Briefing Paper

MFR2025-066

Ministry for Regulation
Te Manatū Waeture

To	**Hon David Seymour, Minister for Regulation**		
Title	**Regulatory Standards Bill: Updated draft Cabinet paper for Ministerial consultation**	Number	**MFR2025-066**
Date	**19 March 2025**	Priority:	**High**
Action Sought	**Agree to the recommendations in this paper**	Due Date	**20 March 2025**
Contact Person	**Pip van der Scheer, Manager, Regulatory Management System**	Phone	s 9(2)(a)
Contact	**Elisa Eckford, Lead Advisor, Policy**	Phone	s 9(2)(a)
Attachments	**Yes – Annexes 1 to 6**	Security	**IN CONFIDENCE**

Executive summary

Annex 3 and Annex 6 are withheld in full as legally privileged consistent with s9(2)(h) of the Official Information Act 1982

1. On Wednesday 12 March, we circulated a draft Cabinet paper on the Regulatory Standards Bill (Bill), initial drafting of the Bill, a draft Regulatory Impact Statement and a draft Treaty Impact Analysis for departmental feedback, along with advice from the Crown Law Office (CLO).

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

3. **Annex 1** summarises the feedback from departments in more detail, for your consideration.

4. Most of the feedback from departments relates to areas where you have previously provided us with clear direction on your intended approach. We have therefore not provided you with further advice on these areas.

5. However, we have made some minor changes to the Cabinet paper to clarify areas of the proposal and to correct small errors. Recommended changes are marked up on the draft Cabinet paper for your review at **Annex 2** and updated drafting from the Parliamentary Counsel Office is provided as **Annex 3**.

6. In addition, as a result of feedback, we recommend:

   a. providing a small number of further exemptions in the Bill for additional legislation that relates to Treaty settlements or is similar to other currently excluded legislation

b. clarifying that secondary legislation would be exempted from consistency assessment requirements if it is empowered by an excluded primary Act

c. linking the Board's functions to the purpose in the Bill to clarify that the Board would focus on compliance with consistency assessment requirements by the Executive and supporting Parliament's scrutiny of legislation, rather than investigating the adequacy of House processes

d. replacing the reference to the Board reporting to a Select Committee in the Cabinet paper with a more general statement about its role in investigating the consistency of legislation while a bill is before select committee, to recognise that presenting information to select committee should be provided for under Standing Orders rather than in legislation

e. clarifying that the Ministry's proposed information-gathering powers would not apply to Offices of Parliament, the Office of the Clerk of the House of Representatives and the Parliamentary Service.

7. The briefing also attaches for your information:

f. the draft Regulatory Impact Statement (**Annex 4**)

g. the draft Treaty Impact Analysis (**Annex 5**)

h. updated advice from CLO (**Annex 6**).

8. The attached draft Cabinet paper incorporates the recommended changes below. If you disagree with any of the recommendations, we will need to provide you with an updated Cabinet paper in time for consultation with your Ministerial colleagues, which we understand is scheduled to begin on Thursday 20 March and finish on 26 March.

9. We will then provide you with updated documents with any changes to reflect the outcome of Ministerial consultation to enable lodgement of the Cabinet paper by 3 April.

Recommended action

We recommend that you:

a	**note** the summary of departmental feedback in Annex 1	*Noted*
b	**agree** to exempt the following legislation from consistency assessment requirements:	
	i. The Marine and Coastal Area (Takutai Moana) Act 2011	*Agree /Disagree*
	ii. Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019	*Agree /Disagree*
c	**agree** to link the Regulatory Standards Board's functions to the purposes of the Bill to clarify that it could not assess House procedures	*Agree /Disagree*
d	**agree** to replace the reference to the Regulatory Standards Board reporting to a Select Committee in the Cabinet paper with a more general statement about its role in investigating the consistency of legislation while a bill is before select committee	*Agree /Disagree*

e	**agree** information gathering powers will not apply to an Office of Parliament, the Office of the Clerk of the House of Representatives or the Parliamentary Service	*Agree/Disagree*
f	**note** that the attached draft Cabinet paper incorporates the recommended changes above	*Noted*
g	**note** that we will provide you with updated documents with any changes to reflect the outcome of Ministerial consultation to enable lodgement of the Cabinet paper by 3 April	*Noted*

Proactive release

h	**agree** that the Ministry for Regulation release this briefing following Cabinet decisions being taken, with any information needing to be withheld done so in line with the provisions of the Official Information Act 1982.	*Agree / Disagree*

s 9(2)(a)

Pip Van der Scheer
Manager, Regulatory Management System
Ministry for Regulation
Date: 19 March 2025

Hon David Seymour
Minister for Regulation
Date:

Purpose of Report

10. On Wednesday 12 March, we circulated a draft Cabinet paper on the Regulatory Standards Bill, initial drafting of the Bill, a draft Regulatory Impact Statement and a draft Treaty Impact Analysis for departmental feedback, along with advice from the Crown Law Office (CLO).

11. This briefing:

    a. highlights key feedback from that departmental consultation and attaches a fuller summary of the feedback (**Annex 1**)

    b. seeks your agreement to some changes to the draft Cabinet paper (**Annex 2**) and drafting (**Annex 3**)

    c. provides you with a draft of the Ministry's Regulatory Impact Statement (**Annex 4**) and Treaty Impact Assessment (**Annex 5**) and updated Crown Law advice (**Annex 6**) for your information.

12. The final summary of submissions from public consultation will be provided to you separately as briefing MFR2025-027. The summary is intended to be attached to the Cabinet paper and will be released publicly on the Ministry's website following Cabinet decisions.

Departmental Consultation

Feedback received from consultation

13. The draft Cabinet paper and attachments, along with the CLO advice were circulated to government departments, the Office of the Clerk, and the Reserve Bank of New Zealand. Around 35 agencies provided feedback. The Public Service Commission (PSC), the Ministry of Justice (MoJ), the Office of the Clerk, the Ministry for the Environment (MfE), Te Puni Kōkiri (TPK) and the Parliamentary Counsel Office (PCO) provided departmental comments, and the Cabinet paper has been updated to include these.

14. **Annex 1** summarises all the feedback received from departments, for your consideration.

