

72. Where a Minister is not the maker of secondary legislation, the responsible agency would be required to ensure the explanatory note includes a CAS along with a statement setting out any reasons for inconsistency identified, provided by the maker.

73. In relation to existing legislation, agencies would be required to develop and periodically report against plans to review existing legislation that is subject to consistency requirements for consistency with the principles. On completion of such a review:

- in the case of an Act, the responsible Minister would be required to present a CAS to the House, along with a statement made by that Minister setting out reasons for any identified inconsistency or any actions that will be taken to address that inconsistency
- in the case of new secondary legislation and existing secondary legislation included by notice, the responsible agency would be required to ensure the publication of a CAS along with a statement made by the responsible Minister or other maker setting out reasons for any identified inconsistency or any actions that will be taken to address that inconsistency.

74. To support the production of these statements, the Minister for Regulation and the Attorney-General could issue guidance on:

- how the principles should be applied
- how to review legislation for consistency with the principles
- the content and presentation of the statements and plans required.

75. Under this option, these requirements would apply to new primary and secondary legislation by default. The proposed Bill would exclude some classes of primary legislation from consistency assessments (largely for technical types of legislation), with an ability for the Minister for Regulation to issue notices exempting further classes of primary or secondary legislation with the assent of the House.
76. The requirements for assessing existing legislation are proposed to apply to primary legislation by default (as above), with select secondary legislation to be **included** in the scope of the Bill by Ministerial notice (rather than being included by default).

#### **Accompanying measures**

77. Option Two also contains additional components to give effect to the Ministry for Regulation's regulatory oversight role.
78. Under this option, the proposed Bill would also include a statutory power that enabled the Ministry for Regulation to require information to be provided on request, to support the effective and efficient conduct of regulatory reviews. Information could be gathered from:
- Public Service agencies (as defined in section 10(a) of the Public Service Act 2020)
  - Statutory Crown entities (as defined in section 7(1)(a) of the Crown Entities Act 2004)
  - any entities that make or administer secondary legislation, including local government
  - any entity authorised by an Act to undertake a regulatory function, for example the Reserve Bank and statutory occupational licensing bodies; and
  - any entity contracted by the government to support the delivery of a regulatory function (also known as third-party service providers), if the information were not available from the relevant public service agency that holds the contract. If the request were made directly to the third party, it would be made in conjunction with the responsible agency.
79. The power to gather information from entities that make or administer secondary legislation and entities authorised to undertake a regulatory function would only be used if the information were not already available through a responsible government agency.
80. Information could be gathered directly by the Secretary for Regulation from any entity that falls within the above categories. Approval would not be required from the Prime Minister or responsible Minister (for statutory entities), nor would there be an expectation that information would be sought from the relevant central government agency (for example the agency holding the contractual relationship with a third party service provider) in the first instance.
81. Information gathering powers would not override prohibitions or restrictions on the sharing of information already set down in legislation. Including this restriction on the scope of the information-gathering power aligns with the restriction on the Public Service Commissioner's power to obtain information as provided for in schedule 3, 3 of the Public Service Act 2020.
82. Other provisions to give effect to the Ministry for Regulation's oversight role under this option would include<sup>20</sup>:

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<sup>20</sup> These elements of the proposal were exempted from the regulatory impact analysis requirements (per Cabinet Office circular (24) 7), under the criteria minor or limited economic, social, or environmental impacts.

- a requirement for public service chief executives to uphold a principle to proactively steward the regulatory systems associated with the legislation they administer
- a requirement for the Ministry for Regulation to produce a regular report for the Minister for Regulation to present to Parliament assessing the overall performance of the Regulatory Management System
- a power for the Ministry for Regulation to require provision of information from public service departments to support this regular reporting
- a requirement for the Ministry for Regulation's regulatory review reports to be presented to the House together with the government's response.

83. Option Two is the Minister's preferred option.

**Option Three – Build on the disclosure statement regime and create new legislative provisions for regulatory stewardship and regulatory oversight (Ministry's preferred option)**

84. Option Three builds on the current disclosure statement regime, by bringing Part 4 of the Legislation Act 2019 into force. Under this option, standards are not set out in primary legislation, but the ability to set standards is provided for in primary legislation (via the issuing of notices).

85. Option Three would provide for similar new legislative provisions as Option Two in order to:

- strengthen regulatory stewardship requirements; and
- give effect to the Ministry for Regulation's regulatory oversight role.

**Standards for regulatory quality**

86. There is an existing statutory power under section 107 of the Legislation Act 2019 for the responsible Minister and the Attorney-General to jointly issue notices setting standards that proposed primary legislation (as well as specified classes of secondary legislation) must be assessed against. The House of Representatives would pass a resolution approving each notice before it was issued.

87. Standards relating to regulatory design and good law-making could be set out in a government notice issued under section 107 of the Legislation Act 2019, supported by the Legislation Design and Advisory Committee (LDAC) Legislation Guidelines and Cabinet's impact analysis requirements.

88. Similarly, standards relating to regulatory stewardship could be set out in legislation, supported by further elaboration such as through the Government's Expectations for Good Regulatory Practice, or a Ministerial direction.

89. Option Three would not include requirements for existing legislation to be explicitly assessed against the standards. Rather, agencies' review of their legislation as part of their stewardship responsibilities would have a broader focus that also included operational practices and regulator capability and performance within the regulatory systems to which that legislation relates.

**Mechanisms for encouraging and assessing compliance with standards**

90. Under this option, standards would be given effect through a mixture of statutory and non-statutory mechanisms.

91. The main mechanism to encourage consistency with the standards would be through the requirement for Chief Executives to independently prepare and publish disclosure

statements for Government-initiated legislation, as currently provided for in section 103 of the Legislation Act 2019. This could be further supported by periodic reviews by the Ministry for Regulation of what disclosures reveal and the accuracy of those disclosures.

92. Section 110 of that Act also provides that the Minister may issue directions to support consistency of disclosures – for example, in relation to how disclosure statements are set out, or providing for other elements that disclosure statements must include, with directions being published and presented to the House of Representatives.
93. As with Option Two, this option includes a separate duty on agencies for regular review, maintenance and improvement of the legislation they administer, and requires responsible agencies to develop and publicly report against plans to review their stock of legislation. However, under Option Three, reviews would focus more broadly on the stewardship of regulatory systems rather than assessing individual pieces of legislation against selected principles.

### **Accompanying measures**

94. As with Option Two, this option establishes a regulatory oversight role for the Ministry for Regulation, enabling the Ministry to produce regular reporting for Parliament assessing overall performance of the wider Regulatory Management System, including the disclosure requirements. It also includes strengthened regulatory system stewardship requirements for public service chief executives.
95. Under this option, the proposed Bill would also include a statutory power that enables the Ministry for Regulation to gather information, for the purpose of initiating and conducting regulatory reviews, from public service agencies, and from statutory Crown entities with the written approval or direction from the Prime Minister or Minister responsible for the Crown entity. Where information is required outside of central government (i.e. from local government or third-party service providers), information requests would be directed to the relevant agency responsible for the regulatory system.
96. As with Option Two, information gathering powers would not override prohibitions or restrictions on the sharing of information already set down in legislation. Including this restriction on the scope of the information-gathering power aligns with the restriction on the Public Service Commissioner's power to obtain information as provided for in schedule 3, 3 of the Public Service Act 2020.
97. Accompanying non-legislative measures could be introduced or continued to complement the strengthened disclosure regime and certification mechanisms. More specifically, they could include:
- Updating Cabinet Circular (24) 7 on the RIA requirements, to reflect the regulatory principles set out in notices under Part 4 of the Legislation Act 2019, as well as further system improvements that enhance the quality of analysis and supporting quality assurance arrangements for Regulatory Impact Statements.
  - Refreshing the *Government Expectations for Good Regulatory Practice* to reflect the requirements under the disclosure statement regime and regulatory principles (particularly those pertaining to good law-making practices).
  - Embedding regulatory standards in the policy development process, such as reflecting good law-making practices into the RIA requirements or Legislation Guidelines, which support the development of regulatory policy.
98. Option Three is the Ministry's preferred option.

### How do the options for the overall approach compare to the status quo?

Note: For simplicity, this table does not address the accompanying measures discussed above due to the broad similarity of those measures between Options Two and Three and their relatively lower impact.

	Option One – Status Quo	Option Two – <i>Principles set out in primary legislation, with requirements for consistency assessments (Minister’s preferred option)</i>	Option Three – <i>Build on the disclosure statement regime and create new legislative provisions for regulatory stewardship and regulatory oversight (Ministry’s preferred option)</i>
<b>Effectiveness</b>	0	<p style="text-align: center;">+</p> <p>This option has the potential to improve overall regulatory quality compared with the status quo through increasing the attention given to specific standards and departures from those standards.</p> <p>Setting the principles in primary legislation will require the House to assent to these principles, which could make it more likely (at least initially) to pay attention to CASs and Ministers’ reasons for inconsistencies and develop enduring processes to consider the information provided, increasing the effectiveness of this approach.</p> <p>However, the effectiveness of this option could be lessened because:</p> <ul style="list-style-type: none"> <li>• setting specific standards via principles in primary legislation requires choices to be made about what aspects of regulatory quality they can cover, and how they are articulated, if they are to comply with standards of good legislative design. To cover the full range of aspects of regulatory quality (as set out in the current <i>Legislation Guidelines</i>), principles in primary legislation would need to be very broad and high level, which could lessen their effectiveness as clear standards for regulatory quality. Alternatively, if they were more definitive, they would need to be more selective, which could mean that some aspects of good regulatory quality would not be covered, resulting in those aspects being deprioritised relative to the ones selected for inclusion in legislation – potentially resulting in a decline in some aspects of regulatory quality</li> <li>• assessment of an increasing portion of primary and secondary legislation over time means the value of some of those assessments will be questionable</li> <li>• the choice to require agencies to complete consistency assessments for all proposed secondary legislation unless exempted, and selected existing secondary legislation makes it more likely that agencies will treat assessments of consistency as tick-box exercises (unless significantly more resource is available), lessening their effectiveness</li> <li>• the comprehensive nature of this approach could crowd out more broadly-based and better targeted regulatory stewardship or ex post review work.</li> </ul>	<p style="text-align: center;">++</p> <p>This option has the potential to improve overall regulatory quality compared with the status quo through increasing the attention given to specific standards and departures from those standards.</p> <p>Since the House will have a say in the setting of those standards, the House is more likely to pay attention to disclosures against the standards and develop enduring processes to consider the information provided, increasing the effectiveness of this approach. Ministerial explanations could be included in disclosures under this option, but this would be at the government’s discretion.</p> <p>The default exclusion of secondary legislation from the disclosure requirements in Part 4 provides flexibility and time to decide what types of secondary legislation warrant a disclosure and what sort of information it will be useful to disclose. Again, with the House having a say in what secondary legislation is included and what information must be disclosed, the chances of the chosen disclosures being used and useful in supporting legislative quality are increased.</p> <p>Notices under this clause would need to be made consistently with the purpose of the Legislation Act 2019, which may decrease the chances the standards set novel or unorthodox descriptions of law-making processes.</p> <p>Agencies will be able to better target their resources towards regulatory systems that are most at risk or would experience greater benefit from review. This could, in turn, increase the effectiveness and value-add of stewardship activity undertaken by agencies.</p>
<b>Durability</b>	0	<p style="text-align: center;">--</p> <p>A statutory obligation is a more credible and enduring commitment than the current administrative requirement.</p> <p>However, establishing standards via principles in primary legislation also reduces flexibility over time as the principles would be more difficult to amend to respond to unforeseen scenarios, changes in priorities and/or unintended consequences. This could result in the legislation becoming less fit for purpose over time, lessening its durability in the longer term.</p> <p>In particular, given the need to be more selective when establishing principles in primary legislation, the principles will likely reflect political judgements about values and priorities at a particular point in time. Where subsequent governments make different judgements,</p>	<p style="text-align: center;">+</p> <p>A statutory obligation is a more credible and enduring commitment than the current administrative requirement.</p> <p>The use of secondary legislation to determine the relevant standards provides more flexibility to adapt and amend disclosures to reflect changing views on best practice or what issues matter most, as well as lessons learned about how the standards are best expressed.</p>



		the legislation would have to be amended, with an increased chance the legislation as a whole would be repealed	
<b>Costs</b>	0	<p>-</p> <p>This option would be potentially significantly more costly than the status quo. Government agencies would incur additional costs associated with certifying new legislation for compliance with the principles and associated with regulatory stewardship obligations contained in the proposed Bill (e.g., developing plans and undertaking periodic reviews of existing legislation), including higher costs for assessment and justifying where inconsistency is identified. [LEGALLY PRIVILEGED] s 9(2)(h)</p> <p>[REDACTED]</p>	<p>-</p> <p>Disclosures of consistency against standards set in secondary legislation would be more formal than under the status quo, resulting in the potential for higher costs of compliance. However, these costs would be less than under Option Two due to fewer pieces of legislation being in scope for assessment from the outset (proposals for new secondary legislation would only be brought in by notice under this option, as opposed to being excluded by notice).</p>
<b>Feasibility/efficiency</b>	0	<p>-</p> <p>The application of consistency assessments to all new legislation (primary and secondary) unless excluded by the Bill or Ministerial notice may impose a greater burden on agencies and entities with responsibility for legislation, and this could be significant for local government - particularly if bylaws are not excluded. The impact of this is variable, and depends on the volume of proposals for new primary and legislation. There are also likely to be inefficiencies created as agencies will be less able to focus attention on legislation where reviews would be most impactful.</p>	<p>0</p> <p>Having a more flexible approach to the review of legislation is likely to make the proposal easier to implement for agencies, and reduce inefficiencies associated with assessment of legislation where there is limited benefit in doing so.</p>
<b>Overall assessment</b>	0	-	+

**What option for the overall approach is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

99. As noted above, any additional measures to strengthen the RMS and incentives on Ministers and agencies will incur a cost compared with the status quo. In addition, the overall effectiveness of any option is uncertain and likely has limits given the strong competing incentives on Ministers and agencies.
100. In this context, both Options Two and Three would use legislative mechanisms to set standards for regulatory quality and to establish processes for agencies and Ministers to assess and report on whether legislation is consistent with those standards. In both cases, the involvement and approval of Parliament provides a more credible and enduring commitment to supporting scrutiny of legislation than the current administrative disclosure requirements. Both options could, to a degree, strengthen incentives for Ministers and agencies to ensure legislation is consistent with the selected standards.
101. However, the Ministry considers that Option Three is more likely to advance the policy objectives at lower cost and with fewer unintended consequences. The disclosure statement regime under Part 4 of the Legislation Act 2019 would achieve many of the same benefits for increasing regulatory quality without generating the same costs and risks as including principles in primary legislation. Specifically, existing provisions under Part 4 provide for the setting of standards and mechanisms for assessing and reporting on consistency with those standards. Those standards can draw on the full range of default principles currently set out in the Legislation Guidelines or elsewhere, at a greater level of detail and with more scope for tailoring the selection of standards to different types of legislation than if the standards were set out as principles in primary legislation.
102. In addition, the use of secondary legislation to determine the relevant standards provides more flexibility to adapt and amend disclosures to reflect changing views on best practice or what issues matters most, as well as lessons learned about how the standards are best expressed to elicit useful assessments. That flexibility also means that compliance costs can be more easily managed, which can support durability.
103. [LEGALLY PRIVILEGED] s 9(2)(h)
104. A drawback with Option Three is that it may not be as effective in increasing the incentives on agencies and Ministers to ensure legislation complies with standards, relative to Option Two where principles set out in primary legislation could be seen as holding more weight compared with standards set out in secondary legislation. However, our view is that the relative effectiveness of other components in Option Three (such as enhanced measures relating to regulatory stewardship) would, on balance, outweigh this.
105. Option Two includes a requirement that existing primary and included secondary legislation within scope of the new requirements is reviewed for consistency with the principles. Option Three would also require agencies to review their existing stock of legislation, but these reviews would be wider in scope and consider the stewardship of the overall regulatory system (e.g. operational practices, and regulator capability and performance). Option Three would also provide agencies with greater flexibility in exercising stewardship of their regulatory systems, meaning that they can prioritise systems most at risk or target their stewardship activity more effectively.

**Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?**

106. The Ministry for Regulation's preferred option (Option Three) differs from the Minister for Regulation's preferred option (Option Two), which is the option being recommended in the Cabinet paper.

107. We have developed **Subpart Two** of this section to analyse in more detail the specific options for setting out principles in primary legislation in accordance with the Minister's preferred option. As the principles are a significant component of the proposed Bill, which received a high volume of feedback during public consultation, decoupling the choice of the approach to establishing the principles in primary legislation from the overarching decision to set them in primary legislation allows for more detailed options analysis.

### **Subpart Two: What options for a specific set of principles set out in primary legislation are being considered?**

108. **Subpart Two** of this section is based on the option being taken forward in the accompanying Cabinet paper, which is to set principles in primary legislation. **Subpart Two** sets out options for establishing principles in primary legislation and includes the substance and level of detail the principles could cover.

109. **Annex One** to this RIS provides further analysis of the specific principles that form part of the Minister's preferred option.

