



Minister and Portfolio:	Hon David Seymour, Minister for Regulation		
Title:	Progressing the Regulatory Standards Bill	Number	MFR2024-092
Date:	6 August 2024	Security Level:	IN CONFIDENCE

Purpose of Report

1. This note summarises the recent advice we have provided on alternative options for a new Regulatory Standards Bill, and the decisions you have made to date. It also provides information on upcoming decisions for your attention and factors that will inform the timelines for progressing the Bill.

Background

2. We have recently provided you with several briefings on policy options for the core components of the Regulatory Standards Bill (see Annex 1 for a summary), to support your decisions on a refined proposal to take forward for Ministerial consultation. These options cover the scope of the regulatory responsibility principles, the nature of accountability/transparency mechanisms to embed these principles, and a range of recourse mechanisms.
3. In these briefings, we have noted a series of next steps, in addition to Ministerial consultation. This includes us seeking further advice from LDAC and the Crown Law Office, and undertaking the detailed design work, analysis and consultation required to refine likely costs, benefits and risks and enable you to make further decisions on the details of a preferred package and develop specific proposals to take to Cabinet.
4. In summary, we understand your decisions to date are that the refined proposal for Ministerial consultation should:
 - not include the provisions in the 2021 Bill relating to a referendum;
 - include the principles of responsible regulation from the 2021 Bill;
 - provide for some form of Ministerial/departmental certification/disclosure of consistency, including for the responsible Minister to transparently justify any inconsistency;
 - not include a new interpretative role for the courts as set out in clause 10 of the 2021 Bill, but that it could still include an administrative role for the courts as the public recourse mechanism (i.e, a role for them to issue findings on the consistency of legislation with the principles); and
 - include any new statutory powers and functions for the Ministry for Regulation, including in relation to regulatory reviews.

5. We also understand that you are comfortable with us proceeding with an approach that gives effect to the principles solely via expectations set out in a Responsible Regulation Statement, to lessen the risk of the courts seeking to directly apply the principles.
6. In addition, as a possible alternative recourse mechanism to the Courts, you have indicated that we should provide further advice on a Ministerially appointed board of independent experts (including as an independent Crown entity).

Forward pathway

7. There are some immediate steps underway on the basis of your feedback on our recent briefing (2024-077), namely:
 - We are preparing a briefing on recommended amendments to the principles in the 2021 Regulatory Standards Bill;
 - 9(2)(h) [REDACTED]
 - [REDACTED]
8. We are also continuing work on the statutory framework to support the Ministry's regulatory reviews. We expect to provide a briefing on this by 16 August.
9. We have provided extensive advice on a range of components. Once we have your decision on a preferred approach to the principles, we can proceed to provide further advice on the other components of the new Bill and any adjustments needed to align these to the principles. These include:
 - Mechanisms to ensure new regulatory proposals and existing legislation are assessed for consistency with the principles, and any inconsistencies declared, building on the provisions for certification in the 2021 Bill. We will need to revisit, for example, part of our previous advice on what powers and functions could be included in the Bill and the respective roles of the Attorney General and Minister for Regulation, depending on the nature of the final principles adopted;
 - The design options for a recourse mechanism to hear public concerns about the legislative design or broader operation of regulatory systems. 9(2)(h) [REDACTED] and [REDACTED]
 - Provisions to establish and support the Ministry's regulatory oversight role.
10. Once you have made decisions on the above elements of the new Bill, we propose to:
 - Commission further advice from the Crown Law Office and the Legislation Design and Advisory Committee on the preferred approach, and continue to engage with other agencies on the refined proposal;
 - Provide updated slides for you to use for Ministerial consultation on the refined proposal; and

- Provide advice on options for engagement on the new Bill to support different stages of the policy and legislative development process. If you decide to proceed with a discussion document prior to seeking Cabinet policy decisions, we would seek your agreement on the scope of this discussion document and proceed to drafting this and the associated Cabinet paper. If required (e.g., if the discussion document does not provide a wide range of feasible options), we would also draft an interim regulatory impact statement at this time.
11. We previously advised that strengthening parliamentary scrutiny of legislation could, in our view, play a key role in raising the quality of legislation in New Zealand and that further advice would be provided on this. Our analysis shows that unless a new Officer of Parliament is sought (unlikely), additional mechanisms as they relate to the scrutiny of legislation, will likely sit outside of the scope of the new Bill and instead be provided for through amending parliamentary rules. We therefore intend to provide further advice closer to when substantive decisions are sought by Cabinet.

Treaty of Waitangi analysis

12. Balancing Māori interests with the wider interests and policy goals of the new Bill will be important as part of the Crown-Māori relationship and we will look to provide a detailed Treaty analysis once key policy elements of the Bill are agreed.