15. The main themes from the departmental feedback included the following:

    a. ***Broad support for the objectives of the proposal, but a preference for these to be achieved by different means***. For instance, the Office of the Clerk supported a statutory requirement for agencies to report on regulatory quality matters along with more formal processes for post-legislative review but thought that some components of the proposed Bill would be better dealt with through the House's rules and practices. Land Information New Zealand thought that strengthening the existing RIA processes and improving how these frameworks are applied would deliver greater impact with fewer unintended consequences and less cost. Customs New Zealand thought an alternative to the Board could be to boost the resources of the Ombudsman's office to consider complaints about regulation.

    b. ***Concerns about the principles and their application to specific regulatory systems***. For instance, s 9(2)(h) [redacted]

s 9(2)(h) The Department of Corrections expressed concerns about the impacts of the liberty principle on its operations. MfE saw fundamental conflicts between the proposed principles and the purpose of the Environment Act 1986. MoJ outlined concerns about the selective and unconventional nature of the principles.

c. ***Concerns about costs and resourcing implications***. Most departments thought the proposed new consistency assessment requirements would have significant resource implications and would impact on agencies' ability to deliver on the government's policy agenda. For instance, the Ministry of Business, Innovation and Employment's (MBIE) assessment was that the proposal was likely to create significant costs and resourcing impacts for large regulatory agencies like MBIE. The Ministry for Primary Industries noted that it would be unable to deliver the required reviews within a 10-year period with current resourcing, particularly given the complex interactions with other regulatory systems and the expectation of significant stakeholder involvement in any reviews it undertakes. The Ministry of Health saw an expected consequence as the shifting of capacity from other areas of government priority to focus on review of existing regulation.

d. ***Concerns about extension of the proposal to secondary legislation***. Most agencies were concerned about the inclusion of all secondary legislation by default from a resourcing and feasibility point of view, with many citing examples of secondary legislation that they thought should be exempted from consistency requirements. For instance, the Ministry of Foreign Affairs and Trade proposed that all legislation that implements international obligations and sanctions against Russia should be excluded. The Ministry of Justice recommended that court rules be excluded, and the Office of the Clerk recommended that secondary legislation made by the House be excluded. In addition, the Department of Internal Affairs noted that the extension of the proposal to all secondary legislation would result in additional unfunded costs on territorial authorities and regional councils, and that consistency assessment requirements would overlap with existing statutory requirements for the making and regular review of bylaws under sections 158 to 160A of the Local Government Act 2002. s 9(2)(h)

e. ***Concerns about the role and makeup of the proposed Regulatory Standards Board***. Many agencies thought that the proposed Board duplicated existing mechanisms. For instance, the National Emergency Management Agency (NEMA) raised concerns that the Board could duplicate the role of the Regulations Review Committee, and PSC saw it as potentially impinging on the work of the Ministry for Regulation. s 9(2)(h) Agencies also thought there should be provision for a broad range of perspectives and skills on the Board – for instance, TPK thought that there should be provision for knowledge, skills and experience relating to te ao Māori and whenua Māori.

f. ***Concerns about the exclusion of provision for Treaty principles and Māori rights and interests***. A number of agencies noted the lack of recognition in the proposal of the

rights and interests of iwi, hapū and Māori recognised or created by a lack of specific reference to the Treaty of Waitangi/te Tiriti o Waitangi (the Treaty/te Tiriti) or the constitutional importance of the Treaty/te Tiriti. Agencies also raised excluding the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

g. ***Concerns relating to the process and timing of consultation***. A number of agencies did not feel they had been given enough time to fully consider the impacts of the proposal. It was also noted that there had been some significant changes to the proposal following public consultation (e.g. the inclusion of all secondary legislation by default) meaning that stakeholders such as local government did not get the opportunity to provide feedback on these aspects of the proposal.

Responding to departmental feedback

16. Most of the feedback from departments relates to areas where you have previously provided us with clear direction on your intended approach. We have therefore not provided you with further advice on these areas in this briefing.

17. Some feedback was as a result of a misunderstanding of aspects of the proposal – for instance, the Cabinet paper had not explicitly included the point that the Bill would specify that information gathering powers would not override prohibitions or restrictions on the sharing of information already set down in legislation. Because of this lack of clarity, the Office of the Clerk and the Government Communications Security Bureau/New Zealand Security Intelligence Service (GCSB/NZSIS) therefore were concerned about application of these powers to classified material, or a requirement being issued in relation to material from the House. The Cabinet paper has now been amended to clarify this (the related clauses have not yet been drafted).

18. Similarly, a number of agencies along with CLO raised concerns that the Board would be able to investigate decisions in individual cases – we have now updated the Cabinet paper and drafting to reflect your recent decision on this issue.

19. However, there was a small number of additional issues raised by departments where we recommend minor changes to the Cabinet paper. These are set out below.

20. In addition, we have made some minor changes to the Cabinet paper on the suggestion of departments to improve clarity or completeness, or to correct small errors.

21. Recommended changes are marked up in the draft Cabinet paper for your review at **Annex 2**.

22. Updated drafting from PCO is attached as **Annex 3**.

Exemptions from consistency requirements

23. As noted above, departments identified a wide range of legislation – particularly secondary legislation – that they recommended should be exempted from consistency assessment requirements. There will be significant work needed to engage further with agencies on this, and to develop a consistent approach across all primary and secondary legislation to enable notices exempting legislation from consistency assessments to be issued in time for the coming into force of the relevant provisions. This is currently proposed to be six months following commencement.

24. However, we have identified some legislation where we recommend exemptions are provided in the Bill rather than via the issuing of notices because they raise similar considerations to Treaty/te Tiriti settlements:

    a. The Marine and Coastal Area (Takutai Moana) Act 2011 – we recommend this be exempted on the basis of consistency with Treaty/te Tiriti settlement legislation as it provides statutory mechanisms and arrangements to give practical effect to recognised customary interest in the marine and coastal area.

    b. Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 - we recommend that this be excluded as it provides for recognition of customary marine title that was negotiated jointly with Te Whanau ā Apanui. Recognition for Te Whanau ā Apanui will be contained in Treaty/te Tiriti settlement legislation as part of redress while Ngāti Porou has recognition through a specific Act separate to Treaty/te Tiriti settlement legislation as recognition of customary marine titles. The arrangements are commensurate with arrangements in Treaty/te Tiriti settlements and were developed in the same way. Therefore, to ensure consistency, this Act should also be excluded.

25. In response to feedback, we have also clarified that secondary legislation would be exempted from consistency assessment requirements if it is empowered by an excluded primary Act.