110. The options in this RIS for specific principles set out two groups of principles:

- Principles relating to legislative design: these principles refer to the content of legislation being developed.
- Principles relating to good law-making: these principles refer to the process of developing legislation.

### **Option One – Status quo, principles are not set out in the Regulatory Standards Bill**

111. Option One is the status quo, where neither principles nor accompanying mechanisms are established in legislation. Options for this are more fully described under **Subpart One** of this section, and used in this part to provide a baseline for comparison only.

### **Option Two – Selected legislative design and good lawmaking principles are set out in the Regulatory Standards Bill (Minister's preferred option)**

112. Under Option Two, the principles for inclusion in primary legislation comprise principles relating to legislative design and good law-making.

113. The principles are selective rather than broad-based – they focus particularly on the effect of legislation on existing rights and liberties and on the processes that should be followed in making that legislation. They do not reflect the wide scope of the expectations or principles set out in the *Government Expectations for Good Regulatory Practice* or the *Legislation Guidelines*, including in relation to showing appropriate respect for the spirit and principles of the Treaty/te Tiriti. In addition, the wording of some of the principles depart significantly from established expressions of those principles in the *Legislation Guidelines* or elsewhere (e.g., the Bill of Rights Act 1990).

114. For the specific proposed wording of the principles, refer to **Annex One**.

115. Option Two is the Minister's preferred option.



**Option Three – Comprehensive high-level principles are set out in the Regulatory Standards Bill, with detail set through non-legislative mechanisms (Ministry’s preferred option)**

116. Option Three involves setting out very broad principles for responsible regulation in primary legislation, with specific detail situated in non-legislative guidance.

117. Under this option, it is proposed to enact only a core set of generally accepted principles in primary legislation, without providing as much detail as under Option Two. The proposed Bill would state a broad purpose (such as to encourage the development and maintenance of legislation and regulatory systems that are well-designed and fit-for purpose) and set a few enduring, high-level principles to give effect to that purpose derived from some well-understood and widely accepted ideas (e.g., in the Legislation Guidelines and/or Queensland’s Legislative Standards Act 1992).

118. These high-level principles could include:

- that the legislation has sufficient regard to fundamental constitutional principles and values of New Zealand law (this includes that the legislation has sufficient regard to rights and liberties of individuals)
- that the development of the legislation has had sufficient regard to good lawmaking processes.

119. These principles would allow fuller coverage of some of the fundamental constitutional principles and values not covered in Option Two – in particular, provision for the principles of the Treaty/te Tiriti, as well as other aspects of rights and liberties (e.g., provision for collective rights) and good lawmaking (e.g., specific obligations in relation to engagement with iwi and hapū).

120. Additional principles that might not have universal support but are important to a particular government could be added by way of secondary legislation, to be confirmed by a House vote. Such a mechanism is already provided for in Part 4 of the Legislation Act 2019.

121. Option Three is the Ministry’s preferred option for setting principles in primary legislation.

**Option Four - High level principles and a non-exhaustive list of examples are set out in the Regulatory Standards Bill**

122. Option Four is modelled on Queensland’s Legislative Standards Act<sup>21</sup>, which has been in place since 1992. The Act identified two overarching “fundamental legislative principles” (FLPs) that are said to underlie a parliamentary democracy based on the rule of law, which are that “legislation has sufficient regard to:

- rights and liberties of individuals, and
- the institution of Parliament”.

123. The Legislative Standards Act then sets out examples of issues that relate to the rights and liberties of individuals, and others that relate to the institution of Parliament. As these issues are presented as examples, additional issues relating to the two FLPs can also be considered when developing primary legislation, and additional examples can be added while the list remains non-exhaustive. Non-legislative guidance from the Office of

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<sup>21</sup> Accessed at [Legislative Standards Act 1992](#).

Queensland Parliamentary Counsel identifies a range of further issues that also apply – with a broadly similar function to LDAC’s Legislation Guidelines in New Zealand.

124. Option Four would follow a similar model, in which the proposed Bill would:

- set out broad principles (as previously proposed), establishing them as fundamental legislative principles, or something similar, for the purposes of the proposed Bill
- include a principle related to the Treaty of Waitangi
- set out more detailed considerations as examples of things to be applied when assessing the consistency of legislation with the principles
- provide for the ability for further considerations to be added via notices approved by the House
- set out how the principles and considerations should be applied – for instance to clarify that these principles are provided to support Parliamentary scrutiny of legislation, have no interpretative effect, and do not affect the validity of any legislation and that there is a non-exhaustive list of examples and supporting guidance.

#### **Option Five – Good lawmaking principles only are set out in the Regulatory Standards Bill**

125. Option Five would establish only the good lawmaking principles (see **Annex One**) in primary legislation.

126. Under this option, the principles would focus more narrowly on standards for regulatory policy development. This would aim to increase the robustness of processes for regulatory policy development and implementation, including focus on the problem definition, cost-benefit analysis and consultation with affected parties.

127. The Government would be required by the Act to pursue its regulatory programme in a way that upholds the principles by setting and giving effect to requirements, processes and expectations.

128. This narrower set of principles in primary legislation would allow alignment with established policy processes, such as the RIA requirements and disclosure regime.

## How do the options for specific sets of principles set out in primary legislation compare?

	Option One – Status Quo	Option Two – <i>Selective legislative design and good lawmaking principles set out in the Regulatory Standards Bill (Minister's preferred option)</i>	Option Three - <i>High level principles set out in the Regulatory Standards Bill, with detail set through non-legislative mechanisms (Ministry's preferred option)</i>	Option Four – <i>High level principles and non-exhaustive list of examples set out in the Regulatory Standards Bill</i>	Option Five – <i>Good lawmaking principles only set out in Regulatory Standards Bill</i>
Effectiveness	0	<p>0</p> <p>Establishing high-level principles in primary legislation, clarifying requirements and making them more prominent may result in a higher level of legislative consistency with these principles than under the status quo.</p> <p>However, legislation is more likely to be found to be inconsistent with the principles (particularly existing legislation) because of the unconventional nature of some of the proposed legislative design principles, and because some of the proposed good lawmaking principles set standards that would be very difficult to achieve (e.g., that a legislation should be <i>the most</i> effective, efficient and proportionate response available). If this were the case, this would reduce the intended incentive effect of an assessment of 'inconsistency', because it would be so common.</p> <p>To the extent that this option is successful at influencing the quality of regulation, because of the selective nature of the principles, it would only do so in relation to a subset of aspects of regulatory quality currently applied in New Zealand (e.g., not all the standards currently covered in the <i>Legislation Guidelines</i>). This could result in a decrease in regulatory quality in those aspects not covered by the principles. In addition, some of the principles do not map well to the existing accepted standards of regulatory quality set out in the <i>Legislation Guidelines</i> and elsewhere.</p> <p>This possibility is supported by feedback during the consultation process that the selection of the principles could lead to overall reductions in regulatory quality due to the perceived deprioritisation of some concepts and values such as equity, social wellbeing and kaitiakitanga, as well as a failure to recognise and explicitly provide for the Crown's obligations under the Treaty/te Tiriti.</p>	<p>+</p> <p>Establishing high-level principles in primary legislation, clarifying requirements and making them more prominent may result in a higher level of legislative consistency with these principles than under the status quo. However, in this option the principles would be very broad, and it is unclear how effective they would be at driving change relative to not having principles in primary legislation at all.</p> <p>Given that the principles would be more conventional, legislation is less likely to be found inconsistent with the principles, and therefore more attention may be paid to identified inconsistencies.</p> <p>To the extent that this option is successful at influencing the quality of regulation, it would do so in relation to a broader range of aspects of regulatory quality.</p> <p>We note that that the effectiveness of this option in terms of improving legislative consistency with the principles would be highly dependent on the strength of any tests set out in non-legislative guidance to assess consistency against these high-level principles.</p>	<p>+</p> <p>Establishing high-level principles through primary legislation may result in a higher level of legislative consistency with these principles than under the status quo.</p> <p>Given that the principles would be more conventional, legislation is less likely to be found inconsistent with the principles, and more attention would be paid to identified inconsistencies.</p> <p>Including non-exhaustive examples in primary legislation may provide clarity for agencies, resulting in more robust assessments and better policy development processes over time.</p> <p>To the extent that this option is successful at influencing regulation, it would do so in relation to a broader range of aspects of regulatory quality.</p> <p>We note that the effectiveness of this option in terms of improving legislative consistency with the principles would be highly dependent on the strength of any tests set out in non-legislative guidance to assess consistency against these high-level principles.</p>	<p>0</p> <p>Benefits of this approach include its more direct focus on good lawmaking principles - which could increase regulatory quality to the extent it incentivises more robust policy and legislative development processes.</p> <p>However, some of the proposed good lawmaking principles set standards that would be very difficult to achieve. The likelihood of findings of inconsistency is therefore relatively high, and less attention would be paid to identified inconsistencies.</p> <p>The trade-off of greater focus on good lawmaking principles is less focus on legislative design principles (although current mechanisms would remain in place, such as the Cabinet mandated Legislation Guidelines and the role of LDAC).</p>



Durability	0	<p>--</p> <p>Establishing a selective set of detailed principles in primary legislation gives less flexibility for standards to be adapted in response to changing or unforeseen circumstances or consequences, or to different Government priorities, negatively impacting the scheme's durability over time.</p> <p>The novel nature of the selected principles in this option, and their lack of alignment with commonly accepted approaches in New Zealand and other jurisdictions will also reduce their broad acceptability and therefore durability.</p> <p>Feedback from the consultation process largely focused on the perceived prioritisation of some values over others in the selection of the principles, and concerns about the omission of some key values that submitters thought should be reflected.</p> <p>A particular area of concern was the proposed lack of explicit recognition for the Crown-Māori relationship under the Treaty/te Tiriti. Feedback included perceptions that the approach under this option does not reflect the constitutional importance of the Treaty/te Tiriti to New Zealand, could diminish the Treaty/te Tiriti protections in both current and future laws (including settlement protections), reduce protections for Māori environmental interests, and have a significant social and cultural impact on Māori.</p> <p>This lack of broad acceptability signalled by the consultation feedback indicates that the principles in this option are unlikely to have the broad support required for the scheme as a whole to be durable.</p>	<p>0</p> <p>This option allows for more flexibility than Option Two through the use of non-legislative guidance to elaborate on the standards, which is more easily amendable than primary legislation.</p> <p>This would reduce the likelihood compared with Option Two that a different government would seek to amend or repeal the Act as a whole if it did not support a particular standard.</p> <p>This option lends itself to consideration of a broader range of principles and values that are better aligned with the current accepted standards set out in the <i>Legislation Guidelines</i> and elsewhere. This would likely address many of the concerns expressed in feedback from the consultation process.</p> <p>In particular, this option would allow for consideration of the Treaty/te Tiriti principles and how best to recognise and protect Māori rights and interests in the development of legislation, which could address a major concern expressed by most people who made a submission during public consultation.</p> <p>This could mean that the scheme achieves broad support and could give it a degree of durability over time.</p>	<p>0</p> <p>This option allows for more flexibility than Option Two by use of non-exhaustive examples set in primary legislation, and additional guidance setting out further examples.</p> <p>This would reduce the likelihood compared with Option Two that a different government would seek to amend or repeal the Act if it did not support a particular standard.</p> <p>This option also lends itself to consideration of a broader range of principles and values that are better aligned with the current accepted standards set out in the <i>Legislation Guidelines</i> and elsewhere. This would likely address many of the concerns expressed in feedback from the consultation process.</p> <p>In particular, like Option Three, it allows for consideration of the Treaty/te Tiriti principles and how best to recognise and protect Māori rights and interests in the development of legislation, which could address a major concern expressed by most people who made a submission during public consultation.</p> <p>This could mean that the scheme achieves broad support and could give it a degree of durability over time.</p>	<p>-</p> <p>Good lawmaking principles are broadly consistent with established tools for encouraging robust policy process (for example the RIA requirements). Therefore, this option may be more durable, as such tools have had broader and longer-standing acceptance.</p> <p>Conversely, the focus on the good lawmaking principles may make the proposed Bill appear redundant if these are all that are in scope (if it is simply perceived to be duplicating RIA requirements for instance), increasing the potential for a future Government to repeal the legislation.</p>
Costs	0	<p>--</p> <p>More resourcing will be required than under the status quo to assess proposed and existing legislation against the principles.</p> <p>[LEGALLY PRIVILEGED] s 9(2)(h)</p> <p>[LEGALLY PRIVILEGED] s 9(2)(h)</p>	<p>-</p> <p>More resourcing will be required than under the status quo to assess proposed and existing legislation against the principles.</p> <p>[LEGALLY PRIVILEGED] s 9(2)(h)</p>	<p>-</p> <p>More resourcing will be required than under the status quo to assess proposed and existing legislation against the principles.</p> <p>[LEGALLY PRIVILEGED] s 9(2)(h)</p>	<p>-</p> <p>Allows for a more integrated approach with work to strengthen and streamline the regulatory policy making process (including RIA requirements), which could be less costly than other options in relation to new proposals for primary legislation. However, if the scheme included assessment of all existing legislation, then more resourcing would be required than under the status quo.</p>

		<p>s 9(2)(h)</p> <p>There may also be costs arising from the application of the principles to policy initiatives that are also too uncertain to estimate, for example costs associated with more consultation, or costs arising from providing compensation for any impairment of property.</p>			
<b>Feasibility and efficiency</b>	0	<p>--</p> <p>The novel nature of the principles, the types of analysis that the application of these particular principles would require, and the potential for trade-offs between the principles would likely mean that agencies require significant support and guidance to implement the proposal. This would make implementation more difficult and complex.</p>	<p>0</p> <p>Establishing high-level principles with detail in guidance that is more closely aligned to the legal principles and concepts in the <i>Legislation Guidance</i> will likely be easier to implement than Option Two.</p> <p>There could be room for more flexible application of the broader principles, potentially allowing for some efficiencies as assessment of compliance could be focused more on significant proposals.</p> <p>There would still likely be some significant work involved in producing detailed guidance and process to support application of the standards.</p>	<p>0</p> <p>This option would be very similar to Option Three.</p>	<p>-</p> <p>This option provides an approach which could be integrated with well-established regulatory policy making process (including RIA requirements), which is likely to be more feasible to implement, both in terms of workload for the Ministry in ensuring agencies understand their obligations, and for agencies to maintain the required capability for compliance. However, the strictness of the tests set out in some of the good lawmaking principles could increase implementation challenges for agencies.</p>
<b>Overall assessment</b>	0	--	0	0	-

**What option for the specific set of principles set out in primary legislation is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

129. Relative to other options for establishing principles in primary legislation, Option Three is preferred by the Ministry.

130. Option Three has the benefits associated with establishment of principles in legislation (i.e. more prominence, which could ultimately result in more compliance with consistency assessment requirements). However, it avoids many of the risks with Option Two in particular, [LEGALLY PRIVILEGED] s 9(2)(h)

It also provides for a broader range of standards to be set in relation to regulatory quality (including standards relating to the Crown's obligations under the Treaty/te Tiriti, which was a matter of some concern for submitters on the discussion document) and is therefore more likely to get broad buy in, increasing its durability over time.

131. The option is also likely to be less costly to implement than the Option Two ([LEGALLY PRIVILEGED] s 9(2)(h))

**Is the Minister's preferred option in the Cabinet paper on the specific set of principles the same as the agency's preferred option in the RIS?**

132. The Ministry for Regulation's preferred option if standards are to be established as principles in primary legislation (Option Three) differs from the Minister for Regulation's preferred option (Option Two), which is the option being taken forward in the Cabinet paper.

## Cost Benefit Analysis: Preferred options package of subparts one and two

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### What are the marginal costs and benefits of the preferred option in the Cabinet paper?

#### ***Costs of the Minister's preferred option***

133. The net costs to agencies over time as a result of the requirements on agencies to produce CAS for new legislation and review included existing legislation for consistency with the principles in the proposed Bill are difficult to assess and may change over time.
134. We have estimated the level of effort to undertake high quality analysis to support the production of CAS and undertake reviews of existing legislation for consistency with the principles in the proposed Bill. We consider the level of resourcing indicated below to be the minimum required. Some assessments may take more resourcing based on complexity and scope, however this is likely to be balanced with other assessments requiring less resourcing.
135. We have calculated an estimate using the anticipated FTE that would be required for each assessment, based on a broad assumption of how agencies choose to undertake the work. Our assumptions use data that are available on the volumes of stock and flow of legislation across public sector agencies. However, we note this data does not directly translate to the level of difficulty that may be involved in assessments. There is a significant range in the scale and complexity of each piece of legislation and a range of context-specific factors that will impact how agencies need to undertake their assessments. As a result, we have very few precedents to look to for evidence of how much effort will be required.
136. Assuming there is no additional funding for resourcing provided for agencies to undertake the work, there may be an opportunity cost associated with prioritising resourcing to undertake CAS and reviews of consistency at the expense of other policy work. If no additional funding is provided, agencies are likely to provide lower levels of existing resource into reviewing existing legislation than the assumptions provided below, due to the need to balance review requirements with other policy priorities. This would lower the quality of the assessments undertaken.
137. There are factors that may reduce the financial burden on agencies over the long term that our calculations do not account for. For example, the costs may be offset with savings over time from increased consistency of the stock and flow of primary and secondary legislation that results in reduced effort in reviewing and amending legislation and/or operational efficiencies. There could also be broader savings beyond the public sector to the extent that the proposal reduces the amount of poor quality or unnecessary legislation. It is difficult to assess the likely savings as it is not possible to monetise the comparison between legislative quality of the status quo with the possible quality of future legislation as a result of the proposed Bill.