Timeframes

13. You asked about the likely timing of Cabinet decisions, and the introduction and passing of the Bill.
14. In order to meet your desire to introduce the Bill early in your term it is imperative that we continue to work towards an ambitious timeline. Your agreement to substantive policy decisions, and direction on the nature of public consultation pre and post cabinet policy decisions, will have a material impact on the timeframes.
15. For example, if you decide to proceed with a discussion document (our recommendation), we estimate that Cabinet’s final decisions on the policy for the RSB, and the decision to issue drafting instructions, could be sought around 5 months following your decisions on the key elements of the Bill. It would then take another 2-3 months for drafting and to seek approval for introduction of the Bill. Consulting on an exposure draft of the RSB would add around 3-5 months to the timeframes.
16. These timeframes are at the ‘minimum’ end of the spectrum, and assume, for example, that no significant issues are identified in agency or Ministerial consultation. They are also subject to agreement from the Parliamentary Counsel Office.
17. As noted earlier in the paper, further advice on options for consultation and engagement and the associated timing implications will be provided in the coming weeks.

Manager	Pip van der Scheer, Regulatory Management System
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Annex 1: Summary of proposals on the core components of the Regulatory Standards Bill to date [as at 6 August 2024]

Date	Briefing title	Summary of proposals
15/12/2023	Regulatory Standards Bill – Initial Advice and Options T2023/2064	This report provided initial high-level options around the core components of a Regulatory Standards Bill and advice on how it could fit within the wider legislative and administrative landscape.
25/3/2024	Crown Law Advice on Regulatory Standards Bill T2024/539	This report provided the formal legal advice Treasury received from the Crown Law Office in relation to the Regulatory Standards Bill. 9(2)(h) [REDACTED]
22/3/2024	Regulatory Standards Bill: Possible amendments T2024/763	<p>This report provided advice on possible alternatives to the involvement of the Courts in applying statutory principles in the 2021 version of the Regulatory Standards Bill. We sought your view on the proposed alternative measures and whether you thought they had merit, either as individual measures or as a package. Based on your feedback, we committed to then working with key agencies to develop your preferred options in more detail.</p> <p>Alternative options to the Courts were discussed in four categories:</p> <ul style="list-style-type: none"> ○ strengthened Executive processes, particularly disclosure statement requirements that require agencies to show whether and how they have complied with principles of responsible regulation in the development of new legislative proposals (supported by independent and expert scrutiny where required), along with strengthened legislative approval processes ○ greater scrutiny of laws by Parliament and strengthened Parliamentary processes ○ new and strengthened powers and requirements in relation to the regulatory oversight role played by the Ministry and Minister for Regulation, along with Ministerial and agency obligations to improve the quality of new and existing regulation

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		<ul style="list-style-type: none"> ○ recourse for individuals and businesses that provides specific mechanisms for raising and responding to concerns about instances where principles of responsible regulation are not being adhered to.
3/5/2024	Regulatory Standards Bill: Possible approaches to embedding regulatory responsibility principles [2024-016]	<p>This report and slide pack were intended to support a discussion with officials on 8 May 2024 on potential modifications to the regulatory responsibility principles set out in the 2021 Regulatory Standards Bill. We sought to discuss possible approaches to providing for the regulatory responsibility principles - focusing on both the principles themselves, and the mechanisms by which they could be embedded throughout government systems and processes.</p> <p>The slide pack covered:</p> <ul style="list-style-type: none"> ○ how the work on principles fits within the broader work programme ○ broad outcomes derived from the key critical success factors, and some broad assumptions about how each can be achieved ○ key choices that would determine both the content of regulatory responsibility principles and how they could be applied ○ development of possible options based on these choices ○ background information on how principles are provided for across the Public Finance Act 1989, Public Service Act 2020, Legislation Act 2019, and the New Zealand Bill of Rights Act 1990.
17/05/2024	Possible approaches to public recourse mechanisms [2024-015]	<p>This report and slide pack were intended to support a discussion with officials on 21 May 2024 on potential recourse mechanisms. We sought to confirm your objectives for this work and discuss your views on key choices available. The outcome of the conversation was intended helped guide policy development on high-level analysis of options for recourse mechanisms, along with further advice on principles in the Bill.</p> <p>The slide pack covered:</p> <ul style="list-style-type: none"> ○ how the work on recourse mechanisms fits within the broader work programme ○ intended outcomes and assumptions ○ identification of gaps in the current landscape for public recourse ○ key choices to shape the design of recourse mechanisms.