Feedback from the Office of the Clerk

26. In addition to the feedback referenced above, the Office of the Clerk raised concerns about some perceived impacts of the proposal on House processes:

    a. Potential for the Board to critique the House's consideration of legislation on the basis of the good lawmaking principles – the Office was concerned that the Board's ability to investigate the consistency of bills before the House could lead to the Board questioning Parliamentary proceedings (for instance whether a select committee had undertaken sufficient consultation). In our view, this risk is relatively low, but we recommend addressing it by more clearly linking the functions of the Board to the purpose of the Bill in the drafting – making it clear that the Board would be focusing on discharge of consistency assessment requirements by the Executive and supporting Parliament's scrutiny of legislation, rather than investigating the adequacy of House processes.

    b. Provision in the Bill for the Board to provide reports to select committees – the Office questioned how this would occur and recommended this be done instead by requiring the Minister for Regulation to present the reports to the House, with the reports then potentially referred to select committees under the Standing Orders. We had not yet identified the exact mechanism by which the Board's reports would be provided to select committees, and PCO has not yet drafted these provisions. In the interim, we have taken out any reference to the Board specifically reporting to a Select Committee in the Cabinet paper.

    c. Use of explanatory notes for consistency statements – the Office was concerned about references to inclusion of consistency statements in explanatory notes to legislation, on the basis that these are required not under legislation but under Standing Order 261, which could be altered. Our view is that this is unlikely to be a problem since

explanatory notes are already referenced in the Legislation Act 2019, the requirement in Standing Order to provide them is unlikely to change; and even if this requirement was removed, it would be relatively easy for the legislation to be amended to provide for any new requirements if needed. s 9(2)(h) We therefore recommend no change to the Cabinet paper.

d. Ability for the chief executive of the Ministry for Regulation to require information from entities as part of regulatory reviews – the Office noted that the application of the powers to "any entity that makes or administers secondary legislation" would capture the House of Representatives and non-executive entities. The Office also noted the powers would apply to other bodies that make secondary legislation but are traditionally at arm's length from government such as the Remuneration Authority. The broad scope of the power means that there is likely a range of entities that will be captured that would normally be at arm's length from government. However, we suggest the Cabinet paper specifically clarifies that the powers would not apply to Offices of Parliament, the Office of the Clerk of the House of Representatives and the Parliamentary Service.

Regulatory Impact Statement

27. The draft Regulatory Impact Statement (RIS) attached as **Annex 4** provides impact analysis for the proposed Bill, and other options which seek to address the policy problem through changes or enhancements to current Regulatory Management System (RMS) tools and processes, including new legislative provisions. The RIS explores options for setting standards for regulatory quality and for supporting the application of these standards, including providing for an assurance function. The RIS analyses options based on their effectiveness, durability, cost, and feasibility/efficiency compared to the status quo, and incorporates the results of public and agency consultation.

28. Based on analysis against these criteria, the Ministry's preferred option would aim to address the policy problem by bringing into force Part 4 of the Legislation Act 2019, and making new legislative provision for the Ministry's regulatory oversight role and for strengthened regulatory stewardship requirements. In relation to a supporting assurance mechanism, the Ministry is neutral between a statutory board and a Ministry-led assurance mechanism, noting that net benefits will depend on the details of implementation.

29. The draft RIS has not yet been reviewed by the quality assurance panel, but we expect the quality assurance process to be completed by Tuesday 25 March.

Treaty Impact Analysis

30. The Ministry's draft Treaty /te Tiriti Impact Analysis is attached as **Annex 5**.

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

Updated Crown Law advice

32. Updated Crown Law advice is attached as **Annex 6**.

33. s 9(2)(h)

34.

Next steps

35. The attached draft Cabinet paper incorporates the changes recommended in this paper. If you disagree with any of the recommendations, we will need to provide you with an updated Cabinet paper in time for consultation with your Ministerial colleagues, which we understand is scheduled to begin on Thursday 20 March and finish on 26 March.

36. We will then provide you with updated documents with any changes to reflect the outcome of Ministerial consultation for lodgement of the paper by 3 April.

Annex 1: Summary of substantive agency feedback on draft RSB Cabinet paper

Area of feedback	Agencies raising issue	Summary of issues raised by agencies	Change proposed
Rationale for and scope of proposal	Customs, DIA, LINZ, MBIE, MfE, MoE, MoH, MoJ, MSD, Office of the Clerk	Agencies put forward alternative options to the ones in the draft Cabinet paper with a view that this would reduce duplication, costs and complexity, while achieving the same benefits. The Office of the Clerk supported a statutory requirement for agencies to report on regulatory quality matters along with more formal processes for post-legislative review, while noting some components of the proposed Bill would be more appropriately dealt with through the House's rules and practices. Other suggestions included strengthening existing tools and functions, improving legislative design considerations early in policy processes, or focusing on the introduction of Part 4 of the Legislation Act 2019.	The Minister has provided direction on the preferred approach. No change is proposed.
Consistency statements	MBIE, MFAT, MSD, PSC, Office of the Clerk	Agencies were concerned about tensions between Chief Executives and responsible Ministers in relation to different views on the consistency of legislation. Agencies also thought that differing priorities between Chief Executives (e.g. to progress consistency assessments under the requirements of the proposed Bill) and Ministers (e.g. to prioritise their own legislation programme) may cause tensions. The Office of the Clerk was concerned about references to inclusion of consistency assessment statements in explanatory notes to legislation, because these are not required under legislation but under Standing Order 261.	The proposal aims to create accountability dynamics to ensure agencies can give free and frank advice where they identify inconsistencies, and Ministers are held accountable for their response to that advice. We discuss our views on the Office of the Clerk's concerns in the briefing. No change is proposed.
Implications for parliamentary processes	HUD, MSD, MoH	Agencies noted the potential for increased pressure on Parliament's time, especially if additional amendment Bills are required to address inconsistencies. They also noted there could be impacts on the time and resourcing of Cabinet and Select Committees.	The Minister has provided direction on the preferred approach. No change is proposed.
Resourcing and financial implications	Corrections, DIA, DPMC, HUD, LINZ, MBIE, MfE, MoE, MoH, MoJ, MPI, MSD, MoD/NZDF, TPK, Reserve Bank	Agencies expressed concern about the financial implications of consistency requirements in the proposed Bill, and the consequential impacts on agencies' ability to deliver on other areas of government priority within portfolios. Some agencies indicated that the resourcing requirements may exceed the estimations provided in the RIS. For example, MBIE provided a rough estimate that a dedicated team of six to eight FTEs would be required to review Building and Construction legislation alone and MPI noted that work to achieve 120 minor amendments via a regulatory systems bill has taken the best part of two years.	The Minister has provided direction on the preferred approach. No change is proposed.
Implications for Local Government	DIA, MfE	Agencies shared their concern that the requirement to review secondary legislation for consistency with the principles would be costly for local government and pointed to the overlap between review requirements in the proposed Bill and existing statutory requirements for reviewing bylaws under the *Local Government Act 2002*.	The Minister has provided direction on the preferred approach. No change is proposed.