#### ***Benefits of the Minister's preferred option***

138. The Cabinet paper proposal is expected to result in greater transparency of whether legislation meets the specific standards expressed as principles of responsible regulation and justifications for inconsistencies. This transparency, along with the incentive effect potentially added by the proposed Regulatory Standards Board (covered in section 2B), could influence decisions made during the development, implementation and stewardship of legislation, and ultimately increase the amount of legislation that is consistent with the principles over time.

139. However, delivery of these benefits will be heavily dependent on the impact of competing incentives and the effectiveness of implementation (including allocation of appropriate funding/resourcing).

140. If the proposed Bill were to have the impact as described, this would be in relation to the principles as currently proposed (see **Annex One**). Given the selective nature of the principles, and the fact that they do not include many of the aspects of regulatory quality covered in the Legislation Guidelines (as noted by a number of submitters to the public consultation process), it is difficult to assess the impact on overall regulatory quality even if there are high degrees of compliance with new requirements under the Bill.

141. The strengthened regulatory stewardship requirement in the proposed Bill could also reduce the incidence, or severity, of regulatory failure – through greater monitoring and evaluation activity.

### ***Assumptions for cost-benefit analysis***

142. The assumptions underpinning the figures in the table below are:

#### *CAS for new legislation*

- Approximately 60 hours of work would be required to produce and approve each CAS and support the responsible Minister or maker (for secondary legislation) to make a statement and provide justification for any inconsistencies.
- The estimated hours focus on the administrative side of producing CAS. The estimation does not include any implications for resourcing or time required during the development of policy and corresponding legislation as a result of following the proposed principles. The costs of such considerations would be context specific and presumably would be built into the proposed scoping of resource and timeframes required for undertaking the policy and legislative work.
- Approximately 100 government Bills or Amendment Papers and 1,350 pieces of new secondary legislation would require a CAS each year.
- The total volume assumes all<sup>22</sup> new secondary legislation remains within scope of the proposed bill's requirements. The volume may decrease should classes of new secondary legislation be excluded from the requirements via a notice from the Minister for Regulation following approval by the House of Representatives. However, because there are no classes of legislation currently proposed for exclusion, the costs have included all new secondary legislation (with the exclusion of by-laws, which have not been costed). We note classes of bills may also be excluded via a notice, however given the smaller volume we would anticipate the number of bills excluded would be a smaller number overall.

#### *Review of existing primary legislation for consistency with the principles of responsible regulation*

- The proposed Bill will require agencies to develop a plan to review existing primary legislation for consistency with the principles of responsible regulation. There is approximately 1,000 existing Acts that would require review under agencies plans.

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<sup>22</sup> Except for secondary legislation excluded in the bill itself (such as Defence Force Notices and Court rules).



- The Bill does not propose a timeframe for agencies to complete reviews. This means agencies will have the flexibility to manage resourcing for review activity alongside other priorities within the relevant portfolio.
- We have estimated costs assuming 1 FTE per review. However, we note the subject matter and complexity of each Act will impact on the level of resourcing required.
- In addition to the overall total, we have assumed agencies would complete reviews of approximately half of the existing stock (500 Acts) within a 10-year period. This would mean 50 Acts are reviewed per year assuming an even spread of review activity across the 10- year period. This approach assumes the other half of existing legislation would be reviewed beyond the ten-year horizon.
- However, given the proposed Bill does not specify a deadline for review activity, we anticipate there will be significant variation in the timeframes agencies will complete reviews within.
- We also note the proposed Bill provides for the Minister for Regulation to include additional classes of existing secondary legislation within review requirements via a notice following approval by the House of Representatives. Should this mechanism be utilised there will be increased costs for undertaking review activity on specified classes of existing secondary legislation. The bill also proposes that when existing secondary legislation is amended, the underlying principal secondary legislation would become subject to review requirements and the board's purview. This will mean an escalating number of pieces of secondary legislation will be subject to review requirements.
- The costs assume Principal Advisor resource. Senior resourcing reflects the technical and complex nature of the considerations involved in undertaking assessments against the principles. The Principal band is a middle ground - some resourcing will likely come from a lower salary base, while legal support, managerial oversight and Ministerial input is from a higher salary base. 25% overhead has been included.
- The estimated average cost of a review of existing legislation is considerably higher than for new legislation because it cannot take advantage of all the policy work already done as part of developing new legislative proposals. Further, the great majority of the cost relates to the assessment of existing legislation against the good law-making principles, rather than the legislation design principles, due to the nature of the analysis required if the analysis is to be of a useful quality.

### *Limitations*

143. We have not tried to estimate potential savings that may result from efficiencies such as the ability to use technology to support analysis. We have also not estimated the level of relevant existing review work that would lower the marginal cost but, given the specific nature of the consistency assessment work required, we don't expect much offset.

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs of the preferred option compared with taking no action</b>			
Ministry for Regulation	Costs to the Ministry involve: <ul style="list-style-type: none"> <li>• Additional resource or reprioritised resource to prepare guidance for the</li> </ul>	Medium - the Ministry for Regulation may require additional resourcing in order to carry out some of these	Medium

	<p>responsible Minister to issue on the application and interpretation of principles, content and presentation of consistency statements, and how to prepare and carry out plans to regularly review legislation.</p> <ul style="list-style-type: none"> <li>• Supporting the Minister for Regulation to issue notices under the legislation to exclude classes of legislation from the requirements set out in the proposed Bill.</li> <li>• Supporting the Minister for Regulation in their role to approve exemptions from consistency statements for Government amendments that do not materially change the related Bill.</li> <li>• Providing training and guidance to agencies on new requirements and developing agency capability.</li> <li>• Reviewing agency consistency statements and stewardship reporting to support regular reporting to the Minister on the overall performance of the regulatory management system.<sup>23</sup></li> </ul>	<p>functions, or deprioritise other work.</p> <p>Estimation by the Ministry suggests approximately \$1.1 million to \$1.4 million per annum in FTE costs.</p>	
Other government agencies (including in-house legal practitioners)	<p>Costs to other agencies involve:</p> <ul style="list-style-type: none"> <li>• Producing and publishing consistency statements to certify new legislation (primary and secondary) is compliant with the principles. We estimate there are around 100 relevant government Bills or Amendment Papers and 1,350</li> </ul>	<p>Variable medium – high. Approximately \$8.6m per year for consistency statements for new legislation.</p>	Low- Medium

<sup>23</sup> Resourcing assumes a team including 3 x principal advisors, 1 x senior advisor, 1 x principal legal support and a manager to develop guidance and support agency training. An additional 1 FTE is included to support the issuing of notices and reporting requirements, considering exemption requests and supporting the Ministry's regular reporting requirements. We consider this resourcing level to be the minimum required to adequately undertake the Ministry's functions, due to the complexity of the guidance that will be required and the scope of consultation that may be needed given the broad range of agencies that will be required to follow the guidance material.

	<p>pieces of new secondary legislation each year.</p> <ul style="list-style-type: none"> <li>• Developing and reporting on plans for reviews of existing legislation and undertaking the reviews for existing primary legislation and secondary legislation that is amended following the Bill coming into force.</li> <li>• Supporting responsible Ministers to make statements on any inconsistencies identified in reviews of primary legislation and/or publishing statements on any inconsistencies found in secondary legislation.</li> <li>• Providing information to the Ministry for Regulation for regulatory reviews or to support the Ministry for Regulation reporting to the House if requested.</li> <li>• Providing information to or responding to recommendations from the Regulatory Standards Board.</li> </ul> <p>[LEGALLY PRIVILEGED: s 9(2)(h)]</p> <p>Increased costs associated with internal legal review required to consider compliance with the principles provided for in legislation.</p> <p>Potential costs of prioritising reviews of new regulatory proposals and existing legislation</p>	<p>Approximately \$187.5m total cost for reviewing existing primary legislation for consistency with the principles in the proposed Bill.<sup>24</sup></p> <p>Costs will not be distributed evenly across the public service as the volume of legislation made and/or administered by agencies varies significantly. For example, we understand 15 agencies are responsible for more than 90 percent of all secondary legislation. Also contributing to the uneven distribution is the varying volumes and complexity of regulatory systems managed across the public service.</p> <p>Assuming half of the current stock of primary legislation is reviewed within 10 years, with an even spread per year (50 Acts) the total cost per year over the first 10 year period would be approximately \$9.375m.<sup>25</sup></p> <p>This is the level we believe would be the</p>	
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<sup>24</sup>This is an overall figure for reviewing all existing primary legislation across an unspecified timeframe. Further assumptions are set out below to provide an estimated annual cost for ten years following the bill coming into force.

<sup>25</sup> For context, we currently estimate that the Government spends approximately \$1B per year on its policy processes.

	<p>against the principles to ensure compliance over other policy work.</p>	<p>minimum required to undertake well-considered reviews.</p> <p>However, if no additional funding is provided, the actual cost of reviewing existing legislation is likely to be considerably lower, but with subsequent implications for the quality of assessments, and therefore the benefits of assessments. Alternatively, review activity may be spread over a longer time period.</p>	
Crown	<p>[LEGALLY PRIVILEGED] s 9(2)(h)</p> <p>[REDACTED]</p> <p>There may also be costs arising from the application of the principles to policy initiatives that are also too uncertain to estimate, for example costs associated with more consultation, or costs arising from providing compensation for any impairment of property.</p>	<p>Uncertain but could be significant.</p>	Low
Judiciary/Legal practitioners	<p>[LEGALLY PRIVILEGED] s 9(2)(h)</p>	<p>[LEGALLY PRIVILEGED] s 9(2)(h)</p>	Low

	s 9(2)(h)	s 9(2)(h)	
Members of the public	<p>Some indirect transactional costs – e.g., some parties may face additional costs from changes resulting from reviews of existing legislation.</p> <p>There may be costs associated with regulatory uncertainty as it will potentially be easier to challenge regulatory settings or reviews of existing legislation may result in more frequent regulatory amendments. Updates may result in businesses needing to adapt systems/processes to comply with changes.<sup>26</sup></p>	<p>Variable – low to medium.</p> <p>Depends on the regulatory system members of the public interact with and the likelihood of legislative amendments as a result of consistency assessments of legislation.</p>	Low
<b>Total monetised costs</b>	<p>The Ministry's estimate includes costs to Ministry for Regulation and other government agencies only.</p> <p>It does not include the potential costs for local government from including by-laws within scope of the proposed Bill or any potential administrative costs associated with Parliament's receipt of 100 consistency statements per year.</p>	<p>Variable – medium to high. Higher compared with the status quo.</p> <p>Approximately \$18m per annum, if the work is to be done to a reasonable standard, and assuming half of existing Acts are reviewed within the first 10 years.</p> <p>Costs will be much lower in practice if not funded, but would also significantly lower assessment quality and any resulting benefits.</p>	Low - Medium
<b>Non-monetised costs</b>		Higher compared with taking no action.	Medium
<b>Additional benefits of the preferred option compared with taking no action</b>			

<sup>26</sup> We note this may be a secondary impact, as the bill does not require amendments to legislation that is deemed inconsistency with the proposed principles. Responsible Ministers may choose to acknowledge inconsistencies without proposing to remedy.

IN-CONFIDENCE

Ministry for Regulation	<p>Greater ability to assess the effectiveness of other government agencies' stewardship of the regulatory systems they administer.</p> <p>Forward plans for reviewing legislation, published by government agencies, could result in greater information certainty on the pipeline of new regulatory proposals which can facilitate Ministry for Regulation functions (e.g., administration of the RIA system).</p>	Low to medium	Medium
Other government agencies (including in-house legal practitioners)	<p>If requirements for more regular review of legislation result in more up-to-date legislation, then this could make it easier for government agencies to do their jobs. Increased understanding within agencies of impact of regulatory decision-making in practice, through increased reviews.</p> <p>Possible increase in regulatory quality due to agencies undertaking more robust assessments.</p>	Variable, low to medium, relative to the status quo depending on the agency's existing regulatory practices and whether regular review leads to changes to legislation.	Low
Parliament	<p>Potential for improved Parliamentary scrutiny through having additional mechanisms to evaluate new legislation introduced into the House.</p> <p>Flow-on benefits of more robust debate on the quality of legislation.</p>	Medium	Low
Members of the public	<p>Benefits derived if there are improvements in regulatory quality over time.</p> <p>Potential avoidance of regulatory failure that may otherwise result from the lack of monitoring and evaluation of existing regulation/regulatory systems.</p>	Variable, depending on the positive impact of changes, e.g., avoidance of regulatory failure could result in benefits.	Low
<b>Total monetised benefits</b>		-	-

<b>Non-monetised benefits</b>	Likely higher compared with taking no action.	Uncertain	Low
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***What are the marginal costs and benefits of the Ministry's preferred option?***

<b>Affected groups</b>	<b>Comment</b>	<b>Impact</b>	<b>Evidence Certainty</b>
<b>Additional costs of the Ministry's preferred option compared with taking no action</b>			
Ministry for Regulation	<p>The responsibilities are similar to Option Two, involving:</p> <ul style="list-style-type: none"> <li>Drafting guidance and supporting material to establish principles via government notice relating to good regulatory design and good law making principles</li> <li>Drafting guidance on the application and interpretation of high-level principles</li> <li>Providing training and guidance to agencies on how to comply with new requirements</li> <li>Reviewing agency disclosure statements and stewardship reports</li> <li>Preparation of periodic agency compliance reports</li> <li>Ongoing review of principles</li> </ul>	<p>Medium - the Ministry for Regulation may require additional resourcing to carry out some of these functions, or deprioritise other work.</p> <p>Despite similar responsibilities, the costs are likely to be lower than Option Two because this option can build more easily on existing disclosure statement and LDAC guidelines and experience. Estimation by the Ministry suggests something under \$1m per year on average in FTE costs, though likely to be lumpy across years.</p>	Medium
Other government agencies (including in-house legal practitioners)	<p>Costs to other agencies involve:</p> <ul style="list-style-type: none"> <li>Producing and publishing disclosure statements for new primary legislation and some secondary legislation. This process would be more formal than under the status quo, likely resulting in higher compliance costs.</li> </ul>	Variable but likely to be higher - the obligation to periodically review existing legislation will likely impose significant costs on agencies, especially those that administer a large number of regulatory systems or complex regulatory	Low

	<ul style="list-style-type: none"> <li>Producing and reporting on plans for review of existing legislation</li> <li>Undertaking additional stewardship activity, such as monitoring, evaluation, and review of regulatory systems</li> <li>Providing information to the Ministry for Regulation for regulatory reviews and periodic agency compliance reports if requested.</li> </ul>	systems; particularly for agencies that are less advanced in their regulatory stewardship work.	
Parliament	Potential increase in need for House time to approve principles set out in Government notices and directions on consistency mechanisms, depending on frequency of updates.	Low. The volume and frequency of notices is unlikely to utilise significant House time but will be higher than under the status quo.	Low
Judiciary	[LEGALLY PRIVILEGED] s 9(2)(h)	s 9(2)(h)	Low
Lawyers / Legal Practitioners outside of the public sector	[LEGALLY PRIVILEGED] s 9(2)(h)	s 9(2)(h)	Low
Members of the public	Level of certainty as to expected standards required from legislation may reduce if principles are updated/ evolve frequently.	Variable depending on the regulatory system members of the public interact with.	Low
<b>Total monetised costs</b>		Variable but higher compared with taking no action.	Low



Non-monetised costs		Likely higher compared with taking no action.	Low
<b>Additional benefits of the Ministry's preferred option compared with taking no action</b>			
Ministry for Regulation	<p>Greater flexibility to support the evolution of standards for regulatory design and good law-making over time and ensure consistency with any developments in the Regulatory Management System.</p> <p>Greater ability to assess the effectiveness of other government agencies in stewardship of the regulatory systems they administer.</p> <p>Increased ability to provide detail to agencies on how to apply them.</p> <p>Forward plans for reviewing legislation, published by government agencies, could result in greater information certainty on the pipeline of new regulatory proposals which can facilitate Ministry for Regulation functions (e.g., administration of the RIA system).</p>	Low to medium	Medium
Other government agencies (including in-house legal practitioners)	<p>If requirements for more regular review of legislation result in more up-to-date legislation, then this could make it easier for government agencies to do their jobs.</p> <p>Provision of guidance material to support agencies to undertake stewardship duties will increase regulatory stewardship capabilities across agencies.</p>	Medium	Low
Parliament	Increased opportunity to affirm principles and maintain oversight if principles are able to evolve over time.	Medium	Low

	<p>Increased cross-Parliament support for principles will increase engagement and durability over time.</p> <p>Potential for improved Parliamentary scrutiny through having additional mechanisms to evaluate new legislation introduced into the House.</p> <p>Flow-on benefits of more robust debate on the quality of legislation.</p>		
Members of the public	<p>Benefits derived if there are improvements in regulatory quality over time.</p> <p>Potential avoidance of regulatory failure, which may otherwise result from the lack of monitoring and evaluation of existing regulation/regulatory systems.</p> <p>Increased confidence in the durability of the principles as the ability for principles to evolve over time and cross-Parliament support will reduce the risk of significant changes over time.</p>	Variable depending on the regulatory system members of the public interact with.	Low
<b>Total monetised benefits</b>		Uncertain	Low
<b>Non-monetised benefits</b>		Likely higher compared with taking no action.	Low

## **Section 2B: Assessing options to address the policy problem – assurance mechanism to support the application of the principles**

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144. Section 2B analyses options around how to design and implement an assurance mechanism independent from agencies to support the application of the principles. The proposed assurance mechanism would be an integral part of the regime introduced by the proposed Bill as it would support an increased volume of New Zealand’s new and existing legislation to be assessed for consistency with the principles for responsible regulation over time.
145. The proposed assurance mechanism was previously referred to in the interim Regulatory Impact Statement (RIS), October 2024, as a “recourse mechanism.” While the discussion document was exclusively focused on delivering the function via a statutory Board, the options presented in this document consider a range of ways to implement the above-described function, including the option for a statutory Board.

