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. 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[1] request in writing to: privacy.officer@regulation.govt.nz.

[1] The Ministry for Regulation's guide to making Privacy Act requests can be found here.

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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[2].

The Ministry also qualitatively assessed a sample of submissions[3] 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

[2] The Ministry has not undertaken any assessment of whether the population of submitters is representative of the population of New Zealand.

[3] 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.

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- 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.

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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.

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Table 1: Information on types of organisation submitters

Type of submitter	Number[4]
Environment and community groups and NGOs	115
Other Māori groups	107
Industry and sector groups	44
Other businesses	42
Research groups, consultancies and thinktanks	26
Unspecified/other	15
Local government	9
Other public and statutory agencies (including officers of Parliament)	9
Law firms	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.[5] 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.

[4] Note that in some cases a submitter may be tagged as more than one type of submitter.

[5] Due to the significantly longer average length of submissions within the sample of submissions compared to all submissions.

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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.[6] **Tables 2 and 3** set out these results by submitter type. **Appendix 1** sets out the methodology for calculating these figures.

[6] 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.

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Table 2: Submitters' stance on the proposed Bill

Submitter type	Oppose	Partially Support	Support	Unclear	Total
Individual	19,718	28	28	2,566	22,340
Iwi/hapū	89	0	0	25	114
Organisation	301	11	9	46	367
Total	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
Individual	88.26%	0.13%	0.13%	11.49%
Iwi/hapū	78.07%	0.00%	0.00%	21.93%
Organisation	82.02%	3.00%	2.45%	12.53%
Total	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**.

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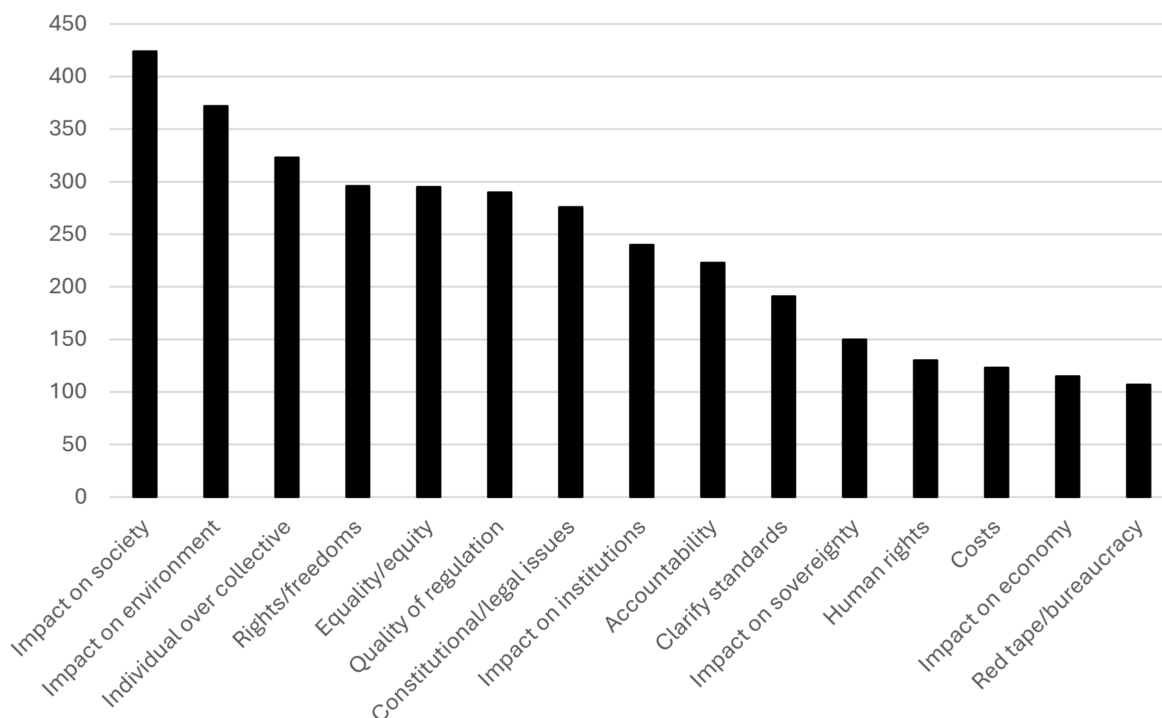
Figure 1: Reasons for support or opposition to the proposed Bill (from the sample of submissions)[7]



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.

[7] Counts include instances of both support and opposition.