Area of feedback	Agencies raising issue	Summary of issues raised by agencies	Change proposed
Proposed principles	Corrections, Customs, Education, GCSB/NZSIS, LINZ, MfW, MSD, MfE, MBIE, MoJ, MoH, MPI, Office of the Clerk, Te Tari Whakatau	s 9(2)(h) Agencies identified uncertainties as to how some of the principles interacted with existing conventions and principles such as the role of the courts, Te Tiriti o Waitangi, BORA and the separation of powers. For instance, the Ministry of Justice suggested s 9(2)(g)(i) Agencies questioned the application of some of the principles to their regulatory systems - including how the principles would apply to particular matters such as search and seizure or incarceration. They highlighted the potential for conflict between the purpose of legislation within some regulatory systems and the fact that the principles may restrict, inhibit or prevent the ability for current and future legislation to be implemented in accordance with Ministers' and agencies' statutory interests and ultimately prevent regulatory systems from being fit for purpose. Agencies noted that some important considerations were not covered by the principles, for instance prevention of harm. Agencies also noted that cross-party support would enhance the durability of the principles.	The Minister has provided direction on the principles. We also note that the proposed Bill provides for the responsible Minister or maker to transparently explain reasons for inconsistency, and there is no statutory requirement for identified inconsistencies to be addressed, with discretion resting with the responsible Minister or maker. No change is proposed.
Liberties principle	MfE, Reserve Bank, MoJ, MoH	Agencies considered that the liberties principle may need further explanation/definition. They though that its current drafting could produce unintended consequences when legislation has been designed to intentionally impose limits on liberty. They suggested that the drafting include a public interest qualification as it is unclear to agencies whether the principle is intended to protect all fundamental human rights or a narrow subset of civil, political and property rights. Agencies expressed a preference for this principle to align with BORA.	
Taking of property principle	LINZ, MfE, MoJ	Agencies were concerned that the taking of property principle's emphasis on property interests may conflict with broader regulatory objectives, including the Government's ability to acquire land for infrastructure or other public projects. Suggestions were also made to avoid retrospective compensation. It was also noted that the principle may be difficult to apply when the boundaries of what constitutes a property right and impairment are unclear. Agencies proposed the principle should be clear on the definition of property and refer to the public interest as a justification.	

Area of feedback	Agencies raising issue	Summary of issues raised by agencies	Change proposed
Good law-making principles	Education, GCSB/NZSIS, Te Tari Whaikaha	Agencies were concerned that it would be difficult to assess whether the benefits exceed the costs from legislation in situations where the benefits are difficult to quantify. They proposed instead to assess whether the purpose of a specific regulatory system is being achieved. Agencies suggested analysis of benefits should consider equity issues and whether there would be disproportionate impacts on particular population groups. Agencies questioned whether the consultation principle was inconsistent with obligations such as the UN Convention on the Rights of Persons with Disabilities or would result in inadequate consultation being undertaken with certain population groups who might not be identified as having an interest.	
Lack of provision for a Treaty principle	Education, HUD, TPK, MfE, MoJ, Te Tari Whakatau	Agencies expressed a view that the Treaty/ Te Tiriti should be reflected in the list of principles due to its constitutional significance. Agencies were concerned that the absence of a Treaty/Te Tiriti principle may mean Treaty obligations are not given proper weighting, which could lead to a greater number of claims under the Treaty of Waitangi Act 1975.	The Minister has provided direction on the inclusion of a Treaty/Te Tiriti principle. No change is proposed.
Proposed treatment of Treaty settlement-related legislation	LINZ, TPK, Te Tari Whakatau	The exclusion of Treaty Settlement Bills is not considered wide enough as Treaty settlement redress can be provided through other Acts such as through Māori Purposes Acts and Reserves and Other Lands Disposal Acts. The Bill should specify that secondary legislation that is made under empowering provisions in Treaty settlement Acts should be excluded as well. LINZ highlighted statutory responsibilities in Treaty settlement processes and Māori land management and raised concerns that the Bill prioritising property rights could undermine Treaty obligations and create legal barriers for returning land.	The Bill will provide a definition of a Treaty Settlement Bill. The proposal excludes existing Treaty settlement Acts, and any secondary legislation empowered under a Treaty settlement Act. All other requests for exemptions would be considered through the provision in the Bill for classes of legislation to be exempt by notice. The Board would not review legislation excluded from the proposed Bill.
Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019	TPK, Te Tari Whakatau, MfE	Agencies asked for the *Marine and Coastal Area (Takutai Moana) Act 2011* and *Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019* to be excluded from the Bill requirements as they provide for recognition of customary marine title.	We recommend that both Acts be excluded from the proposed Bill.
Regulatory Standards Board	Corrections, GCSB/NZSIS,	Agencies asked for the Bill to clearly reflect that the proposed Board would be a Ministerial advisory committee not a decision-making body. Agencies were concerned that Board	The Minister has provided direction on the form and membership of a Board. The