### **What scope will options be considered within?**

146. The objective of setting up the proposed assurance mechanism is to complement and support new proposed components of the Regulatory Management System, namely by providing an independent mechanism for inquiring into the consistency of primary and secondary legislation against the set of proposed principles for responsible regulation.
147. This proposed function is intended to act as an incentive for agencies to devote a greater amount of their finite resources to assessing the primary and secondary legislation they develop and administer against the principles in the proposed Bill and do this with an adequate level of rigour.
148. To achieve the above objective, the range of feasible options considered was narrowed by clear Ministerial direction that agencies are expected to undertake consistency assessments against the regulatory principles when they are reviewing legislation they administer periodically.
149. The Minister’s preference is that the assurance mechanism should be set up to add value in two ways:
- provide for independent inquiry into complaints from the public that specific existing primary and secondary legislation is inconsistent with the principles. The Minister for Regulation and/or the independent reviewers themselves should also be able to instigate an inquiry, and
  - look into agencies’ consistency assessment statements for Bills or amendments once they are introduced into the House and step in in a timely manner where an agency may have made a poorly substantiated statement.
150. Lastly, the assurance mechanism is expected to deliver non-binding recommendatory findings independent of Ministers responsible for and agencies administering the legislation under assessment.

### *Options that have not progressed for further analysis*

151. This RIS outlines three feasible options regarding the form the proposed mechanism could take instead of the status quo. Another five options to deliver the assurance function were identified, briefly considered and discarded for the reasons explained below.
152. The options that have not progressed for further analysis are:

- **A Regulatory Standards Board established as a crown entity:** This option was discarded because of the significant cost for the public sector to set up and operate a crown entity with an extremely narrow scope.
- **Recourse to the courts:** This option was assessed at a high level in the Interim RIS (October 2024). It has been discarded due to the potential for:
  - unjustifiable costs imposed on the court system, depending on the volume of complaints
  - limiting accessibility for complainants due to costs and formality
  - long wait times for complaints to be considered by the courts
  - the courts inhibiting or limiting other work that agencies carry out, and
  - [LEGALLY PRIVILEGED] s 9(2)(h)
- **A specialist tribunal:** This option was discarded because it is not a usual feature of a tribunal to make declarations of consistency. A tribunal is a quasi-judicial institution; as such, it has been discarded for similar reasons to the option of recourse to the court (discussed above).
- **An Interdepartmental Executive Board (IEB):** This option was discarded because of the high administration burden for Chief Executives and agencies, and the significant overlap with the work of those agencies to review the regulations they administer. This option would also have created a conflict between the chief executives on the IEB, many of whom would have been in the position of reassessing their own agency's consistency assessments of the legislation and regulations they are responsible for administering with the principles for responsible regulation.
- **Expansion of the current Regulatory Review Committee's scope or a new select committee:** This option was discarded because of the limited time and resources Members of Parliament have for committee work amongst their other duties. For the assurance mechanism to effectively discharge its role and support the proposed Bill's objectives, the RRC or a dedicated select committee would need to carry out inquiries into a substantial volume of primary and secondary legislation, as well as occasional assessments of agencies' consistency statements for Bills before the House, which would be well beyond a select committee's resource capacity.

### ***Criteria for analysing the options***

153. The options discussed below have been analysed using the criteria that were also applied in Section 2A. They are:

- Effectiveness
- Durability
- Costs
- Feasibility and efficiency.

154. The criteria used below have the same meaning as for the other areas of this RIS except for the effectiveness criterion. For the assurance mechanism options analysis, effectiveness means that an option lends to seamless and comprehensive delivery of the assurance function.

### **What options are being considered?**

#### **Option One – status quo**

155. In this option, there would be no dedicated assurance mechanism set up. The current ways that existing primary and secondary legislation are assessed for quality would continue to be applied by relevant Ministers and agencies. New legislation and amendments would be considered for quality using existing mechanisms (such as Regulatory Impact Statements where applicable) and through agencies' own assessments of consistency with the principles for responsible regulation. Complaints about existing primary and secondary legislation would be through the courts, the Ombudsman and the Regulatory Review Committee where applicable.

#### **Current ways existing primary and secondary legislation are assessed for quality**

156. Ministers and agencies are currently responsible for ensuring the legislation they administer are reviewed and amended to remain fit for purpose. They currently review existing legislation and regulatory systems at appropriate times (such as in response to adverse incidents) and when resources allow.

157. In addition, section 12(1)(e)(v) of the Public Service Act 2020 places regulatory stewardship duties on Chief executives regarding the legislation they are responsible to administer. In practice, this means Chief executives are already responsible for ensuring legislation and regulatory systems they administer are consistent with the [Government's expectations for good regulatory practice](#) (April 2017).

158. The Ministry for Regulation would also have a role to advise the Minister for Regulation on all matters relating to the Regulatory Standards Act as the administering agency.

159. That said, and as extensively explained in the problem definition, agencies are expected to deliver competing Ministerial priorities and currently there are weak incentives to look into the quality of existing legislation (if it is not a Ministerial priority).

160. Under the proposed Bill, agencies would also have to plan to undertake consistency assessments against the principles for responsible regulation for the primary and secondary legislation they administer if in scope.

#### **Current ways new legislation and amendments are assessed for quality**

161. New primary and secondary legislation and amendments that pass through the House are assessed for quality through:

- consultation with impacted parties and relevant government agencies
- the quality assurance processes within agencies
- Regulatory Impact Analysis processes (where applicable)
- Ministerial consultations
- Select committee stage of the legislative process, and
- Parliamentary debates at readings of the Bill in the House.

**The way new legislation and amendments would be assessed for consistency with the principles in the proposed Bill**

162. Under the proposed Bill, agencies would also undertake the consistency assessments with the principles for the flow of all new primary Bills and secondary legislation as proposed in section 2A and would draft relevant statements. These statements would be included in the explanatory note of Bills and amendments and considered as part of the suite of information (e.g., Cabinet papers, draft Bill and RIS) available to Members of Parliament when making decisions around new and amended legislation.

**How complaints about the consistency of regulation with the proposed principles are addressed**

163. Complaints from the public about existing legislation would continue to be managed through existing mechanisms.

164. There is a range of methods through which individuals and businesses can currently raise complaints about existing primary and secondary legislation. Those institutions were listed in the Interim RIS (see page 37) and the discussion document (see page 30). Those institutions will continue to operate regardless of whether the Bill is introduced.

**Submitters' views**

165. In response to the discussion document, most submitters who commented on the proposal that an independent statutory Board is established as a recourse mechanism questioned the need for it. Some submitters just raised specific concerns about proposed features of the Board; many submissions suggested no Board should be established.

**Option Two – Ministry for Regulation-led assurance mechanism**

166. In this option, public servants in the Ministry for Regulation would deliver the assurance functions, namely:

- carrying out inquiries following a complaint, on their own accord or on Minister for Regulation direction into existing primary and secondary legislation for consistency with the principles for responsible regulation, and
- assessing agencies' consistency assessment statements for new legislation and amendments at a suitable time following the introduction of those Bills to the House following a complaint, Minister for Regulation direction, or at their own behest.

**How the Ministry would deliver the assurance function**

167. The Chief Executive of the Ministry for Regulation would reconfigure its existing resources and infrastructure to carry out inquiries (following a complaint, at the behest of the Minister or on its own accord) into existing primary and secondary legislation for potential inconsistency with the principles.

168. The Ministry for Regulation's Red Tape portal could be used as an avenue to receive relevant complaints. Following an inquiry, the Ministry would inform the Minister for Regulation on its findings and make recommendations. Any recommendations would be published on the Ministry's website for transparency. The Minister would table the Ministry's annual summary report of findings and recommendations to the House to enhance accountability of the Executive to Parliament.

169. Staff could also be called to occasionally assess agencies' consistency statements for Bills or amendments before the House and submit a report with its conclusions at Select Committee stage.

170. To support the efficient delivery of the assurance mechanism objectives, the Ministry could set up a dedicated team comprised of existing staff and appoint an internal manager with accountability for the assurance function. This person, and their team, would offer an additional level of assurance regarding any recommendations, drive the pace of work and be the central point of interaction with the Minister for Regulation.

171. The Ministry would need to consider whether adjustments are needed to current work programmes to prevent any internal duplication. To manage additional workload, particularly keeping up with the timeframes of assessing agencies statements of consistency in relation to Bills and amendments before the House, the Ministry would likely need to deprioritise certain areas of work. Alternatively, the Ministry could secure new funding for the assurance function.

#### **Submitters' views**

172. Some submitters questioned the need for the Board when considering the Ministry for Regulation's newly established functions to review regulatory systems. Some of these submitters expressed their preference for Ministry staff to conduct the consistency assessments over un-elected Board members. Therefore, there is some level of support for Option Two.

#### **Option Three – A statutory Board**

173. This option is a proposal for the assurance mechanism to be delivered via a statutory Board that is designed in the same manner as other existing Ministerial Advisory Committees.

174. The proposed Board would:

- consider claims that existing primary and secondary legislation in scope is inconsistent with the legislative design and relevant good lawmaking principles
- report its views on these claims to the Minister for Regulation and make non-binding recommendations
- assess agencies' consistency assessment statements for a portion of Bills and amendments before the House and submit a report at Select Committee.

175. The Ministry for Regulation would provide secretarial and administrative support for the Board, as well as research and analytical support. The Ministry website would be used to receive complaints, publicise information and guidance on how to interact with the Board, and to publish non-binding recommendatory reports.

176. The establishment of the statutory Board would follow the guidance prepared by the Public Service Commission.<sup>27</sup> The Board members would not be public servants, or Members of Parliament. This is a design choice rather than a prohibition. It is intended to create a degree of independence from the public service and Parliament.

177. Board members would be appointed by the Minister for Regulation. Board members would be remunerated in line with both the provisions of the proposed Bill and the relevant sections of the Cabinet Fees Framework.<sup>28</sup>

#### **Submitters' views**

178. As already indicated, most submitters who commented on the proposal that an independent statutory Board is established as a recourse mechanism questioned the need

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<sup>27</sup> Public Service Commission, "[Establishing a ministerial advisory committee](#)" (August 2022).

<sup>28</sup> Cabinet Office Circular, "[CO\(22\)2 - Cabinet Fees Framework](#)", (October 2022).

for it and suggested it should not be established. Some submitters commented that it would be important for any such Board to be independent of the public service and Parliament. Many submitters objected to the proposal that the Minister for Regulation appoint the members of the Board, on the grounds that they considered this to be inappropriate as it would lead to a shared political bias among members, or cause conflicts of interest, among other issues.

#### **Option Four – An Officer of Parliament**

179. Under this option, a new Officer of Parliament would be established to deliver the assurance functions. The Officer of Parliament would have dedicated staff to support its operation. The proposed Officer of Parliament could be termed the “Commissioner for Regulatory Standards.”

180. Currently there are three Officers of Parliament: The Auditor-General, the Ombudsman and the Parliamentary Commissioner for the Environment. This option looks to the Commissioner for the Environment as the most relevant comparator.

181. An Officer of Parliament must only discharge functions that the House of Representatives, if it so wished, might carry out. All officers of Parliament report to the House of Representatives, rather than a specific Minister. As such, the relationship of the proposed Officer of Parliament to the Minister for Regulation would be via the Speaker of the House and the Officers of Parliament Committee. The Committee would lead the appointment of the proposed Parliamentary officer and would determine the level of funding for the Officer and its staff.

182. In this option, the Ministry for Regulation would not need to provide secretariat services. Instead, the Officer of Parliament would have a dedicated staff complement that would support the Officer of Parliament to deliver all aspects of the assurance function already described.

183. This staff complement has not been estimated in size or costs because this option is not preferred. For comparison only, the Parliamentary Commissioner for the Environment Vote for the 2023/24 financial year was for \$4.42 million.<sup>29</sup> We do not consider the costs of the proposed Officer of Parliament would be comparable to that of either the Ombudsman or the Auditor-General (which are approximately \$56 million<sup>30</sup> and \$163 million<sup>31</sup> respectively).

#### **Submitters views**

184. The option of establishing a new Officer of Parliament was not included in the discussion document but some submitters suggested that either a Parliamentary Commissioner or the Ombudsman should take on the proposed functions of the Board.

185. The submission from the Office of the Ombudsman suggested that, under the Ombudsman Act 1975, the Ombudsman already had the jurisdiction take on the proposed role of carrying out inquiries into the consistency of legislation with the principles. However, this suggestion was based on the proposal in the discussion document. Given the assurance function has since been expanded to also include assessing, in certain occasions, the consistency of agencies’ statements accompanying Bills and amendments before the House, this function no longer comfortably falls within the jurisdiction of the Ombudsman.

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<sup>29</sup> [Vote Parliamentary Commissioner for the Environment 2024/25 Financial year.](#)

<sup>30</sup> [Vote Ombudsman 2024/25 Financial year.](#)

<sup>31</sup> [Vote Audit 2024/25 Financial year.](#)



IN-CONFIDENCE

IN-CONFIDENCE

**Option Four assessment**

186. This option has advantages, such as independence from government agencies and Ministers responsible for the primary and secondary legislation under assessment and could deliver the assurance function in a highly effective manner. However, the costs of this option are likely to be prohibitive.

## How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – <i>Ministry for Regulation-led assurance mechanism</i>	Option Three – <i>Statutory Board</i>	Option Four – <i>Officer of Parliament</i>
<b>Effectiveness</b>	0	<p>+</p> <p>The Ministry for Regulation has been set-up with a core mandate to strengthen New Zealand's Regulatory Management System (RMS) and improve the quality of regulation, including the experience that New Zealanders have of complying with regulation.</p> <p>Ministry staff including the Chief Executive have been appointed because they had the skills and capabilities required to deliver on this mandate.</p> <p>Therefore, using existing Ministry staff to deliver the proposed assurance function would ensure seamless and comprehensive delivery of the functions' intended objectives as staff have the knowledge and experience required to:</p> <ul style="list-style-type: none"> <li>conduct inquiries into potential inconsistencies of legislation with the principles (function akin to regulatory reviews) and</li> <li>assess agencies' statements of consistency for Bills and amendments before the House (function akin to RIA) and submit a report at Select Committee (somewhat similar to activities of the second opinion team).</li> </ul>	<p>++</p> <p>For the Board to deliver the assurance function with support from Ministry staff.</p> <p>As already indicated, Ministry staff have the capability and expertise to deliver the assurance function and could do so through supporting the operations of a Board.</p> <p>The Board's impact would always be dependent on the level of skill, knowledge and mana of its members. With both the stock and flow of legislation, the Board would need to apply discretion and prioritise where to spend its efforts for most value.</p> <p>That said, a Board comprised of members who have the drive and appetite to focus on uplifting the quality of regulation, supported by Ministry staff, could deliver the assurance function effectively and prove a driving force behind raising consistency with the principles in the legislation stock and flow.</p>	<p>++</p> <p>Having a dedicated Officer of Parliament would be an effective way to deliver the assurance function. This is because the resources and efforts of the Officer would be focused on conducting inquiries into potential inconsistencies of legislation with the principles and assessing agencies' statements of consistency for Bills and amendments before the House.</p> <p>The Officer of Parliament would have dedicated staff with appropriate skills and expertise including administrators, analysts, corporate functions, and managers.</p> <p>The Officer, and their staff, would produce a higher volume of reports (than other options) and so this would raise the visibility of the work Ministers and agencies need to do to achieve consistency of legislation with the principles of responsible regulation. As with options two and three, with both the stock and flow, the Officer of Parliament would need to apply discretion and prioritise where to spend review and assessment effort for most value.</p>
<b>Durability</b>	0	<p>+</p> <p>The level of flexibility in this option is high because the Ministry can adjust and recalibrate the delivery of this function based on how often the public uses the complaints' function, Ministerial direction, agency feedback, resource availability and decisions relating to opportunity cost regarding other areas of work the Ministry is called to deliver on.</p> <p>The level of expected buy-in is higher than options three and four as some submitters have questioned the need for a Board when considering the Ministry for Regulation's newly established function to review regulatory systems. Some of these submitters expressed their preference for Ministry staff to conduct the consistency assessments over un-elected Board members.</p>	<p>-</p> <p>The level of flexibility in this option is medium to low. For the Board to update its approach and operating parameters in the face of changing circumstances and new information could take significant time. The Board as a group would need to process information, evaluate its significance and agree to an updated approach.</p> <p>There is a lower level of buy-in for this option than the status quo and option two. We heard several concerns from the submitters on the Discussion Document about a range of factors related to the proposals for the Regulatory Standards Board. For example, submitters did not want the Minister to appoint members, were concerned the Board would act in favour of individual interests and against public wellbeing, and may not have sufficient skills, experience and representation to perform the intended functions of the Board well.</p>	<p>-</p> <p>The level of flexibility in this option is medium. Officers of Parliament are provided for by Standing Orders which are in themselves difficult to adjust, as well as relevant Acts (see Environment Act 1986, Ombudsmen Act 1975, and the Public Audit Act 2001). However, the Officer and its staff could update and change their operational approach to delivering the function in the face of changing circumstances and new information.</p> <p>The Officer would necessarily have a staff, and this means the very high cost of this option may well be unacceptable to many parties. See costs discussion below.</p>
<b>Costs</b>	0	<p>+</p> <p>The Ministry has funding to fulfil its key functions, namely:</p> <ul style="list-style-type: none"> <li>ensure the quality of new regulation</li> <li>improve the functioning of existing regulatory systems</li> <li>raise the capability of those who design and operate regulatory systems</li> </ul>	<p>-</p> <p>The costs for setting up and the ongoing operation of a Board comprising of five to seven members are high.</p> <p>These would include upfront cost for the Ministry to set up secretariat support and assist with the selection and appointment of Board members.</p> <p>There would be ongoing cost of the Board members' pay, expenses, accommodation and flights, but they are not high.</p>	<p>--</p> <p>There would need to be an appropriation for the proposed Officer of Parliament and its supporting staff. This appropriation would also need to cover facilities, corporate functions, and overhead costs. The costs of this option are likely to be less than those of the Parliamentary Commissioner for the Environment initially; however, the costs may increase over time depending on the</p>