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14/06/2024	Options for taking forward a Regulatory Standards Bill [2024-038]	<p>This report built upon feedback from all briefings and discussions to date and sought your agreement on a preferred option for taking forward a new Bill. It was intended that your preferred option could then guide the next phase for Ministerial consultation, detailed design work, analysis and consultation required to refine likely costs, benefits and risks and enable you to make further decisions on the details of a preferred package, and develop specific proposals to take to Cabinet.</p> <p>The three broad options in the paper included:</p> <p><u>Option 1</u>: An enhanced status quo based on the coming into force of Part 4 of the Legislation Act 2019 (the disclosure statement regime)</p> <p><u>Option 2</u>: An approach combining assessment of the consistency of legislation with standards and the establishment of new statutory powers and expectations to reinforce good regulatory practice and design (<i>Ministry preferred option</i>)</p> <p><u>Option 3</u>: An approach based on certification of compatibility of legislation with principles in primary legislation (the approach in the 2021 Bill)</p> <p>The options focused primarily on giving effect to what we had identified as the core parts of the 2021 Bill:</p> <ul style="list-style-type: none"> ○ establishing and embedding standards of responsible regulation (including in relation to impact analysis and policy advice processes) ○ assessment of the consistency of new and existing legislation against these standards ○ provision for recourse mechanisms – i.e. transparent mechanisms that enable people to get acknowledgement that legislation is not consistent with standards, or that the operation of a regulatory system is causing particular issues. <p>In the Ministry’s view, Option 2 was likely to be more effective than Option 1, and at least as effective as Option 3 in incentivising Ministers and agencies to ensure that new and existing legislation is consistent with agreed regulatory responsibility standards. 9(2)(h)</p> <p>[REDACTED]</p>
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5/7/2024	Further advice on a preferred option for a Regulatory Standards Bill [2024-063]	<p>This report provided you with further advice following your discussion with officials on 20 June on a preferred option to take forward a Regulatory Standards Bill. It also attached for your review a pack of draft slides, to support consultation with your ministerial colleagues.</p> <p>The paper proposed an approach that would make greater provision for principles in primary legislation, largely based on the Queensland Legislative Standards Act 1992 and the Legislation Guidelines administered by the Legislation Design Advisory Committee (LDAC) and adopted by Cabinet, in which the Bill would:</p> <ul style="list-style-type: none"> ○ set out broad principles (as previously proposed), establishing them as fundamental legislative principles, or something similar, for the purposes of the Bill ○ set out more detailed considerations as examples of things to be applied when assessing the consistency of legislation with the principles ○ provide the ability for further considerations to be added via notices approved by the House ○ set out how these principles and considerations should be applied 9(2)(h) [REDACTED] <p>We considered that this approach could achieve more certainty and durability than the proposal in the previous briefing, 9(2)(h) [REDACTED]</p> <p>The briefing also proposed how the respective roles of the Minister for Regulation and the Attorney-General could be clarified in relation to the matters covered in the Bill – noting that there will likely be a degree of overlap between the Minister for Regulation’s and the</p>

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		<p>Attorney-General’s roles in relation to any new powers and functions established in the Bill.</p> <p>The briefing also provided additional details on a proposed option to establish a board of experts (a ‘Regulatory Standards Board’), appointed by the Minister for Regulation, as an alternative recourse mechanism to the courts.</p> <p>We provided a pack of draft slides intended to support consultation with your Ministerial colleagues, for your review – noting that these slides were drafted on the basis of the proposed approach set out above. These slides also included material on the proposals to streamline and strengthen the regulatory policy making process, as discussed at our meeting with you on 25 June (2024-047 refers).</p>
26/7/2024	<p>Alternative approach to providing for regulatory responsibility principles [MFR2024-077]</p>	<p>This report provided you with further advice following your discussion with officials on Tuesday 9 July, when you asked officials to explore how the Regulatory Standards Bill could be weighted more towards setting standards for good regulatory policy making.</p> <p>The report proposed a revised approach to the Bill based on the approach to fiscal responsibility in the Public Finance Act. This approach has a more direct focus on lifting the robustness of the Government’s regulatory policy processes and the stewardship of regulatory systems by responsible Ministers and departments compared to the previous approach (2024-063 refers). It also included:</p> <ul style="list-style-type: none"> ○ setting principles of responsible regulation in primary legislation in relation to new regulatory proposals (focusing on robust processes for regulatory policy development and implementation) and in relation to the management of regulatory systems (focusing on good stewardship practices) ○ giving effect to these principles via processes and expectations set out in Regulatory Responsibility Statements issued by the Minister for Regulation, tabled in the House and made publicly available. <p>Depending on your preferences in relation to the coverage of the principles and how they</p>

		<p>are given effect, we noted that we could also provide you with further advice on the other components of the Bill. However, our initial thinking is that, similar to the previous approach, this approach would include:</p> <ul style="list-style-type: none">○ mechanisms to transparently show whether and how Ministers and agencies have complied with the requirements, processes and expectations in RRSs in relation to regulatory proposals and regulatory systems they are responsible for○ a regulatory oversight role for the Minister/Ministry for Regulation via a requirement to publicly report on the consistency of government regulatory practices with the principles periodically, along with provision for regulatory reviews and any supporting powers needed for the Minister/Ministry to discharge these functions○ a recourse mechanism, although this would likely be focused more on the robustness of underlying policy and stewardship practices rather than on issues relating to legislative content and design. <p>Annex 2 of the briefing provided initial drafting by PCO to show how such an approach might be provided for in a Bill.</p>
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