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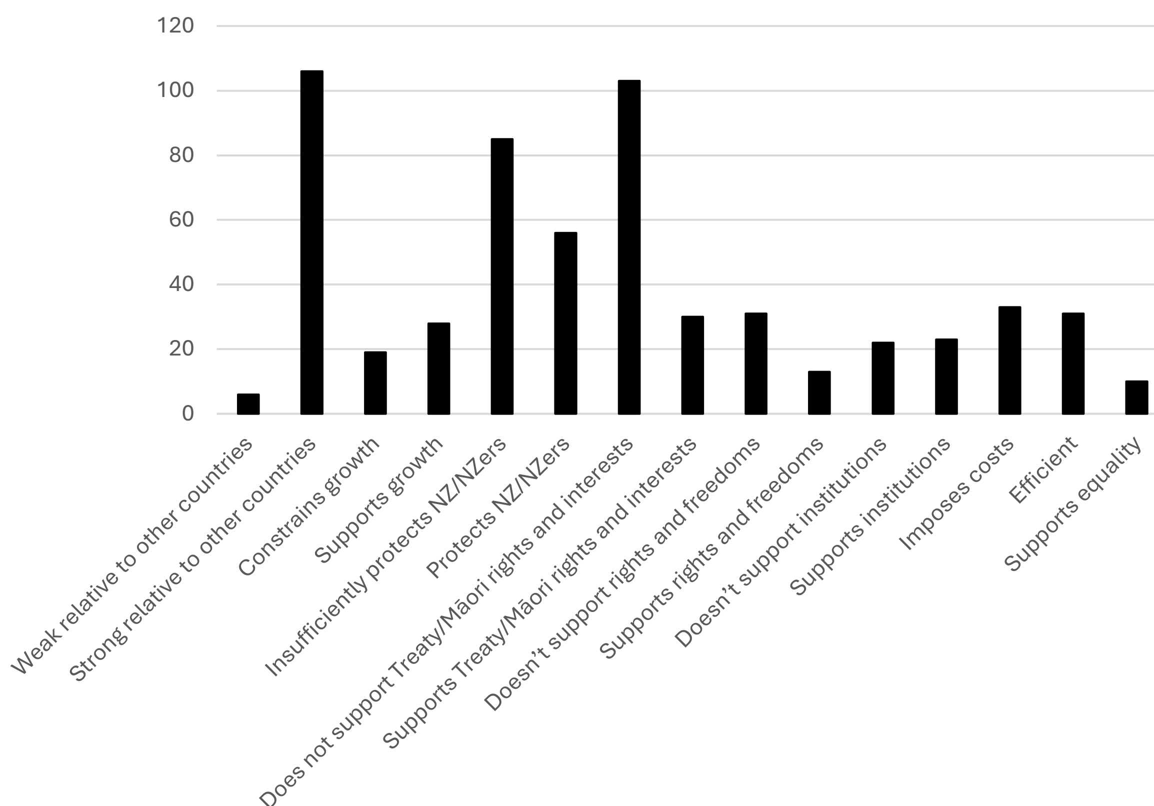
Figure 2: Views on current regulatory quality in New Zealand (from the sample of submissions)



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

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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[8] 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.

[8] 14,807 submissions mentioned the Treaty or te Tiriti out of a total of 22,744.

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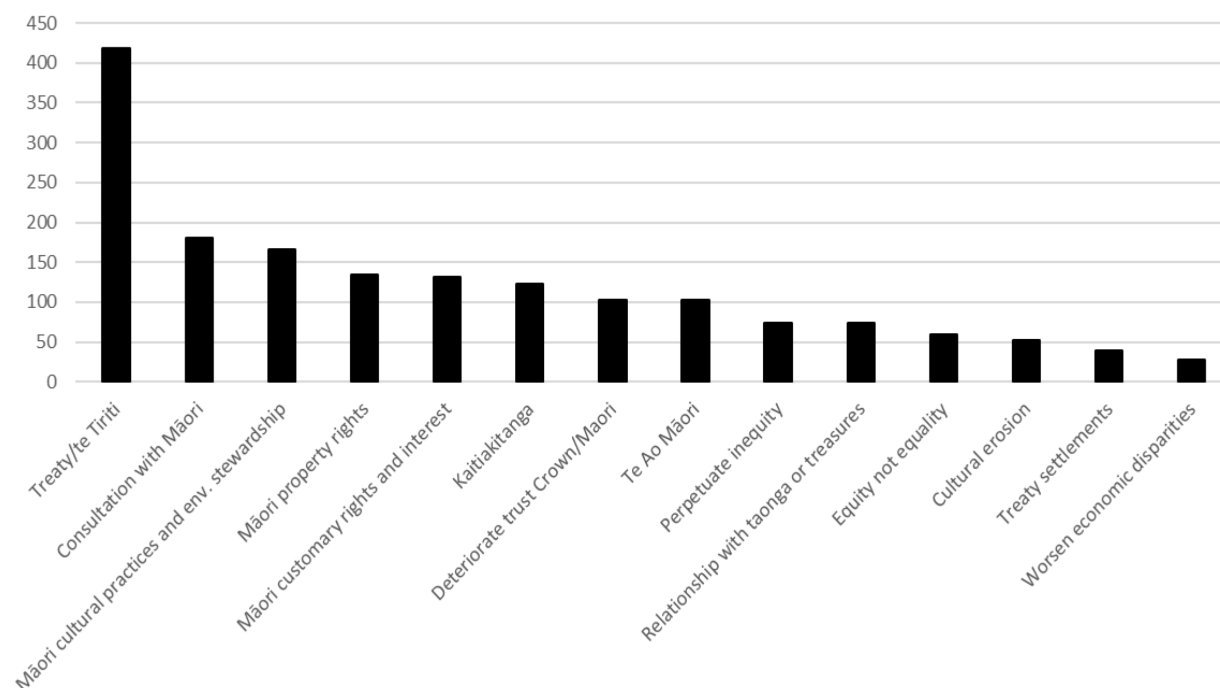
Figure 3: Issues raised relating to the Treaty/te Tiriti or Māori rights and interests (from the sample of submissions)