		<ul style="list-style-type: none"> <li>provide continuous and enduring improvements to the Regulatory Management System.</li> </ul> <p>Any reconfiguration of the Ministry to deliver the assurance mechanism could be within existing headcount if there were a decision to deprioritise other work. Alternatively, additional funding could be allocated to the Ministry to carry out the assurance function.</p> <p>Costs incurred for agencies to conduct consistency assessments of existing legislation following recommendation by the Ministry's assurance mechanism, cooperate with the Ministry on inquiries about consistency with the principles, complete assessment statements for Bills and amendments are opportunity costs. These activities are expected to be funded within agencies' existing baselines.</p>	The Ministry would provide facilities for Board meetings and administrative and analytical services that could be absorbed within baselines the same way as if the Ministry were delivering the function.	required level of output. The 2024/25 financial year, the Vote Parliamentary Commissioner for the Environment was \$4.42m. <sup>32</sup>
<b>Feasibility and efficiency</b>	0	<p style="text-align: center;">+</p> <p>Potential overlap with the assurance mechanism and the regulatory reviews programme of the Ministry for Regulation can be resolved during implementation phase to avoid duplication of effort.</p> <p>The new function would require reallocation of roles and duties to existing staff and teams, and any disruption would be mitigated and minimised with effective change management process.</p> <p>Current regulatory stewardship arrangements, recently set up regulatory review teams and a regulatory red tape complaints portal are already in place, have ongoing funding and are being, and will continue to be, reviewed and adjusted to meet emerging needs.</p>	<p style="text-align: center;">+</p> <p>This option requires the establishment and operation of a Board with support from the Ministry for Regulation. These are tasks and functions the Ministry can organise and deliver with some disruption of its daily operations (such as initial change management processes, and ongoing balancing of the assurance workload with the programme of regulatory review work).</p> <p>Depending on the speed of appointments the Board may be up and running reasonably quickly and commence assessment work in a shorter timeframe than in option three (Officer of Parliament). The existing regulatory red tape complaints portal could be used for receiving complaints from organisations and the public.</p> <p>Potential overlap with the work of the Board and the regulatory reviews programme of the Ministry for Regulation can be resolved during implementation phase to avoid duplication of effort.</p>	<p style="text-align: center;">-</p> <p>Establishing a new Officer of Parliament may have high barriers of entry which may delay its achievement. Even if it is agreed by Parliament, and a suitable candidate is selected to be the Officer, they would require a dedicated staff to support their work as well as a physical premises and corporate functions. All this means delays in the commencement of the Officer's work.</p> <p>Once the work was running, it would be expected to operate at a faster pace than options one and two. Potential overlap with the work of the Officer of Parliament and the regulatory reviews programme of the Ministry for Regulation can be resolved during implementation phase to avoid duplication of effort.</p>
<b>Overall assessment</b>	0	<p style="text-align: center;">+</p> <p>This option scores highest-equal, alongside Option Three. It is relatively cost-effective and flexible, and the results of public consultation indicate that it has a level of support. However, its findings may not have as much influence as a Board of independent experts.</p>	<p style="text-align: center;">+</p> <p><b>This is the Minister for Regulation's preferred option and is included in the Cabinet paper accompanying the proposed Bill.</b></p> <p>A statutory Board could prove effective in discharging the assurance function. However, this option is somewhat costlier than a Ministry-delivered assurance mechanism (see tables in next section) and potentially has low durability.</p>	<p style="text-align: center;">--</p> <p>This option is not preferred.</p> <p>This option would be very effective in discharging the assurance function. However, it is not easily implementable and it is by far the costliest option to deliver, therefore we expect that it would also have low buy-in from the public.</p>

<sup>32</sup> [Vote Parliamentary Commissioner for the Environment 2024/25 Financial year.](#)

**What option is likely to best meet the policy objectives and deliver the highest net benefits?**

176. The multi-criteria analysis indicates that there is merit in both Option Two and Option Three. While Option Two is likely to be more cost effective and flexible, the findings of inquiries undertaken by a statutory Board (Option Three) may be more influential.
177. The policy objective is to create a mechanism for independent assurance of the consistency of new and existing legislation with the principles for responsible regulation. Both Option Two and Option Three meet the policy objectives by setting up an assurance mechanism and applying the Ministry for Regulation's existing capability and infrastructure. While Option Three has the additional aspect of a Board, the research and analysis work in both options would be conducted by Ministry staff.
178. Both options create a new incentive for agencies to conduct sound assessments for consistency with principles of responsible regulation, as any incongruence between their assessment and a potential assessment from the Ministry or the Board may signal the agency did not apply an adequate level of rigour.
179. Option Two is expected to provide marginally higher net benefits when compared with Option Three because it is lower cost. The expected costs for Option Two are \$980,000 per annum, while Option Three may cost between \$1.04 million and \$1.17 million per annum. The main difference between Option Two and Option Three is the costs related to Board members and associated expenses. The costs for both Options Two and Three are likely to be mostly stable over time, when accounting for inflationary pressures.
180. There are several uncertainties for both options; these are noted in the costs and benefits tables below. Ultimately, the actual net benefits of either option will be significantly influenced by implementation details.

**Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?**

182. The Minister's preferred option is Option Three: A Statutory Board. The Ministry for Regulation's preference is for Option Two (Ministry-led assurance function) OR Option Three (Statutory Board).

**What are the marginal costs and benefits of the preferred option in the Cabinet paper?**

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs of the preferred option compared to taking no action</b>			
Ministry for Regulation	<p>Costs to the Ministry include:</p> <ul style="list-style-type: none"> <li>Resource to undertake Board nominations, recruitment and appointment processes, both for the initial establishment and ongoing re-appointment or new appointments as terms expire.</li> <li>Secretariat support of 1 FTE to support preparation of Board papers, administration associated with Board meetings, travel bookings, public queries and ministerial support resourcing. We anticipate the level of work involved in responding to queries from the public about the complaints process, OIA requests etc may be high in the first year. Any overflow</li> </ul>	<p>Medium</p> <p>Current estimate is \$950,000 per year for the Ministry to provide support functions to the Board.<sup>33</sup></p> <p>Current Board fee estimates are between \$63,000 and \$185,000 per year.<sup>34</sup></p> <p>Additional expenses are variable but could be within the range of \$24,000 to \$34,000 per year.<sup>35</sup></p>	Low to Medium

<sup>33</sup> One advisor salary costed within the Ministry's advisor pay band including 25% overhead for new resourcing. And, three senior advisors, one principal and one principal legal advisor.

<sup>34</sup> The range is broad as it includes the potential fees for five board members at the low end of the fee range through to seven board members at the high end of the range. A 20% contingency has been included to account for the possibility of an exception to pay above the range. The current range is based on 2025 dollars and would likely increase to account for inflation in outyears.

<sup>35</sup> Additional expenses include flights, accommodation and daily expenses on a basis of \$800 per member per trip.

	<p>in resourcing would need to be covered within baseline or supported by the research and analytical resourcing.</p> <ul style="list-style-type: none"> <li>• Research and analytical support to the Board of 5 FTE.</li> <li>• Board member fees are based on 5 – 7 Board members meeting 11 times per year with one day of preparation per meeting. Fees are calculated at the midpoint of Group 4, Level 1 of the Cabinet Fees Framework with 20% contingency built-in to account for the possibility of additional Board members and/or a fees exemption to pay above the range if required to attract potential Board members with the necessary skillsets.</li> <li>• Additional expenses are included on the assumption of 5 meetings being held in person per year.</li> </ul>	<p>We have not estimated the impact from the potential for duplication in functions between regulatory reviews undertaken by the Ministry and complaints heard by the Board. We assume that implementation design will seek to minimise duplication.</p>	
Other government agencies (including in-house legal practitioners)	<p>There will be costs and opportunity costs, which will vary depending on the frequency of an agency's processes being subject to review by the Board.</p> <p>Resource is likely required by relevant agencies to support responding to findings from the Board.</p> <p>Agencies who undertake regulatory review processes for existing</p>	<p>Variable for agencies depending on the volume of un-excluded legislation they each administer. This assumes this additional work comes at an opportunity cost to other work programme commitments and Ministerial servicing, unless additional resources are secured.</p>	Low - Medium

	legislation they administer as a result of findings by the Board are also likely to incur costs.		
Parliament	No additional costs foreseen.	Low	High
Judiciary	No additional costs foreseen.	Low	High
Lawyers / Legal Practitioners outside of the public sector	No additional costs, unless legal practitioners choose to support a member of the public making a complaint pro bono	Low	High
Members of the public	Time cost associated with making complaints and providing supporting evidence.	Variable depending on complexity of complaint and regulatory system	Medium
<b>Total monetised costs</b>	Board membership fees and expenses and the analysis and administration costs.	\$1.04 million - \$1.17 million.	Low - Medium
<b>Non-monetised costs</b>		Low	Low
<b>Additional benefits of the preferred option compared to taking no action</b>			
Ministry for Regulation	Increased avenues to gain insight into the functioning of regulatory systems to support the Ministry's oversight role.	Variable	Medium
Other government agencies (including in-house legal practitioners)	Government agencies can gain greater visibility of the impacts (including unforeseen impacts or unintended consequences) of regulation when issues are surfaced through the Board's complaints mechanism, or are commenced at the Minister or Board's behest, and when reports are published.	Variable, depending on the nature of complaints and findings reports from the Board.	Low
Parliament	Additional opportunity to scrutinise the consistency	Medium	Medium



	<p>of legislation with legislative design and relevant good law-making principles through the tabling of a summary of the Board's recommendation and findings reports in Parliament.</p> <p>Select Committees will have the benefit of having the opportunity to consider the Board's report on a portion of bills and amendments before the House prior to making their final recommendations to the Committee of the Whole.</p>		
Lawyers / Legal Practitioners outside of the public sector	<p>Potential opportunities to support members of the public to access complaint mechanism.</p> <p>Increased opportunity for public law experts to utilise complaints mechanism to support the scrutiny of legislative development processes.</p>	Low	Low
Members of the public	<p>New complaints processes available.</p> <p>Increased transparency and accountability regarding legislative development processes which has the potential to result in increased trust in government.</p> <p>Potential for reduction in costs to comply with regulatory systems if relevant changes are made as a result of agencies implementing findings from the Board.</p>	Medium	Low
<b>Total monetised benefits</b>		Variable. It is difficult to monetise the potential benefits as they are	Low - Medium

		dependent on the Board's recommendations, agencies' responses to those recommendations and the impacts of any changes or actions as a result.	
<b>Non-monetised benefits</b>		Variable, depending on the actions taken in response to the findings reports.	Medium

### What are the marginal costs and benefits of a Ministry-led assurance function?

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs of the Ministry-led assurance function compared to taking no action</b>			
Ministry for Regulation	<p>Costs for the Ministry include:</p> <ul style="list-style-type: none"> <li>• Increase in salary for an existing manager position that would be reappointed to the role to manage the assurance function.<sup>36</sup></li> <li>• Complaints portal management.</li> <li>• Resource for analysis and reporting similar as to the Minister's preferred option.</li> <li>• Legal support.</li> </ul>	<p>Low</p> <p>Estimated cost of \$30,000 for salary increase of an existing management position.</p> <p>Administrative support similar to a Board secretariat role and analytical and legal support may require additional resourcing as with Option Three. However, there is more likelihood of resourcing being managed within baseline as part of existing regulatory review and stewardship functions as the Ministry will have an increased ability to align the work of teams.</p>	Low - Medium
Other government agencies (including in-house legal practitioners)	Costs associated with responding to recommendatory findings reports. This cost would likely fall within baseline as part of an agency's	Medium	Low

<sup>36</sup> Moves salary for a manager up a pay band to recognise additional responsibilities.

	responsibilities for administering legislation and regulation.		
Parliament	No additional costs foreseen.	Low	High
Judiciary	No additional costs foreseen.	Low	Medium - High
Lawyers / Legal Practitioners outside of the public sector	No additional costs, unless legal practitioners chose to support a member of the public making a complaint pro bono.	Low	Low
Members of the public	New complaints processes available. Increased transparency and accountability regarding legislative development processes, which has the potential to result in increased trust in government. Potential for reduction in costs to comply with regulatory systems if relevant changes are made as a result of agencies implementing findings from the Board.	Medium	Low
<b>Total monetised costs</b>		\$980,000 if all new resourcing is required to support the assurance function manager's role. Noting the possibility of resourcing within baseline above.	Low
<b>Non-monetised costs</b>		Low	Low
<b>Additional benefits of this option compared to taking no action</b>			
Ministry for Regulation	Increased avenues to gain insight into the functioning of regulatory systems to support the Ministry's oversight role.	Variable	Low - Medium
Other government agencies (including	Government agencies can gain greater visibility of the impacts (including	Variable, depending on the nature of complaints and findings reports from	Low – Medium

in-house legal practitioners)	unforeseen impacts or unintended consequences of regulation) when issues are surfaced through the assurance function.	the manager of the assurance function.	
Parliament	N/A	N/A	N/A
Lawyers / Legal Practitioners outside of the public sector	Potential opportunities to support members of the public to access complaint mechanism.  Increased opportunity for public law experts to utilise complaints mechanism to support the scrutiny of legislative development processes.	Low	Low
Members of the public	New complaints processes available.  Increased transparency and accountability of legislative development processes, which has the potential to result in increased trust in government.  Potential for reduction in costs to comply with regulatory systems if relevant changes are made as a result of agencies implementing findings from the Board.	Medium	Low
<b>Total monetised benefits</b>		Variable. It is difficult to monetise the potential benefits as they are dependent on the Ministry's recommendations, agencies' response to those recommendations and the impacts of any changes or actions as a result.	Low - Medium
<b>Non-monetised benefits</b>		Variable, depending on the actions taken in response to the findings reports.	Medium

## Section 3: Delivering an option

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### How will the proposal be implemented?

183. We understand that the Minister wishes to have legislation in place by the end of 2025.

184. New primary and secondary legislation will be introduced to establish a regulatory standards regime under the Regulatory Standards Act. The Act will be implemented through administrative powers and requirements on government agencies and Ministers.

### ***Responsibility for the operation and enforcement of the new arrangements***

185. The Ministry for Regulation will be responsible for oversight of the new arrangements, providing advice, guidance and reporting on compliance across government. Established teams within the Ministry will undertake this activity.

186. The legislation will also include a provision to enable the Minister to issue guidance on best practice and Ministerial expectations for complying with the new arrangements. This provision could be used by the Minister to address operational matters and supplemented by additional material produced by the Ministry.

187. The functions of the proposed Regulatory Standards Board will be supported by the Ministry for Regulation, and are expected to be funded from within existing baselines.

### ***Arrangements coming into effect***

188. The Minister has expressed a preference to introduce the proposed Bill in May 2025, with transitional provisions meaning that new regulatory proposals introduced from 1 July 2026 will need to comply with the new arrangements.