Area of feedback	Agencies raising issue	Summary of issues raised by agencies	Change proposed
	TPK, PSC, NEMA, Education, MfE, HUD, Office of the Clerk, MBIE, MoJ, Customs.	members would not have sufficient specialised skills or understanding of particular regulatory systems. Some agencies were uncomfortable with the Minister for Regulation being solely responsible for appointing Board members and wanted public consultation and/or Parliamentary oversight. There was agency support for the Board membership to include expertise in the Treaty/Te Tiriti and Māori rights and interests. Agencies also suggested there may be duplication with other independent oversight and monitoring functions and that, as currently described, the Board's role may result in critiquing Parliamentary processes or cut across Ministerial responsibilities. Agencies questioned whether consistency reviews as a response to complaints would be efficient or effective and pointed out that complaints may have ulterior motives. Agencies were not comfortable with the Board investigating individual cases. The Office of the Clerk questioned how the Board would provide reports to Select Committee and recommended this be done instead by requiring the Minister for Regulation to present the reports to the House, with the reports then potentially referred to select committees under the Standing Orders.	Cabinet paper reflects the Minister's direction that the Board will not be able to investigate individual cases. We also recommend clarifying that the Bill would not specify that the Board provide a report to Select Committee, and linking the Board's functions to the purposes of the Bill to clarify that it could not assess House procedures. Some of the other concerns raised can be addressed through implementation. No further changes are proposed.
Review of existing regulation – inclusion of secondary legislation	Education, HUD, MBIE, MFAT, MoD/NZDF, MoH, MSD, Reserve Bank	Agencies were concerned about the potentially extensive resource burden involved in assessing secondary legislation due to the large volumes they administer. Agencies thought the proposed additional scrutiny from the House on secondary legislation would be inconsistent with agencies being empowered to make secondary legislation independently. Agencies specifically mentioned examples of secondary legislation where they thought there would be no benefits from consistency assessments including secondary legislation made under the Russia Sanctions Act 2022, Court notices, School Term Dates, notices providing information on how to appeal regulator decisions, one-off instruments that record decisions and a range of other secondary legislation that is technical in nature.	The Minister has provided direction on the inclusion of secondary legislation. As outlined in the briefing, work will be undertaken to develop a consistent approach across all primary and secondary legislation to enable notices exempting legislation from consistency assessments to be issued in time for the coming into force of the relevant provisions.
Ten-year timeframe for reviewing existing legislation	Corrections, GCSB.NZSIS Education, HUD, Transport, MSD, MoH, MoJ, MPI	Agencies did not consider it feasible to undertake reviews of all legislation within 10 years, especially without additional resources. They suggested that the requirement may undermine efficiency or agencies' ability to prioritise and would have an opportunity cost in relation to delivering on the government of the day's policy agenda. They also thought that it was unclear how the requirements would interact with other regulatory stewardship requirements.	The Minister has provided direction on the inclusion of a 10-year timeframe. No change is proposed.

Area of feedback	Agencies raising issue	Summary of issues raised by agencies	Change proposed
		Agencies questioned how the requirements would fit with review processes already built into some legislation, and Cabinet-mandated expectations for regulatory stewardship to be considered across a whole regulatory system, with legislation only being one aspect.	
Information-gathering powers	GCSB/NZSIS, HUD, Office of the Clerk, TPK,	Agencies raised concerns about the Ministry requesting classified information, including the need for staff to have clearance and secure facilities and storage. Agencies suggested that the legislation should specify exactly what information can be requested, and for what purpose, and that those acting under the powers will need to know the scope of their mandate and what other laws and restrictions might take precedence (for example legal privilege, commercial confidentiality, security classification). The Office of the Clerk was concerned that the scope of the power inappropriately captured the House and non-Executive entities such as the Speaker and Parliamentary Services who make secondary legislation. They noted that the paper does not address the application of the power to other bodies that make secondary legislation but are traditionally at arms-length from Government, for example the Remuneration Authority.	The Minister has provided direction on application of information-gathering powers. The Cabinet paper specifies that information-gathering powers would not override prohibitions or restrictions on the sharing of information already set down in legislation. We recommend clarifying that the powers would not apply to Offices of Parliament, the Office of the Clerk of the House of Representatives and the Parliamentary Service. No further changes are proposed.
Ministry for Regulation-led regulatory reviews	PSC	PSC expressed a view that relevant regulatory agencies should always agree to the initiation of a Ministry for Regulation-led regulatory review and be involved in setting its terms of reference.	The Cabinet paper does not provide a process for initiating these types of regulatory reviews. No change is proposed.
Exclusion of other legislation from requirements in the Bill	MFAT, MfE, MoD/NZDF, Te Tari Whakatau, TPK, Office of the Clerk	A number of agencies have proposed specific legislation or types of primary legislation they consider would be appropriate from exclusion from the Bill at the outset including; • Māori Purposes Bills • A carve out for the NZDF (see next row for more information on this) • Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 • Legislation that provides exclusively for Māori rights • Legislation implementing international obligations such as Free Trade Agreements • Environmental legislation Te Tari Whakatau thought that the scope of exemptions currently provided for in the proposed Bill should be clearer. The Office of the Clerk suggested notices specifying classes of bills that should be excluded from consistency assessments or reviews should be jointly issued by the Minister for Regulation and the Attorney-General as a safeguard.	We recommend exempting the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019. All other requests for exemptions would be considered through the provision in the Bill for classes of legislation to be exempted by notice. No further changes are proposed.

Area of feedback	Agencies raising issue	Summary of issues raised by agencies	Change proposed
Constitutional considerations	MOD/NZDF	MoD/NZDF were concerned that the Bill cuts across long-standing constitutional arrangements relating to the armed forces, with the Chief of the Defence having full command of members of the armed forces (Defence Act, s8) and the power of control over the NZDF sitting with the Minister of Defence (s7). They are also concerned that the power resting in the Minister for Regulation to exempt Defence Force secondary legislation, not the Minister of Defence, is a substantial variation to constitutional arrangements. s 9(2)(h)	The Minister has provided direction on application of consistency requirements and processes for exemption. There is scope for NZDF legislation and secondary legislation to be excluded from the proposed Bill via notice, with the assent of the House. No change is proposed.

DRAFT

In confidence

Office of the Minister for Regulation

Chair, Cabinet Expenditure and Regulatory Review Committee

POLICY APPROVALS FOR PROGRESSING A REGULATORY STANDARDS BILL

Proposal

1 This paper seeks:

1.1 final Cabinet decisions on an approach to the Regulatory Standards Bill, aimed at improving the quality of New Zealand's regulation

1.2 agreement to issue drafting instructions to the Parliamentary Counsel Office (PCO) on the basis of this approach.

Relation to government priorities

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

Executive summary

3 Sometimes when a government ~~regulates~~ seeks to regulate, key questions remain unanswered - including whether there's a real problem to solve, whether the benefits of regulating outweigh the cost, and where costs and benefits fall. This can be coupled with a lack of transparency about whether new regulation meets accepted standards and, where it does not meet those standards, why it has still been proceeded with. Furthermore, because rules and regulations stay in place for a long period of time, it is difficult for the public to know who to hold to account for the costs they face from poor quality or unnecessary regulation. Even where regulation may be justifiable at a point in time, a lack of ongoing review and maintenance often create additional costs.

4 The volume of regulation has grown substantially over recent decades with no signs of that trend abating at this point. Legislative bids for house time proposed by Ministers and agencies significantly outstretch the capacity of Parliament to consider those proposals. There are real question marks over the quality of the scrutiny that new regulatory proposals receive, and very few resources allocated to reviewing the existing body of regulation to cull unnecessary or ineffective regulation.

5 These are the issues that the Regulatory Standards Bill seeks to address.

6 On 11 November 2024, Cabinet agreed to release the discussion document *Have your say on the proposed Regulatory Standards Bill* to consult on a proposed approach to the Bill (CAB-24-MIN-0437 refers). That consultation has now been completed, and a summary of submissions is attached as **Annex 1** to this paper.