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 Tireni, 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

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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.

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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.

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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

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- 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

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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.

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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

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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.

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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

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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

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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.

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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

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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

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- 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

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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.

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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.

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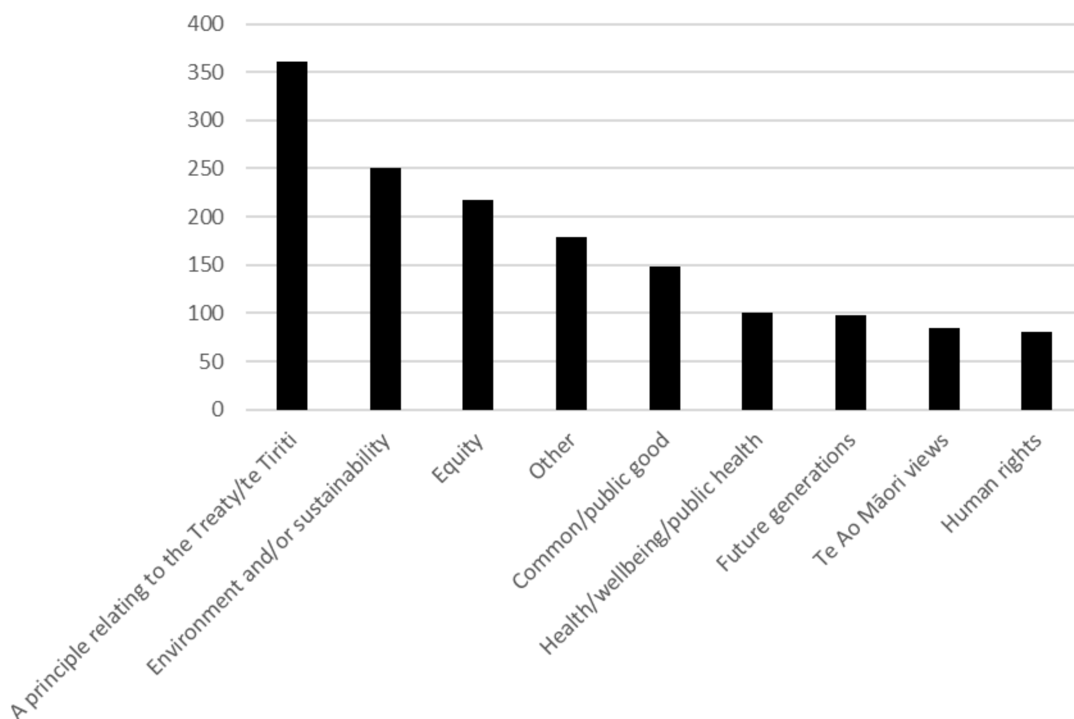
Figure 4: Views on additional or alternative regulatory responsibility principles (from the sample of submissions)



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.

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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.

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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.

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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

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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**)