189. Implementation work will be required, which includes but is not limited to:

- supporting the preparation of Ministerial guidance
- developing supporting materials, such as further guidance and communications materials, including updating RIA and disclosure regime Cabinet circulars and associated guidance
- informing and educating affected agencies through dedicated material
- developing guidance on how to comply with the new arrangements
- establishing the Board and the Ministry's secretariat function and analytical support the Board would require
- developing the Ministry's reporting strategy.

190. The assessments for consistency with the principles are planned to be incorporated into existing policy processes, including the RIA requirements. Part 4 of the Legislation Act 2019 would be required to be repealed.

191. For the Regulatory Standards Board to be set up, the Minister would need to appoint the Board members following the passage of the Act and in accordance with the Act's provisions. The Board would also need to develop and approve its Terms of Reference and detailed process guidance with support from Ministry staff. The Ministry's website would need to be updated to include information on how complaints of legislation being inconsistent with the principles can be made as well as what the complainants can expect will happen. This process could take at least three months.

***Transitional Provisions***

192. To allow time for the policy and implementation work, including agency and Minister familiarisation with the new arrangements, certification requirements would apply to Government Bills, and amendments introduced from 1 July 2026.
193. During this time, the Ministry will continue to develop detailed design and implementation plans, and replace the current disclosure regime (established by Cabinet circular) with the new arrangements.

***Other agencies' involvement in implementation and ongoing operation***

194. Government agencies responsible for administering legislation and makers of secondary legislation of types not excluded from the requirements of the Act will be responsible for assessing consistency of new regulatory proposals against the principles and establishing the related certification processes. They will also need to develop plans for reviewing their stock of existing legislation (primary and included secondary legislation) and prepare and publish reports on the reviews it carries out. The impact of operationalising this will depend on the size of the agency and its current regulatory stewardship (or similar) function and level of maturity.
195. Agencies will need to respond to findings of the Board if an inquiry is conducted in response to a complaint.
196. Agencies will also be required to provide information for the Ministry's regulatory reviews, as per the requirements in the Act. Agencies responsible for entities that make or administer secondary legislation and entities authorised to undertake a regulatory function will additionally need to provide information for those entities, where they hold it.
197. Agencies have been consulted through the development of this policy.

***Risks and mitigations***

198. As identified in the options analysis, there is a risk that due to volume of consistency assessments required, agencies will need to prioritise resource for this, potentially crowding out other work. This may mean Ministers and agencies find it more difficult to resource other policy priorities, potentially resulting in persisting issues or unrealised benefits of regulation, specific to their portfolio. This risk may be mitigated somewhat by the level of agency resource already allocated to regulatory systems and stewardship, meaning that the additional requirements are partially absorbed into these functions. However, the level of this activity is uncertain (presumed low) and variable across agencies.
199. There is also a risk that due to the volume of assessments for new regulatory proposals, agencies and Ministers adopt standard wording and responses, which may reduce the impact of the principles over time. This risk is somewhat mitigated by the Board having access to consistency statements for all new regulatory proposals, and reviewing those that are prioritised. The Minister and Ministry will also be able to update guidance, processes and expectations in response to issues identified.
200. There is a risk that the requirements on Ministers and agencies provided for in the Act are not sufficient incentive amidst competing drivers, and the desired improvements to regulatory quality are not seen. Due to the complexity of the regulatory environment in New Zealand, this risk is apparent under any option. If this occurs, it will only be apparent over the long-term. However, the possibility of a Board inquiry may increase the incentive for robust and thorough assessments and statements by agencies and Ministers. This risk may

also be mitigated by the Ministry's review of how the Act is working after 5 years as well as ongoing monitoring of the RMS.

201. [LEGALLY PRIVILEGED] s 9(2)(h)



202. Another risk identified throughout the submissions process is the level of public and political opposition, specifically to the principles currently in the proposed Bill. As the principles are proposed to be set in primary legislation, they will not be easily adaptable. This risk might be mitigated over time if improvements to regulatory quality are seen after enactment.

### **Key implementation differences for Option Three (Ministry's preferred option)**

#### ***Responsibility for the operation and enforcement of the new arrangements***

203. Responsibility for the new arrangements related to the principles and accompanying measures are the same as the Minister's preferred option.

204. If the Ministry were directed to manage the assurance function internally (as Option Two outlines) there would be some key implementation similarities and differences with the Minister's preferred option of establishing a Regulatory Standards Board (Option Three).

205. Under both options, public servants in the Ministry for Regulation would undertake the administrative and analytical work to fulfil many of the assurance function's duties. This would require a rearrangement of existing resources and infrastructure in the Ministry to carry out inquiries. For example, changes could be made to the Regulation Red Tape portal to receive complaints.

206. Under Option Two, the Ministry would need to appoint an internal manager to lead the assurance function and establish the processes for engaging with agencies and the Minister for Regulation.

207. Under Option Three, the Ministry would need to support the Minister for Regulation to establish the Regulatory Standards Board. This would include managing the nominations and appointments processes as well as developing the processes required for ongoing secretariat support.

208. Whether adjustments are needed to accommodate this new function alongside the Ministry's existing work programme would also need to be assessed.

#### ***Arrangements coming into effect***

209. Part 4 of the Legislation Act 2019 would need to be left to automatically come into force (by April 2026), likely with some amendments. New legislative provisions such as roles for the Minister for Regulation, for the Ministry's regulatory oversight role and information-gathering powers would also need to be drafted and brought into effect, as supporting measures.

#### ***Transitional Provisions***

210. It is likely that similar transitional provisions for the new legislative requirements (e.g., consistency mechanisms) to the Minister's preferred option would be applicable. There is an existing statutory mechanism that brings into force Part 4 of the Legislation Act 2019 by 24 March 2026.





***Other agencies' involvement in implementation and ongoing operation***

211. Chief Executives of agencies responsible for administering legislation and makers of included secondary legislation types will be responsible for preparing and publishing disclosure statements (section 103 of the Legislation Act 2019) in accordance with any directions issued by the Minister under section 110 of the Legislation Act 2019.

212. Agencies will still have to comply with the duty to review, maintain and improve the stock of legislation they administer, report on their plans to do so, and provide information to the Ministry for Regulation to support regulatory reviews.

***Risks and mitigations***

213. A key risk with the Ministry's preferred option is that it does not provide sufficient incentive in the context of competing drivers, and that it is therefore ineffective. This could be mitigated by monitoring activity after implementation, with the Minister and Ministry responding to identified issues with, for example, communication and engagement campaigns, training, and updating Minister-issued guidance.

**How will the proposal be monitored, evaluated, and reviewed?**

214. The Act will be administered by the Ministry for Regulation and form part of the RMS.

215. The Ministry plans to conduct a Post-Implementation Review of the Act within five years after its enactment to evaluate whether it is meeting its objectives, identify costs and benefits following its implementation, and consider any proposals that could enhance the Act's fitness for purpose in the context of the wider RMS at the time of the evaluation.

216. The monitoring, evaluation and review plan would be the same for Option Two (the Ministry's preferred option).

**Annex One: Analysis of specific principles**

The summary analysis below draws on advice from the Legislation Design Committee and the Crown Law Office, along with feedback from public consultation on the discussion document.

	Principle	Analysis
Rule of law	<p>The importance of maintaining consistency with the following aspects of the rule of law:</p> <p>(i) the law should be clear and accessible:</p> <p>(ii) the law should not adversely affect rights and liberties, or impose obligations, retrospectively:</p> <p>(iii) every person is equal before the law:</p> <p>(iv) there should be an independent, impartial judiciary:</p> <p>(v) issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion</p>	<p>The exact nature of the rule of law is contestable, and careful work is needed to ensure that any rule of law principles line up with settled legal understandings. The <a href="#">Legislation Guidelines</a> already provide a well-established starting point for thinking about the rule of law in relation to legislative design.</p> <p>In this context, in relation to the components of this proposed principle:</p> <ul style="list-style-type: none"> <li>the force with which some of the principles are stated does not reflect some of the inherent uncertainties. For instance, a blanket requirement for all law to be ‘clear and accessible’ without any qualification could impose very onerous obligations, depending on how it was interpreted. In addition, ‘clear’ and ‘accessible’ lack precision in the context in which they are used, and it is not clear to whom the legislation must be clear</li> <li>the principle that everyone is equal before the law is broadly open to interpretation and carries a risk that it could be interpreted as substantive equality – i.e. a requirement that governments consider how to achieve equal outcomes for people, not just equal treatment (equality in the administration of law).</li> </ul>
Liberties	<p>Legislation should not unduly diminish a person’s liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person</p>	<p>The values expressed in this principle do not have settled meanings, are open to interpretation, and incorporate concepts in a way that is broader than is generally recognised in other jurisdictions.</p> <p>[LEGALLY PRIVILEGED] s 9(2)(h)</p>

		<p>s 9(2)(h)</p> <p>s 9(2)(h)</p> <p>[LEGALLY PRIVILEGED] s 9(2)(h)</p> <p>s 9(2)(h)</p>
Taking of property	<p>Legislation should not take or impair, or authorise the taking or impairment of, property without the consent of the owner unless—</p> <p>(i) there is a good justification for the taking or impairment; and</p> <p>(ii) fair compensation for the taking or impairment is provided to the owner; and</p> <p>(iii) the compensation is provided, to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment</p>	<p>Property rights are already provided for in reasonably determinate and well-established rules and principles, including interpretive principles. However, this principle goes much further than current understandings in New Zealand and similar provisions in other jurisdictions.</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>the reference to impairment could capture any effect on property, however minor</li> <li>‘fair’ compensation is inherently subjective and therefore could be interpreted in unexpected ways</li> <li>the idea that compensation should be provided by those who obtain the benefit is a novel concept, does not appear in any overseas jurisdiction, and would be extremely difficult to apply in practice.</li> </ul>

		[LEGALLY PRIVILEGED] s 9(2)(h)
Taxes, fees, and levies	<p>The importance of maintaining consistency with section 22 of the Constitution Act 1986 (Parliamentary control of public finance)</p> <p>Legislation should impose, or authorise the imposition of, a fee for goods or services only if the amount of the fee bears a proper relation to the cost of providing the good or service to which it relates</p> <p>Legislation should impose, or authorise the imposition of, a levy to fund an objective or a function only if the amount of the levy is reasonable in relation to both–</p> <p>(i) the benefits that the class of payers are likely to derive, or the risks attributable to the class, in connection with the objective or function; and</p> <p>(ii) the costs of efficiently achieving the objective or providing the function.</p>	<p>These principles are already well-established aspects of legislative design and in some cases legality (see <a href="#">Chapter 17 of the Legislation Guidelines</a>). While they have broad acceptance in the New Zealand context, it may be duplicative and unnecessary to establish these in primary legislation. It is also unclear why these principles of legislative design are included in the proposed Bill, but others are not.</p>
Role of courts	<p>Legislation should preserve the courts' constitutional role of ascertaining the meaning of legislation</p> <p>Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.</p>	<p>This principle aligns with <a href="#">section 10 of the Legislation Act 2019</a>, and reinforces the courts' constitutional role. The wording in the second clause of this principle aligns with the wording in section 4 of <a href="#">Queensland's Legislative Standards Act</a>. This means the principle is likely to have broader acceptance than some of the other principles, given these consistencies.</p> <p>However, the <a href="#">Legislation Guidelines</a> (see 12.2) note that the starting point is that Parliament is entitled and empowered to make and amend any law. That includes altering the law declared in completed court cases, or by amending or otherwise clarifying the law that is likely to arise in pending cases. The fact that litigation is occurring or has been</p>

		concluded does not put the law at issue in a case beyond the reach of legislation.
Good law-making	<p>The importance of consulting, to the extent that is reasonably practicable, the persons or representatives of the persons that the responsible agency considers will be directly and materially affected by the legislation</p> <p>The importance of carefully evaluating—</p> <ul style="list-style-type: none"> <li>(i) the issue concerned; and</li> <li>(ii) the effectiveness of any relevant existing legislation and common law; and</li> <li>(iii) whether the public interest requires that the issue be addressed; and</li> <li>(iv) any options (including non-legislative options) that are reasonably available for addressing the issue; and</li> <li>(v) who is likely to benefit, and who is likely to suffer a detriment, from the legislation</li> </ul> <p>Legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons</p> <p>Legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available.</p>	<p>There are a number of potential issues relating to the good lawmaking principles including:</p> <ul style="list-style-type: none"> <li>• [LEGALLY PRIVILEGED] s 9(2)(h) [REDACTED]</li> <li>• the inherent difficulty of quantifying the ‘benefits’ and ‘costs’ of many proposals – noting that, in many policy areas (for example, in the justice or social policy areas) the ‘benefits’ are often qualitative rather than quantitative, and ‘costs’ (notably in the longer term) are not quantifiable. [LEGALLY PRIVILEGED] s 9(2)(h) [REDACTED]</li> <li>• some of the tests set by these principles leave little room for value judgement, even though decisions about benefits and costs routinely involve these types of judgements.</li> </ul>



## Annex Three: The Treaty of Waitangi/te Tiriti o Waitangi Impact Analysis for the Regulatory Standards Bill

1. The Ministry for Regulation (the Ministry) is undertaking a Treaty Impact Analysis (TIA) on the proposal for a Regulatory Standards Bill (the proposed Bill). This analysis updates the preliminary TIA published by the Ministry in November 2024, in light of amendments to the proposal and to incorporate feedback received as part of public consultation on the *Have your say on a proposed Regulatory Standards Bill* discussion document between 19 November 2024 and 13 January 2025.
2. The analysis identifies the Treaty of Waitangi/te Tiriti o Waitangi (the Treaty/te Tiriti) impacts of the range of policy proposals in the proposed Bill on rights and responsibilities recognised or created by the Treaty/te Tiriti, and the implications for Treaty/te Tiriti settlements and agreements. This TIA is informed by guidance for policy makers set out in Cabinet Circular CO (19)5<sup>1</sup> and by advice from the Crown Law Office (CLO).
3. This TIA does not provide a full summary of the submissions received on the consultation document, which is contained in the *Consultation on the proposed Regulatory Standards Bill: Summary of Submissions report*.<sup>2</sup>
4. In the submissions, the Ministry heard views on:
  - a lack of recognition and provision for the Treaty/te Tiriti
  - a lack of recognition for kaitiakitanga and the unique relationship between Māori and the environment
  - negative impacts on Māori sovereignty, governance and self-determination:
  - a lack of provision for consultation and engagement with Māori
  - a need to uphold Treaty/te Tiriti settlements and arrangements with iwi and hapū.

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<sup>1</sup> Cabinet Office, [Cabinet Office Circular CO \(19\) 5 Te Tiriti o Waitangi/Treaty of Waitangi Guidance 2019](#).

<sup>2</sup> The summary of submissions report is included as Annex One with the Cabinet paper and will be published following Cabinet consideration.



5. The decisions sought in the Cabinet Paper are particularly relevant to Māori rights and interests and the Crown's obligations under the Articles of the Treaty/te Tiriti as they relate to:

- the absence of a principle of responsible regulation (principle(s)) relating to the Treaty /te Tiriti
- the provision around consultation as part of the good law-making principles
- impacts for Māori as part of the 'taking of property' principle
- impacts for Māori as part of the 'rule of law' principle
- impacts for Māori as part of the 'liberties' principle
- panel expertise and appointment requirements for the proposed Regulatory Standards Board (the Board)
- the Treaty/te Tiriti settlement legislation, Marine and Coastal Area (Takutai Moana) Act 2011 (Takutai Moana Act), and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

6. More broadly, through consultation the Ministry heard concerns about the content and processes for the proposed Bill.

7. The Treaty/te Tiriti impacts of the proposed Bill will ultimately depend on how it is implemented by decision-makers and the guidelines that are created to support the interpretation of its provisions. s 9(2)(h)

[REDACTED]

8. [LEGALLY PRIVILEGED: s 9(2)(h)]

[REDACTED]

9. [LEGALLY PRIVILEGED: s 9(2)(h)]

[REDACTED]

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10. [LEGALLY PRIVILEGED: s 9(2)(h)]

[REDACTED]

11. [LEGALLY PRIVILEGED: s 9(2)(h)]

[REDACTED]

12. [LEGALLY PRIVILEGED: s 9(2)(h)]

[REDACTED] An urgent application relating to this proposal has been lodged with the Tribunal, and it is likely that many of the matters discussed in this TIA will be considered in that urgent application.

13. s 9(2)(h)

[REDACTED]

*Absence of a principle relating to the Treaty of Waitangi/te Tiriti o Waitangi*

14. The proposed Bill does not include a principle relating to the Treaty/te Tiriti in the development or review of legislation. As a result, decision-makers considering matters under the proposed Bill (including Chief Executives and Ministers in making consistency assessments, and the Board in reviewing those consistency assessments or the stock of existing legislation) will not be expressly required by the proposed Bill to consider the Treaty/te Tiriti.

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15. This approach to consistency assessments does not prohibit any decision-maker considering a regulatory proposal from taking account of the Treaty/te Tiriti, in either the process or substance of a decision. Ministers may still consider these matters in proposing legislation, and existing Cabinet processes<sup>3</sup>, Crown guidance<sup>4</sup>, and Crown legal advice all still encourage decision-makers to act consistently with the Crown's Treaty/te Tiriti obligations to provide for Māori rights and interests, and with Treaty/te Tiriti settlements and agreements.