7 After having considered the submissions, I have decided to proceed on the basis of a substantially similar approach to the one set out in the discussion document. However, I am proposing a number of amendments to the proposal to enhance its workability and effectiveness.

8 The Regulatory Standards Bill would aim to reduce the amount of unnecessary and poor regulation by increasing transparency and making it clearer where legislation does not meet standards, bringing the same discipline of regulatory management that New Zealand has for fiscal management.

9 The Bill would establish a benchmark for good legislation by establishing a set of principles of responsible regulation in primary legislation, focused on the effect of legislation on:

9.1 existing interests and liberties - including the rule of law; liberties; taking of property; taxes, fees, and levies; and the role of courts

9.2 good law-making processes – including consultation; options analysis; and cost-benefit analysis.

10 The Bill would then create requirements for responsible Ministers, administering agencies and other makers of legislation in relation to the assessment of the consistency of proposed and existing legislation (both primary and secondary) against these principles, including a requirement for all agencies to complete assessments of the consistency of their existing legislation within 10 years from the Bill's commencement. Ministers and makers of secondary legislation would be required to ensure publication and/or presentation to the House of the results of those assessments and explanations for any inconsistency. The Bill would provide for exemptions of some primary and secondary legislation from these requirements – for instance where legislation is largely technical in nature.

11 The Bill would also establish a Regulatory Standards Board, with members appointed by the Minister for Regulation, to make its own independent assessments of the consistency of legislation, helping to create an incentive for Ministers and agencies to complete robust assessments of consistency with the principles. The Board would carry out inquiries either following a complaint, at the direction of the Minister, or on its own accord into whether legislation is inconsistent with the principles. Any recommendations it made would be non-binding. The Board could investigate the consistency of legislation with the principles in two broad ways:

11.1 it could look at consistency assessments of Bills as introduced into the House, and provide a report to Parliament on its findings

11.2 it could look at existing legislation and carry out an inquiry into whether the legislation is consistent with the principles, and report to the Minister on its findings.

12 Finally, the Bill would seek to strengthen regulatory quality by supporting the Ministry for Regulation in its regulatory oversight role, including by setting new requirements for the Ministry to report on the overall performance of the Regulatory Management System, new regulatory stewardship expectations

for agencies, and information-gathering powers for the Ministry to support the efficient and effective conduct of regulatory reviews.

13 I propose that the Bill come into force on 1 January 2026. I also propose that transitional arrangements provide for consistency assessment requirements for agencies and Ministers to be brought in via Order in Council but commence no later than six months after the date the Bill comes into force. This will allow time for the development and testing of guidance, and to ensure agencies understand and can prepare to meet the new requirements.

14 A Regulatory Impact Statement and Treaty Impact Analysis have been completed by the Ministry, and are attached to this paper as **Annexes 2** and **3**.

Background

15 On 11 November 2024, Cabinet agreed to release the discussion document *Have your say on the proposed Regulatory Standards Bill* to consult on a proposed approach to the Bill (CAB-24-MIN-0437 refers). That consultation has now been completed, and a summary of submissions is attached as **Annex 1** to this paper.

16 After having considered the submissions, I have decided to proceed on the basis of a substantially similar approach to the one set out in the discussion document. However, I am proposing a number of amendments to the proposal to enhance its workability and effectiveness.

17 s 9(2)(h)

17.1 s 9(2)(h)

17.2 s 9(2)(h)

Overview of proposed Bill

18 The Regulatory Standards Bill will aim to reduce the amount of unnecessary and poor regulation by increasing transparency and making it clearer where legislation does not meet standards. It will seek to bring the same discipline of regulatory management that New Zealand has for fiscal management by providing:

18.1 a benchmark for good legislation through a set of principles of responsible regulation (principles)

18.2 mechanisms to transparently assess the consistency of proposed and existing legislation with the principles (consistency assessment requirements)

18.3 a mechanism for independent consideration of the consistency of proposed and existing legislation, ~~primarily~~ in response to stakeholder concerns, Minister for Regulation direction, or on its own accord (a Regulatory Standards Board).

19 The Bill will also seek to strengthen regulatory quality by supporting the Ministry of Regulation in its regulatory oversight role.

Purpose

20 I propose that the purpose of the Bill would be to focus on:

20.1 promoting the accountability of the Executive to Parliament in relation to the development of high-quality legislation and regulatory stewardship

20.2 supporting Parliament to scrutinise Bills and oversee the power to make delegated legislation.

Principles

21 I propose that the Bill would include principles of responsible regulation, focused on the effect of legislation on existing interests and liberties, and on good law-making processes. The proposed principles would cover the following areas:

21.1 *Rule of law* - The law should be clear and accessible; the law should not adversely affect rights and liberties, or impose obligations, retrospectively; every person is equal before the law; there should be an independent, impartial judiciary; and issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion.

21.2 *Liberties* - Legislation should not unduly diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person.

21.3 *Taking of property* - Legislation should not take or impair, or authorise the taking or impairing of, property without the consent of the owner unless there is good justification for the taking or impairment, fair compensation for the taking or impairment is provided to the owner, and compensation is provided to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment.

21.4 *Taxes, fees and levies* - Legislation should be consistent with section 22 of the Constitution Act 1986 (Parliamentary control of public finance); legislation should impose a fee for goods or services only if the amount of the fee bears a proper relation to the costs of efficiently providing the good or service to which it relates; and legislation should impose a levy to fund an objective or a function only if the amount of the levy is reasonable in relation to both the benefits/risks to that class of payers, and the costs of efficiently achieving the objective or providing the function.

21.5 *Role of courts* - Legislation should preserve the courts' constitutional role of ascertaining the meaning of legislation; and legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

21.6 *Good law-making* – good law-making should include:

21.6.1 consulting, to the extent practicable, the persons or representatives of the persons that the responsible agency considers will be directly and materially affected by the legislation

21.6.2 carefully evaluating the issue concerned, the effectiveness of any relevant existing legislation and common law; whether the public interest requires that the issue be addressed; any options (including non-legislative options) that are reasonably available for addressing the issue; and who is likely to benefit, and who is likely to suffer a detriment, from the legislation

21.6.3 establishing that legislation should be expected to produce benefits that exceed the costs of the legislation to the public

21.6.4 establishing that legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available.

Consistency assessment requirements

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

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

22.2 all makers of secondary legislation[1].