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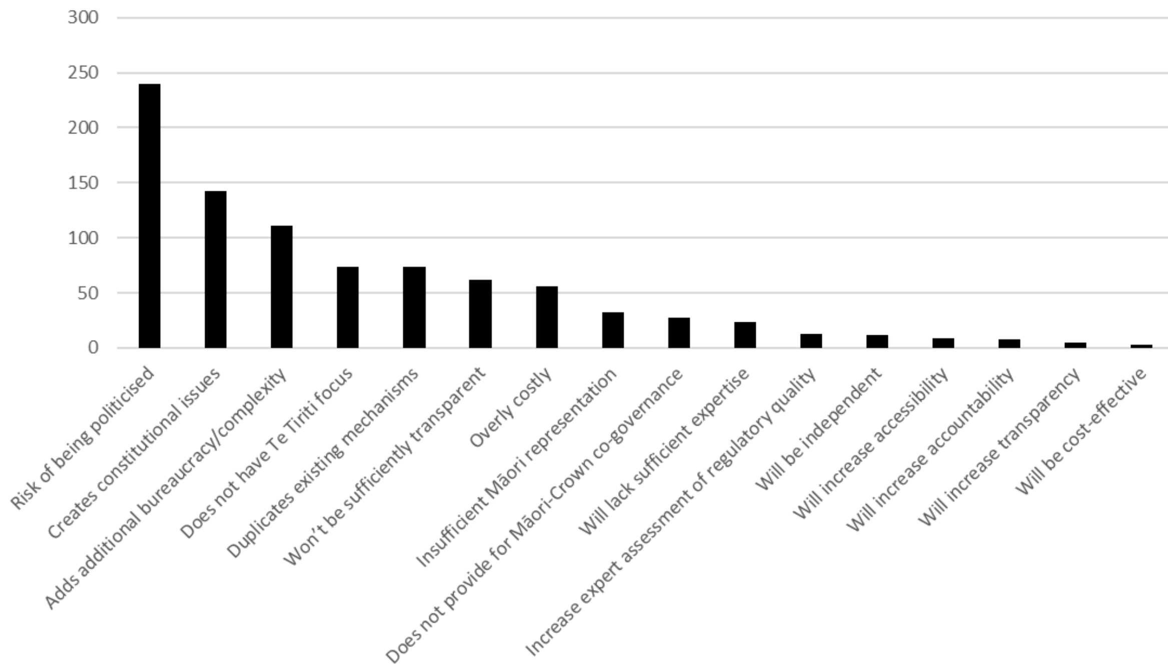
- that it would be too separate from regulatory realities to make practical recommendations, and may introduce legal complexities to existing regulatory processes
- that the work of the Board would add to workload pressures for agencies which would result in resources being diverted away from other work
- 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

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- 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-

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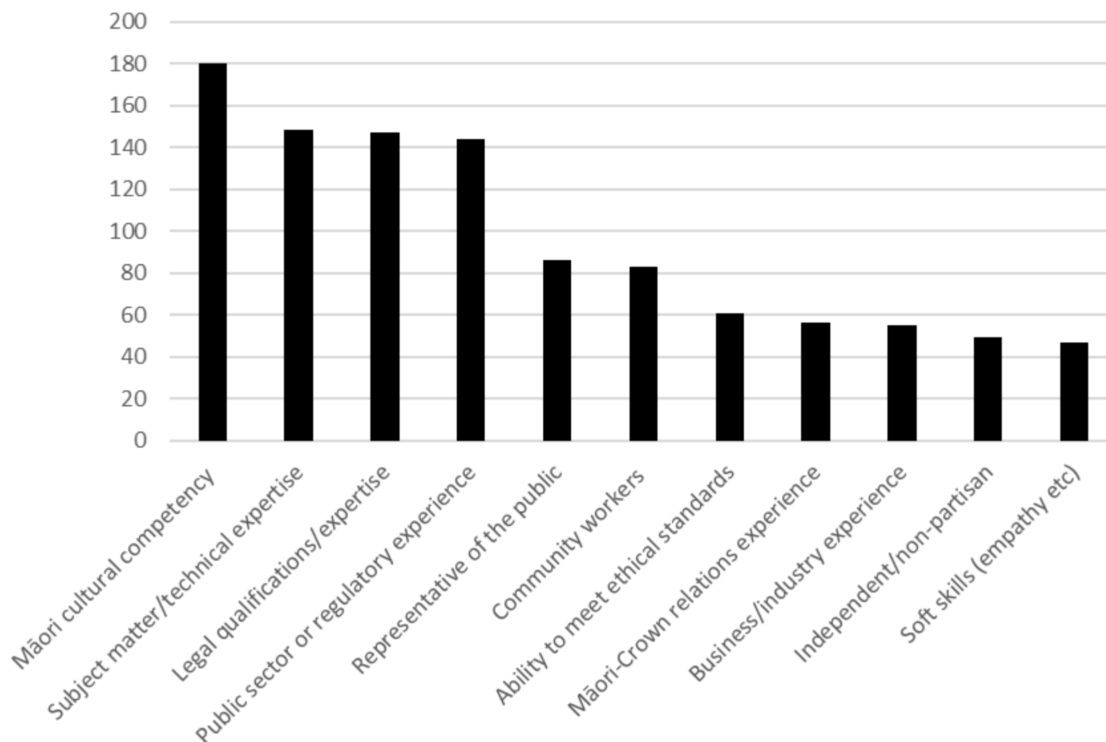
benefit analysis, environmental management, social policy, human rights, international development, community sector, infrastructure, local government, and regulatory policy in other markets. Comparisons were made by submitters with the Legislation Design and Advisory Committee which includes a broad 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.

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- **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

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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.

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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.

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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

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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.

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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

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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

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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.

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