16. Having said that, there is a risk that including a set of principles in primary legislation without an express reference to the Treaty/te Tiriti creates uncertainty for decision-makers, given the perceived inconsistency with existing guidance or advice. [LEGALLY PRIVILEGED: s 9(2)(h)]

17. [LEGALLY PRIVILEGED: s 9(2)(h)]

18. [LEGALLY PRIVILEGED: s 9(2)(h)]

<sup>3</sup> Such as Cabinet Circular CO 19(5).

<sup>4</sup> Such as the Legislation Guidelines.

<sup>5</sup> As above, such as the Legislation Guidelines and Cabinet Circulars.



*Provision around consultation as part of the 'good law-making' principles*

19. The proposed 'good law-making' principles include the importance of consulting, to the extent practicable, the persons or representatives of the persons that the responsible agency considers will be directly and materially affected by the legislation.
20. Under existing law, and as expressed in guidance to Ministers and agencies, the Crown has a responsibility to take reasonable steps to make informed decisions on matters that affect Māori interests.<sup>6</sup> The 'good law-making' principles could be seen as further recognising in legislation the importance of consulting with both Māori and non-Māori who are directly and materially impacted by legislation. [LEGALLY PRIVILEGED:

s 9(2)(h)

21. [LEGALLY PRIVILEGED: s 9(2)(h)

*Impacts for Māori as part of the 'taking of property' principle*

22. New Zealand does not currently have set down in legislation a general protection of property rights from expropriation.

23. [LEGALLY PRIVILEGED: s 9(2)(h)

<sup>6</sup> *New Zealand Māori Council v Attorney-General* (the *Lands* case) [1987] 1 NZLR 641, at 683 per Richardson J. See also *New Zealand Māori Council v the Attorney-General* [1996] 3 NZLR 140 per Thomas J at 169.

<sup>7</sup> See Cabinet Circular CO19(5) paragraph 24.

<sup>8</sup> [LEGALLY PRIVILEGED s 9(2)(h)

<sup>9</sup> [LEGALLY PRIVILEGED s 9(2)(h)



s 9(2)(h)

<sup>10]</sup>

24. [LEGALLY PRIVILEGED: s 9(2)(h)

25. [LEGALLY PRIVILEGED: s 9(2)(h)

26. The Office for Treaty Settlements and Takutai Moana – Te Tari Whakatau advise that the value of land provided as settlement redress is only ever able to represent a small fraction of the value of what was lost through the Treaty/te Tiriti breaches. [LEGALLY PRIVILEGED s 9(2)(h)

<sup>10</sup> [LEGALLY PRIVILEGED s 9(2)(h)

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*Impacts for Māori as part of the 'rule of law' principle*

27. This proposed principle specifies that 'every person is equal before the law.' New Zealand currently has no equivalent formal statutory recognition for observing the right to equality before the law, although the New Zealand Bill of Rights Act 1990 promotes equality in relation to various civil and criminal legal processes.<sup>11</sup>
28. In the absence of clear guidance, there is a risk that decision-makers assess proposed or existing legislation designed to address unique disparities in outcomes experienced by Māori as being inconsistent with this principle. Existing guidance drives agencies to consider proposals to achieve equitable outcomes including addressing inequalities and cultural bias,<sup>12</sup> and many laws and policies recognise the need for specific Māori protections or processes (e.g. Whānau Ora). Under the proposed Bill, there is a risk that such policies would be exclusively measured against a benchmark of equal treatment for all citizens (formal equality), as opposed to considering whether to recognise individual circumstances to ensure equal outcomes (substantive equality). This could lead to a difference between consistency assessments and current guidance for decision-makers.
29. As noted above, a consistency assessment does not direct the decision-maker to a specific outcome inconsistent with the Crown's Treaty/te Tiriti obligations, or require the decision-maker to only progress legislation directly consistent with the principles. In each case, a Treaty/te Tiriti-compliant course of action would remain open, regardless of whether that course aligned with the principles or not. At a practical level, what will matter is how agencies and Ministers deal with a finding of inconsistency. Implementation guidance will be crucial to avoid confusion and ensure coherence.

*Impacts for Māori as part of the 'liberties' principle*

30. This proposed principle specifies that 'legislation should not unduly diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person'. New Zealand does not have set down in legislation a description of 'liberties' or a statutory recognition of liberties in this form.

31. s 9(2)(h)
- [REDACTED]
- [REDACTED]
- [REDACTED]

<sup>11</sup> See e.g. sections 21 to 27, New Zealand Bill of Rights Act 1990.

<sup>12</sup> See Te Arawhiti's *Providing for the Treaty of Waitangi in legislation and supporting policy design*, March 2022



s 9(2)(h)

s 9(2)(h)

32. Conversely, the principle's focus on rights to 'own, use, and dispose' of property focusses on Western concepts of private land 'ownership', and therefore may be seen not to cover Māori (or other public) relationships with land involving kaitiakitanga, wairua, whakapapa, taonga, and environmental protection.
33. As set out above, this potential for a consistency assessment to take a narrower view that excludes wider concepts of ownership does not prevent a decision-maker making policy choices to give effect to these wider interests, but the nature of implementation will be determinative of the impact on Māori rights and interests. This will be particularly important in relation to amendments to well-established legislative schemes that are based on Māori interests.

*Provision for Māori governance and self-determination as part of the Board*

34. Māori frameworks of governance, such as tino rangatiratanga and kaitiakitanga, emphasise adaptability, collective wellbeing, and the intergenerational stewardship of natural resources. While there is nothing in the proposed Bill that prevents the Minister from providing for Māori governance and tino rangatiratanga (including diverse representation as part of appointing the Board), or the Board from doing so while carrying out inquiries, the absence of a specific provision was a repeated feature of feedback received and seen as significant for the Crown-Māori relationship.

*Treaty of Waitangi/te Tiriti o Waitangi settlement legislation, Marine and Coastal Area (Takutai Moana Act) 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019*

35. The proposed Bill excludes Treaty/te Tiriti settlement bills or legislation that gives effect to, or is otherwise related to, full and final Treaty/te Tiriti settlements ('Settlement Legislation') from consistency assessments and from the Board's purview. This approach recognises the different, closely negotiated, approach to Settlement Legislation, and allows for previous and future claim groups to be treated consistently. The Takutai Moana Act and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 are also excluded for consistency, as both Acts provide statutory mechanisms and arrangements to give practical effect to recognised customary interest in the marine and coastal area.

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36. Through consultation it has been raised that there will be legislation relevant to Treaty/te Tiriti settlements and processes for recognition of customary marine title that the requirements of the proposed Bill will apply to (for example, environmental legislation that also reflects Māori perspectives or priorities).
37. There is a concern that undertaking assessments for consistency against principles absent a principle relating to the Treaty/te Tiriti will result in legislation being developed or implemented in a manner that deprioritises Treaty/te Tiriti considerations. Concerns have been raised with us through agency consultation that this could have the effect of settlements being negotiated or implemented within a changed context that does not give the same level of prioritisation to Treaty/te Tiriti matters than when previous settlement legislation was implemented.
38. As noted earlier, the proposed Bill does not direct the decision-maker to a specific outcome inconsistent with the Crown's Treaty/te Tiriti obligations, or require the decision-maker to only progress legislation directly consistent with the principles. The likelihood of the above situation occurring may be mitigated by providing detailed guidance to support agencies in their interpretation of the principles. The potential impact may also be mitigated depending on the level of comfort a responsible Minister has to justify or address inconsistencies with the principles, if an inconsistency did occur from legislation being developed in a way to provide for Treaty/te Tiriti obligations. It is not yet clear the extent to which this will occur, in practice.

## Annex Five: Summary of departmental feedback

*Note agencies provided feedback at a point when the proposal included a requirement for all existing primary and secondary legislation to be reviewed for consistency with the principles contained in the proposed bill within ten years (unless exempted.) The proposal now being considered by Cabinet removes both the ten-year deadline and some existing secondary legislation from consistency assessment requirements.*

Area of feedback	Agencies raising issue	Summary of issues raised by agencies
Rationale for and scope of proposal	Customs, DIA, LINZ, MBIE, MfE, MoE, MoH, MoJ, MSD, Office of the Clerk	Agencies put forward alternative options to the ones in the draft Cabinet paper with a view that this would reduce duplication, costs and complexity, while achieving the same benefits. The Office of the Clerk supported a statutory requirement for agencies to report on regulatory quality matters along with more formal processes for post-legislative review, while noting some components of the proposed Bill would be more appropriately dealt with through the House's rules and practices. Other suggestions included strengthening existing tools and functions, improving legislative design considerations early in policy processes, or focusing on the introduction of Part 4 of the Legislation Act 2019.
Consistency statements	MBIE, MFAT, MSD, PSC, Office of the Clerk	Agencies were concerned about tensions between Chief Executives and responsible Ministers in relation to different views on the consistency of legislation. Agencies also thought that differing priorities between Chief Executives (e.g. to progress consistency assessments under the requirements of the proposed Bill) and Ministers (e.g. to prioritise their own legislation programme) may cause tensions. The Office of the Clerk was concerned about references to inclusion of consistency assessment statements in explanatory notes to legislation, because these are not required under legislation but under Standing Order 261.
Implications for parliamentary processes	HUD, MSD, MoH	Agencies noted the potential for increased pressure on Parliament's time, especially if additional amendment Bills are required to address inconsistencies. They also noted there could be impacts on the time and resourcing of Cabinet and Select Committees.
Resourcing and financial implications	Corrections, DIA, DPMC, HUD, GCSB/NZSIS, LINZ, MBIE, MfE, MoE, MoH, MoJ, MPI, MSD, MoD/NZDF, TPK, Reserve Bank, PCO, PSC	Agencies expressed concern about the financial implications of consistency requirements in the proposed Bill, and the consequential impacts on agencies' ability to deliver on other areas of government priority within portfolios. Some agencies indicated that the resourcing requirements may exceed the estimations provided in the RIS. For example, MBIE provided a rough estimate that a dedicated team of six to eight FTEs would be required to review Building and Construction legislation alone and MPI noted that work to achieve 120 minor amendments via a regulatory systems bill has taken the best part of two years.

Area of feedback	Agencies raising issue	Summary of issues raised by agencies
Implications for Local Government	DIA, MfE	Agencies shared their concern that the requirement to review secondary legislation for consistency with the principles would be costly for local government and pointed to the overlap between review requirements in the proposed Bill and existing statutory requirements for reviewing bylaws under the <i>Local Government Act 2002</i> .
Proposed principles	Corrections, Customs, Education, GCSB/NZSIS, LINZ, MfW, MSD, MfE, MBIE, MoJ, MoH, MPI, Office of the Clerk, Te Tari Whakatau, PCO, CLO	<p><b>[LEGALLY PRIVILEGED: s 9(2)(h)]</b></p> <p>Agencies identified uncertainties as to how some of the principles interacted with existing conventions and principles such as the role of the courts, Te Tiriti o Waitangi, BORA and the separation of powers. For instance, the Ministry of Justice commented that the principles refer to one role of the courts to interpret legislation but not other important roles. .</p> <p>Agencies questioned the application of some of the principles to their regulatory systems - including how the principles would apply to particular matters such as search and seizure or incarceration. They highlighted the potential for conflict between the purpose of legislation within some regulatory systems and the fact that the principles may restrict, inhibit or prevent the ability for current and future legislation to be implemented in accordance with Ministers' and agencies' statutory interests and ultimately prevent regulatory systems from being fit for purpose.</p> <p>Agencies noted that some important considerations were not covered by the principles, for instance prevention of harm.</p> <p>Agencies also noted that cross-party support would enhance the durability of the principles.</p>
Liberties principle	MfE, Reserve Bank, MoJ, MoH, PCO	Agencies considered that the liberties principle may need further explanation/definition. They thought that its current drafting could produce unintended consequences when legislation has been designed to intentionally impose limits on liberty. They suggested that the drafting include a public interest qualification as it is unclear to agencies whether the principle is intended to protect all fundamental human rights or a narrow subset of civil, political and property rights. Agencies expressed a preference for this principle to align with BORA.
Taking of property principle	LINZ, MfE, MoJ, PCO	Agencies were concerned that the taking of property principle's emphasis on property interests may conflict with broader regulatory objectives, including the Government's ability to acquire land for infrastructure or other public projects. Suggestions were also made to avoid retrospective compensation. It was also noted that the principle may be difficult to apply when



Area of feedback	Agencies raising issue	Summary of issues raised by agencies
		the boundaries of what constitutes a property right and impairment are unclear. Agencies proposed the principle should be clear on the definition of property and refer to the public interest as a justification.
Good law-making principles	Education, GCSB/NZSIS, Te Tari Whaikaha	<p>Agencies were concerned that it would be difficult to assess whether the benefits exceed the costs from legislation in situations where the benefits are difficult to quantify. They proposed instead to assess whether the purpose of a specific regulatory system is being achieved.</p> <p>Agencies suggested analysis of benefits should consider equity issues and whether there would be disproportionate impacts on particular population groups.</p> <p>Agencies questioned whether the consultation principle was inconsistent with obligations such as the UN Convention on the Rights of Persons with Disabilities or would result in inadequate consultation being undertaken with certain population groups who might not be identified as having an interest.</p>
Lack of provision for a Treaty principle	Education, HUD, TPK, MfE, MoJ, Te Tari Whakatau	Agencies expressed a view that the Treaty/ Te Tiriti should be reflected in the list of principles due to its constitutional significance. Agencies were concerned that the absence of a Treaty/Te Tiriti principle may mean Treaty obligations are not given proper weighting, which could lead to a greater number of claims under the Treaty of Waitangi Act 1975.
Proposed treatment of Treaty settlement-related legislation	LINZ, TPK, Te Tari Whakatau	<p>The exclusion of Treaty Settlement Bills is not considered wide enough as Treaty/te Tiriti settlement redress can be provided through other Acts such as through Māori Purposes Acts and Reserves and Other Lands Disposal Acts.</p> <p>The Bill should specify that secondary legislation that is made under empowering provisions in Treaty/te Tiriti settlement Acts should be excluded as well. LINZ highlighted statutory responsibilities in Treaty/te Tiriti settlement processes and Māori land management and raised concerns that the Bill prioritising property rights could undermine Treaty/te Tiriti obligations and create legal barriers for returning land.</p>
Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019	TPK, Te Tari Whakatau, MfE	Agencies asked for the <i>Marine and Coastal Area (Takutai Moana) Act 2011</i> and <i>Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019</i> to be excluded from the Bill requirements as they provide for recognition of customary marine title.
Regulatory Standards Board	Corrections, GCSB/NZSIS, TPK, PSC, NEMA, Education, MfE, HUD, Office of the Clerk, MBIE, MoJ, Customs	Agencies asked for the Bill to clearly reflect that the proposed Board would be a Ministerial advisory committee not a decision-making body. Agencies were concerned that Board members would not have sufficient specialised skills or understanding of particular regulatory systems. Some agencies were uncomfortable with the Minister for Regulation being solely responsible for appointing Board members and wanted public consultation and/or Parliamentary oversight.