Consistency assessment requirements for proposed legislation

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

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

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

[1] This includes some Ministers, government agencies, Crown entities, local authorities and a range of non-Crown bodies

[2] Being the Chief Executive of the agency primarily responsible for leading the development of that Bill

explanations for any inconsistency provided by the responsible Minister (or other maker).[3]

Consistency assessment requirements for existing legislation

26 Addressing the issue of outdated, unnecessary or poor-quality existing legislation will also be critical in lifting regulatory quality. I therefore propose that:

26.1 administering agencies be required to develop and periodically report against plans to review the consistency of existing legislation (both primary and secondary) that would be subject to the consistency review requirements above - with a further requirement to complete the initial consistency assessments of all this legislation no later than 10 years after this requirement in the Regulatory Standards Bill comes into force unless the legislation is repealed or revoked before the review

26.2 as agencies complete these reviews for each Act in accordance with their plans, the responsible Minister would be required to present to the House a statement from the responsible Chief Executive confirming that that Act had been assessed for consistency with the principles, and the results of that assessment. The responsible Minister would also have to present to the House a statement setting out reasons for any inconsistency identified or the proposed actions that would be taken to address the inconsistency.

27 I also propose that, as agencies complete these reviews in relation to secondary legislation, the responsible agency must ensure the publication of:

27.1 a statement by the Chief Executive of the administering agency that an assessment of the consistency of that secondary legislation has been carried out and the results of the assessment

27.2 a statement by the responsible Minister or maker explaining the reasons for any inconsistency identified or the proposed actions that would be taken to address the inconsistency.

Other proposed provisions in relation to consistency assessment requirements

28 It will be important that, when assessing the consistency of proposed or existing legislation, the responsible agency can make its own robust assessment. For that reason, I propose that the Bill provide that both the responsible Chief Executive and the responsible agency must act independently from the Minister or maker in relation to making the assessments of consistency described above.

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

29.1 how the principles should be applied

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

29.2 how to review legislation for consistency with the principles

29.3 the content and presentation of the statements and plans required.

Exclusions or exemptions from consistency assessment requirements

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

30.1 Imprest Supply Bills or Appropriation Bills

30.2 Statutes Amendment Bills

30.3 legislation that primarily relates to the repeal or revocation of legislation identified as spent

30.4 revision bills prepared by PCO under subpart 3 of Part 3 of the Legislation Act 2019

30.5 confirmation bills prepared under subpart 3 of Part 5 of the Legislation Act 2019

30.6 Treaty Settlement Bills or any other bill that provides redress for Treaty of Waitangi claims

30.630.7 The Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

31 I also propose that the Minister for Regulation could issue a notice to specify a class of bills or secondary legislation that should be excluded from consistency assessments or review by the Board. These notices would need to be approved by the House. Some examples of when this power could be used could include:

31.1 where it is not practical to undertake consistency assessments (e.g. legislation passed in response to an emergency)

31.2 where it is not cost-effective to undertake consistency assessments (e.g. technical or minor legislation that is not already excluded)

31.3 to otherwise help align consistency requirements with regulatory impact analysis requirements.

32 I propose that the Bill would also exempt:

32.1 Government amendments where they relate to the classes of exempt legislation

32.2 Acts resulting from excluded bills, where a bill becomes a principal Act

32.3 Amendment Acts (as their provisions would be captured as part of the assessment of the Act that was amended)

32.4 any secondary legislation created under an excluded class of primary legislation.

33 Local, Private and Members' Bills and related secondary legislation would not be covered by the proposal.

Regulatory Standards Board

~~32~~34 I propose that the Bill establish a Regulatory Standards Board to make its own independent assessments of the consistency of legislation. The Board would comprise between five and seven members appointed by the Minister for Regulation on the basis of that Minister's assessment of members having the requisite knowledge, skills and experience.

~~33~~35 The Board would carry out inquiries either following a complaint, at the direction of the Minister, or on its own accord into whether legislation is inconsistent with the principles. Any recommendations it made would be non-binding.

~~34~~36 The Board could investigate the consistency of legislation with the principles in two broad ways:

~~34.1~~36.1 it could look at consistency assessments of Bills ~~as introduced into the House~~while they are being considered by a Select Committee , (for example, the Minister for Regulation could table any resulting report, or the Board ~~provide a report~~could write to the Select Committee ~~on~~ with its findings)

34.236.2 it could look at existing legislation and carry out an inquiry into whether the legislation is consistent with the principles, and report to the Minister on its findings.

~~35~~37 As well as providing an avenue for complaints about legislation that is inconsistent with the principles, the Board would therefore help create an incentive for Ministers and agencies to complete robust assessments of consistency with the principles.

~~36~~38 To ensure that the Board offers a relatively low-cost, agile way to respond to complaints and assess consistency of legislation with the principles, I recommend that the Board would:

38.1 focus only on legislation subject to consistency assessments

36.138.2 not be able to investigate decisions in relation to individual cases

~~36.2~~38.3 operate ~~'on the papers'~~on the basis of reviewing written documents rather than holding formal hearings.

39 With the exception of any information provided to a select committee, Board findings and key relevant supporting information would be published (subject to the equivalent provisions of the Official Information and Privacy Acts) to reinforce transparency.

~~37~~40 I also propose that the Board would provide to the Minister for Regulation an annual report summarising its recommendations and findings to present to the House.

~~38~~41 The Chief Executive of the Ministry for Regulation would be responsible for the provision of administrative and secretarial services to the Board.

~~39~~42 It will be crucial that remuneration for the members of the Board reflects the level of technical and legal expertise required to undertake the complex and important role that would have been played by the courts in the 2021

Regulatory Standards Bill. I will therefore be seeking appropriate levels of remuneration when the Board is being established.

Ministry for Regulation's regulatory oversight role

Establishing new oversight arrangements

~~40~~43 I propose that the Bill contain provisions to support the Ministry for Regulation in its regulatory oversight role. I therefore recommend that the Bill:

40.1~~43~~.1 set a requirement for the Ministry for Regulation to produce a regular report for the Minister for Regulation to present to Parliament assessing the overall performance of the Regulatory Management System[4]

40.2~~43~~.2 set a power for the Ministry for Regulation to require provision of information from public service departments to support this regular reporting.

New regulatory stewardship expectations for agencies

~~41~~44 Given known issues with New Zealand's stock of legislation, encouraging agencies to more actively steward their regulatory systems will be critical to improving the quality of regulation over time. I therefore recommend that the Bill require public service Chief Executives to uphold a principle to proactively steward the regulatory systems associated with the legislation they administer – this is aligned with duties under the Public Service Act 2020.