Area of feedback	Agencies raising issue	Summary of issues raised by agencies
		<p>There was agency support for the Board membership to include expertise in the Treaty/te Tiriti and Māori rights and interests.</p> <p>Agencies also suggested there may be duplication with other independent oversight and monitoring functions and that, as currently described, the Board's role may result in critiquing Parliamentary processes or cut across Ministerial responsibilities.</p> <p>Agencies questioned whether consistency reviews as a response to complaints would be efficient or effective and pointed out that complaints may have ulterior motives. Agencies were not comfortable with the Board investigating individual cases. The Office of the Clerk questioned how the Board would provide reports to Select Committee and recommended this be done instead by requiring the Minister for Regulation to present the reports to the House, with the reports then potentially referred to select committees under the Standing Orders.</p>
Review of existing regulation – inclusion of secondary legislation	Education, HUD, MBIE, MFAT, MoD/NZDF, MoH, MSD, Reserve Bank, PCO	<p>Agencies were concerned about the potentially extensive resource burden involved in assessing secondary legislation due to the large volumes they administer. Agencies thought the proposed additional scrutiny from the House on secondary legislation would be inconsistent with agencies being empowered to make secondary legislation independently.</p> <p>Agencies specifically mentioned examples of secondary legislation where they thought there would be no benefits from consistency assessments including secondary legislation made under the Russia Sanctions Act 2022, Court notices, School Term Dates, notices providing information on how to appeal regulator decisions, one-off instruments that record decisions and a range of other secondary legislation that is technical in nature.</p>
Ten-year timeframe for reviewing existing legislation	Corrections, GCSB/NZSIS Education, HUD, Transport, MSD, MoH, MoJ, MPI, PCO	<p>Agencies did not consider it feasible to undertake reviews of all legislation within 10 years, especially without additional resources. They suggested that the requirement may undermine efficiency or agencies' ability to prioritise and would have an opportunity cost in relation to delivering on the government of the day's policy agenda. They also thought that it was unclear how the requirements would interact with other regulatory stewardship requirements.</p> <p>Agencies questioned how the requirements would fit with review processes already built into some legislation, and Cabinet-mandated expectations for regulatory stewardship to be considered across a whole regulatory system, with legislation only being one aspect.</p>
Information-gathering powers	GCSB/NZSIS, HUD, Office of the Clerk, TPK,	Agencies raised concerns about the Ministry requesting classified information, including the need for staff to have clearance and secure facilities and storage. Agencies suggested that the legislation should specify exactly what information can be requested, and for what purpose, and that those acting under the powers will need to know the scope of their mandate and what other

Area of feedback	Agencies raising issue	Summary of issues raised by agencies
		<p>laws and restrictions might take precedence (for example legal privilege, commercial confidentiality, security classification).</p> <p>The Office of the Clerk was concerned that the scope of the power inappropriately captured the House and non-Executive entities such as the Speaker and Parliamentary Services who make secondary legislation. They noted that the paper does not address the application of the power to other bodies that make secondary legislation but are traditionally at arms-length from Government, for example the Remuneration Authority.</p>
Ministry for Regulation-led regulatory reviews	PSC	PSC expressed a view that relevant regulatory agencies should always agree to the initiation of a Ministry for Regulation-led regulatory review and be involved in setting its terms of reference.
Exclusion of other legislation from requirements in the Bill	MFAT, MfE, MoD/NZDF, Te Tari Whakatau, TPK, Office of the Clerk	<p>A number of agencies have proposed specific legislation or types of primary legislation they consider would be appropriate from exclusion from the Bill at the outset including;</p> <ul style="list-style-type: none"> <li>• Māori Purposes Bills</li> <li>• A carve out for the NZDF (see next row for more information on this)</li> <li>• Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019</li> <li>• Legislation that provides exclusively for Māori rights</li> <li>• Legislation implementing international obligations such as Free Trade Agreements</li> <li>• Environmental legislation</li> </ul> <p>Te Tari Whakatau thought that the scope of exemptions currently provided for in the proposed Bill should be clearer. The Office of the Clerk suggested notices specifying classes of bills that should be excluded from consistency assessments or reviews should be jointly issued by the Minister for Regulation and the Attorney-General as a safeguard.</p>
Constitutional considerations	MOD/NZDF	<p><b>[LEGALLY PRIVILEGED: s 9(2)(h)]</b></p> <p>[REDACTED]</p> <p>[REDACTED]</p>



# Cabinet

## Minute of Decision

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*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

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### Progressing a Regulatory Standards Bill: Policy Approvals

#### Portfolio

#### Regulation

On 5 May 2025, following reference from the Cabinet Expenditure and Regulatory Review Committee, Cabinet:

- 1 **noted** the summary of submissions on the discussion document *Have your say on the Regulatory Standards Bill* that Cabinet agreed to release in November 2024 [CAB-24-MIN-0437], attached as Annex 1 under CAB-25-SUB-0148;
- 2 **noted** that, after having considered the submissions referred to above, the Minister for Regulation has decided to proceed on the basis of a substantially similar approach to the one set out in the discussion document;

#### Purpose

- 3 **agreed** that the purpose of the Regulatory Standards Bill (the Bill) would focus on:
  - 3.1 promoting the accountability of the Executive to Parliament in relation to the development of high-quality legislation and regulatory stewardship;
  - 3.2 supporting Parliament to scrutinise Bills and oversee the power to make delegated legislation;

#### Principles

- 4 **agreed** that the Bill include principles covering the following areas:
  - 4.1 *Rule of law* – the law should be clear and accessible; the law should not adversely affect rights and liberties, or impose obligations, retrospectively; every person is equal before the law; there should be an independent, impartial judiciary; and issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion;
  - 4.2 *Liberties* – legislation should not unduly diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person;

- 4.3 *Taking of property* – legislation should not take or impair, or authorise the taking or impairing of, property without the consent of the owner unless there is good justification for the taking or impairment, fair compensation for the taking or impairment is provided to the owner, and compensation is provided to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment;
- 4.4 *Taxes, fees and levies* – legislation should be consistent with section 22 of the Constitution Act 1986 (Parliamentary control of public finance); legislation should impose a fee for goods or services only if the amount of the fee bears a proper relation to the costs of efficiently providing the good or service to which it relates; and legislation should impose a levy to fund an objective or a function only if the amount of the levy is reasonable in relation to both the benefits/risks to that class of payers, and the costs of efficiently achieving the objective or providing the function;
- 4.5 *Role of courts* – legislation should preserve the courts’ constitutional role of ascertaining the meaning of legislation; and legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review;
- 4.6 *Good law-making* – good law-making should include:
- 4.6.1 consulting, to the extent practicable, the persons or representatives of the persons that the responsible agency considers will be directly and materially affected by the legislation;
  - 4.6.2 carefully evaluating the issue concerned, the effectiveness of any relevant existing legislation and common law; whether the public interest requires that the issue be addressed; any options (including non-legislative options) that are reasonably available for addressing the issue; and who is likely to benefit, and who is likely to suffer a detriment, from the legislation;
  - 4.6.3 establishing that legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons;
  - 4.6.4 establishing that legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available;

### Consistency assessment requirements

- 5 **agreed** that the Bill apply new requirements for assessing the consistency of proposed and existing legislation with the above principles to:
- 5.1 all administering agencies for legislation (including statutory Crown entities and the Reserve Bank of New Zealand);
  - 5.2 all makers of secondary legislation;
- 6 **agreed** that the Bill provide that the Minister responsible for a Government Bill must ensure that its explanatory note includes:
- 6.1 an independent statement from the responsible Chief Executive stating that the Bill has been assessed for consistency with all the principles and providing the results of that assessment;

- 6.2 a statement from the Minister explaining the reasons for any inconsistency that was identified;
- 7 **agreed** that the Bill provide that, unless the Minister for Regulation certifies that a proposed Government amendment would not materially change a Bill, the responsible Minister must ensure the same statements as in paragraph 6 above are included in the explanatory note to that amendment;
- 8 **agreed** that the Bill provide that, if it is not practical for the responsible Minister to complete the statements in paragraph 7 above in the time available, the responsible Minister may present them to the House as soon as possible following consideration of the amendment;
- 9 **agreed** that the Bill provide that the explanatory note to any new secondary legislation should contain the same notices as paragraph 6 above, with the independent assessment of consistency done by the Chief Executive of the administering agency and the explanations for any inconsistency provided by the responsible Minister (or other maker);
- 10 **agreed** that the Bill provide that agencies be required to develop and periodically report against plans to review existing legislation (both primary and secondary) that is subject to consistency reviews for consistency with the principles;
- 11 **agreed** that the Bill provide that, as agencies complete the reviews in paragraph 10 above for each Act, the responsible Minister would be required to present to the House:
- 11.1 a statement from the responsible Chief Executive confirming that that Act had been assessed for consistency with the principles, and the results of that assessment;
- 11.2 a statement from the Minister setting out reasons for any inconsistency identified or the proposed actions that would be taken to address the inconsistency identified;
- 12 **agreed** that the review requirements in paragraph 10 above would only apply to existing secondary legislation either where:
- 12.1 a consistency assessment has previously been completed for that secondary legislation when it was made or amended;
- 12.2 the Minister for Regulation issues a notice to specify that a class of existing secondary legislation is subject to consistency assessment requirements, and that notice is approved by the House;
- 13 **agreed** that the Bill provide that, as agencies complete the reviews in paragraph 10 above in relation to secondary legislation, the responsible agency must ensure the publication of:
- 13.1 a statement by the Chief Executive of the administering agency that an assessment of the consistency of that secondary legislation has been carried out and the results of the assessment;
- 13.2 a statement by the responsible Minister or other maker explaining the reasons for any inconsistency identified or the proposed actions that would be taken to address the inconsistency identified;
- 14 **agreed** that the Bill provide that both the responsible Chief Executive and the responsible agency must act independently from the Minister or maker in relation to making the assessments of consistency described above;

- 15 **agreed** that the Bill provide that the Minister for Regulation may issue guidance jointly with the Attorney-General to support agencies making consistency assessments, and Ministers in making their statements, including on:
- 15.1 how the principles should be applied;
  - 15.2 how to review legislation for consistency with the principles;
  - 15.3 the content and presentation of the statements and plans required;

### **Exclusions or exemptions from consistency requirements**

- 16 **agreed** that the Bill:
- 16.1 exclude some legislation from consistency assessment requirements;
  - 16.2 enable the Minister for Regulation to issue a notice to exempt particular classes of legislation from consistency assessment requirements, where that notice is approved by the House;
- 17 **agreed** that the Bill exempt some types of Government legislation from consistency assessments and regular review requirements, including:
- 17.1 Imprest Supply bills or Appropriation bills;
  - 17.2 Statutes Amendment bills;
  - 17.3 legislation that primarily relates to the repeal or revocation of legislation identified as spent;
  - 17.4 revision bills prepared by the Parliamentary Counsel Office (PCO) under the Legislation Act 2019;
  - 17.5 confirmation bills prepared by PCO under the Legislation Act 2019;
  - 17.6 Treaty Settlement bills or any other bill that provides redress for Treaty of Waitangi claims;
  - 17.7 the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019;
- 18 **agreed** that the Bill make specific exclusions in relation to the following secondary legislation, which would have the effect of excluding that secondary legislation (or maker when applicable) entirely from the scope of the Bill:
- 18.1 secondary legislation made under the provisions of the Defence Act 1990, the Armed Forces Discipline Act 1971, or otherwise issued by the Chief of the Defence Force under any other statutory instrument;
  - 18.2 secondary legislation made by the Speaker of the House, or the House of Representatives;
  - 18.3 all court rules, and instruments made by the judiciary that are secondary legislation;

- 19 **agreed** that, for consistency, the Bill should also exempt:
- 19.1 Government amendments from consistency assessments where they relate to the classes of excluded legislation;
  - 19.2 Acts resulting from excluded bills, where a bill becomes a principal Act (unless it is an Act from a member's bill);
  - 19.3 Amendment Acts (as their provisions would be captured as part of the assessment of the Act that was amended);
  - 19.4 any secondary legislation created under an excluded class of primary legislation;
  - 19.5 member's bills;
  - 19.6 local and private bills, their Acts, and related secondary legislation;
- 20 **noted** that the notices in paragraph 16.2 above could be used to exempt legislation from consistency assessment requirements including:
- 20.1 where it is not practical or appropriate to undertake consistency assessments (e.g. legislation to be passed in response to an emergency);
  - 20.2 where it is not cost-effective to undertake consistency assessments (e.g. technical or minor legislation that is not already excluded);
  - 20.3 to otherwise help align consistency requirements with relevant Government processes, such as regulatory impact analysis requirements;
- 21 **agreed** that the Ministry for Regulation (the Ministry) work in consultation with agencies while the Bill is before the House to develop an initial list of exemptions that could be included in a notice to be issued as soon as the Bill comes into force;

### **Regulatory Standards Board**

- 22 **agreed** that the Bill should establish a Regulatory Standards Board (the Board) to make its own independent assessments of the consistency of legislation;
- 23 **agreed** that the Bill should provide for the Board to:
- 23.1 comprise between five and seven members appointed by the Minister for Regulation on the basis of that Minister's assessment of members having the requisite knowledge, skills and experience;
  - 23.2 carry out inquiries either following a complaint, at the direction of the Minister for Regulation, or on its own accord into whether legislation is inconsistent with the principles;
  - 23.3 make non-binding recommendations;
- 24 **noted** that appointments to the Board would be made via the Cabinet Appointments and Honours Committee;



- 25 **agreed** that the Bill provide for the Board to investigate the consistency of legislation by:
- 25.1 looking at consistency assessments of bills as introduced into the House, and providing a report to the relevant Select Committee;
  - 25.2 looking at existing legislation and carrying out an inquiry into whether the legislation is consistent with the principles, and reporting to the Minister for Regulation on its findings;
- 26 **agreed** that the Bill provide that the Board should:
- 26.1 carry out inquiries only in relation to legislation that is subject to consistency assessment requirements (noting that exclusion or exemption of legislation from consistency assessment requirements would also mean that legislation is not subject to Board review);
  - 26.2 not be able to investigate decisions in relation to individual cases;
  - 26.3 operate on the basis of reviewing written documents rather than holding formal hearings;
  - 26.4 provide to the Minister for Regulation an annual report summarising its recommendations and findings for the Minister to present to the House;
- 27 **agreed** that the Chief Executive of the Ministry would be responsible for the provision of administrative and secretariat services to the Board;
- 28 **agreed** that Board findings and key relevant supporting information would be published (subject to the equivalent provisions of the Official Information Act 1982 and Privacy Act 2020);

### Ministry for Regulation's regulatory oversight role

- 29 **agreed** that the Bill would:
- 29.1 require public service Chief Executives to uphold a principle to proactively steward the regulatory systems associated with the legislation they administer;
  - 29.2 set a requirement for the Ministry to produce a regular report for the Minister for Regulation to present to Parliament assessing the overall performance of the Regulatory Management System;
  - 29.3 set a power for the Ministry to require provision of information from public service agencies to support this regular reporting;
- 30 **agreed** that the Bill provide that the Ministry must act independently from the Minister for Regulation in relation to making the regular reports described in paragraph 29.2 above;
- 31 **agreed** that the Bill would provide information-gathering powers to enable the Chief Executive of the Ministry to require information to be provided on request, to support the effective and efficient conduct of regulatory reviews from:
- 31.1 public service agencies, as defined in section 10(a) of the Public Service Act 2020;
  - 31.2 statutory Crown entities, as defined in section 7(1)(a) of the Crown Entities Act 2004;

- 31.3 any entity that makes or administers secondary legislation, including local government;
- 31.4 any entity authorised by an Act to undertake a regulatory function, for example the Reserve Bank and statutory occupational licensing bodies;
- 31.5 any entity contracted by the Government to support the delivery of a regulatory function, also known as third-party service providers;
- 32 **agreed** that the Bill would set a requirement for review reports to be presented to the House together with the Government's response;
- 33 **agreed** that the Bill would specify that, in relation to the proposed information-gathering powers in paragraph 31 above:
- 33.1 the powers would only be used when necessary for the effective and efficient conduct of the regulatory reviews carried out by the Ministry;
- 33.2 in relation to information held by third party service providers, the Ministry would first seek this information from the public service agency that holds the contract, or make the request in conjunction with the responsible agency;
- 33.3 in relation to entities that make or administer secondary legislation and entities authorised to undertake a regulatory function (e.g. the Reserve Bank), the Ministry would make a request following consultation with a responsible public service agency (where relevant);
- 33.4 the powers would not override prohibitions or restrictions on the sharing of information already set down in legislation;
- 33.5 the powers would not apply to the House of Representatives, the Speaker, an Office of Parliament, the Office of the Clerk of the House of Representatives, or the Parliamentary Service;
- 34 **agreed** that the Bill would provide that the information-gathering powers above could be enforced via court order if required, a breach of which would constitute contempt of court;

### Commencement and transitional arrangements

- 35 **agreed** that the Bill would come into force on 1 January 2026, with transitional arrangements providing for consistency assessment requirements for agencies and Ministers to be brought in via Order in Council, but commence no later than six months after the date the Bill comes into force;
- 36 **noted** that the Minister for Regulation intends to report back to Cabinet on proposed changes to the Cabinet Office Circulars for *Disclosure Requirements for Government Legislation* [CO (13) 3] and *Impact Analysis Requirements* [CO (24) 7], to ensure alignment with the Bill;

s 9(2)(h)

- 37 **agreed** that the Bill include clauses clarifying that:
- 37.1 the purpose of the Bill is only given effect by the specific provisions of the Bill;
- 37.2 the Bill does not confer or impose any legal rights or duties or affect the validity of any legislation;

**Financial and other implications**

- 38 **noted** that the Bill will have financial implications for all agencies who are responsible for administering primary and/or included secondary legislation;
- 39 **noted** that these costs could be offset to some degree where new requirements substitute for existing legislative stewardship activity, or where agencies realise savings over time as a result of reduced effort in reviewing and amending legislation and/or operational efficiencies;
- 40 **noted** that the Ministry will have additional costs associated with its new functions to provide system oversight and secretariat support to the Board, as well as the cost of Board fees, and that these financial implications will be managed within baseline;

**Next steps**

- 41 **agreed** that Cabinet will consider the Departmental Report before it is submitted to Select Committee, and will further consider the Bill as reported back from Select Committee;
- 42 **agreed** that the Cabinet report back following Select Committee will include consideration of the proposed taking of property principle, as well as other matters;
- 43 **authorised** the Minister for Regulation to issue drafting instructions to the Parliamentary Counsel Office to implement the above decisions;
- 44 **authorised** the Minister for Regulation to make minor or technical policy decisions as needed to support the development of the above drafting instructions, consistent with the above decisions;
- 45 **noted** that the Minister for Regulation intends to issue a media release to publicly announce the next steps in the progression of the Bill;
- 46 **noted** that the Waitangi Tribunal has approved an urgent one-day hearing in relation to the proposed Bill, scheduled for 6 June 2025;
- 47 **agreed** that a paper seeking approval to introduce the Bill, along with the proposed Bill, will proceed directly to Cabinet for consideration on 19 May 2025.

Rachel Hayward  
Secretary of the Cabinet