~~42~~45 Agencies could be asked to supply information to the Ministry for Regulation to show what actions they have taken to fulfil the above requirements, as part of the Ministry's power to require provision of information. This would support the Ministry's preparation of its regular report on the Regulatory Management System. More details on the timing of such reports and the processes that would be followed would be set out in guidance.

Provisions to support regulatory reviews

~~43~~46 One important way in which the Ministry is seeking to influence the quality of New Zealand's regulation is by conducting regulatory reviews to ensure that regulatory systems are achieving their objectives, do not impose unnecessary compliance costs, and do not unnecessarily inhibit investment, competition and innovation. These reviews are initiated by the Minister for Regulation, and terms of reference are set jointly with the responsible Minister(s) where appropriate.

~~44~~47 To support the efficiency and effectiveness of these reviews, I propose that the Bill:

~~44.1~~47.1 provides information-gathering powers to enable the Chief Executive of the Ministry for Regulation to require information to be provided on request, to support the effective and efficient conduct of the Ministry's regulatory reviews from:

~~44.1.1~~47.1.1 public service agencies as defined in section 10(a) of the Public Service Act 2020)

[4] That is the set of policies, institutions, processes and tools used by central government to pursue and maintain good quality regulation.

~~44.1.2~~47.1.2 statutory Crown entities as defined in section 7(1)(a) of the Crown Entities Act 2004

~~44.1.3~~47.1.3 any entity that makes or administers secondary legislation, including local government

~~44.1.4~~47.1.4 any entity authorised by an Act to undertake a regulatory function, for example the Reserve Bank and statutory occupational licensing bodies

~~44.1.5~~47.1.5 any entity contracted by the government to support the delivery of a regulatory function, also known as third-party service providers

44.247.2 sets a requirement for review reports to be presented to the House together with the Government's response.

~~45~~48 The Bill would specify that the proposed information-gathering powers above would only be used when necessary for the effective and efficient conduct of the Ministry's regulatory reviews. It would also require that:

45.148.1 in relation to information held by third party service providers, the Ministry would first seek this information from the public service agency that holds the contract, or make the request in conjunction with the responsible agency

~~45.2~~ in relation to entities that make or administer secondary legislation and entities authorised to undertake a regulatory function (e.g. the Reserve Bank) the Ministry would make a request only if the information is not already available through a responsible government agency.

49 The Bill would also specify that information gathering powers would not override prohibitions or restrictions on the sharing of information already set down in legislation, and would not apply to an Office of Parliament, the Office of the Clerk of the House of Representatives or the Parliamentary Service.

Commencement and transitional arrangements

~~46~~50 I propose that the Bill come into force on 1 January 2026. I also propose that transitional arrangements provide for consistency assessment requirements for agencies and Ministers to be brought in via Order in Council, but commence no later than six months after the date the Bill comes into force. This will allow time for the development and testing of guidance, and to ensure agencies understand and can prepare to meet the new requirements.

~~47~~51 The provisions of the Bill would duplicate elements of the current disclosure requirements set out in Part 4 of the Legislation Act 2019, and I therefore recommend that these requirements be repealed.

~~48~~52 In my view, existing Cabinet-mandated provisions for disclosure requirements for bills and regulatory impact analysis for regulatory proposals can be adjusted where needed to support completion of required consistency assessments and avoid any duplication. I will report back to Cabinet in due course on proposed changes to the Cabinet Office Circulars for Disclosure Requirements for Government Legislation [CO(13)3] and Impact Analysis Requirements [CO(24)7].

[LEGALLY-PRIVILEGED] Provisions to reduce legal risk

~~49~~53 s 9(2)(h)

~~49.1~~53.1 s 9(2)(h)

53.2 s 9(2)(h)

Next steps

54 I propose Cabinet Legislation Committee (LEG) consider the Bill by 15 May 2025, and for the Bill to proceed to Cabinet by 19 May 2025. This timeline could allow for the Bill to be introduced to the House on or before 22 May 2025.

[LEGALLY-PRIVILEGED] Crown Law advice

~~50~~55 CLO advises that:

~~50.1~~55.1 s 9(2)(h)

~~50.2~~55.2 s 9(2)(h)

~~50.3~~55.3 s 9(2)(h)

~~50.4~~55.4 s 9(2)(h)

~~50.5~~55.5 s 9(2)(h)

~~50.6~~55.6 s 9(2)(h)

~~50.6.1~~55.6.1 s 9(2)(h)

~~50.6.2~~55.6.2 s 9(2)(h)

~~51~~56 s 9(2)(h)

~~52~~57 s 9(2)(h)

Cost-of-living implications

~~53~~58 There are no cost-of-living implications arising from the proposals in this paper.

Financial implications

Agency costs

59 There are financial implications as a result of the proposals in this paper for all agencies with responsibility for administering primary and/or secondary legislation. Those costs will fall unevenly across agencies due to the significant range in the volume of legislation administered by different agencies. For example, 15 agencies likely administer more than 90 percent of all secondary legislation, and at least ~~three~~ four agencies (Ministry of Health, Ministry of Justice, Ministry for Primary Industries, and Ministry of Business, Innovation and Employment) administer more than 900 pieces of secondary legislation each.

~~54~~60 These costs would arise from requirements for agencies to comply with new consistency assessment requirements and respond to investigations undertaken by the Regulatory Standards Board.

~~55~~61 There are also likely to be costs arising from the application of the principles to policy initiatives, for example costs associated with more consultation or costs arising from providing compensation for any impairment of property. There are also likely to be other potential costs associated with the risks identified by CLO in its advice.

~~56~~62 These costs could be offset to the degree that:

~~56.1~~62.1 agencies are already undertaking work to fulfil their current legislative stewardship obligations under the Public Service Act 2020, in which case new requirements could substitute for this work

~~56.2~~62.2 there are savings over time from increased consistency of the stock and flow of primary and secondary legislation that results in reduced effort in reviewing and amending legislation and/or operational efficiencies

~~57~~63 There could also be broader savings beyond the public sector to the extent that the proposal reduces the amount of poor quality or unnecessary legislation.

~~58~~64 Responsible Ministers and agencies will need to consider how to manage any residual resourcing implications within baseline ~~or may need to seek additional funding through Budget processes.~~ including trade-offs against other priorities in the absence of additional funding.

Ministry for Regulation/Regulatory Standards Board

~~59~~65 The Ministry for Regulation will have additional costs associated with its new functions to provide system oversight and secretariat support to the Regulatory Standards Board, as well as the costs of Board fees. We have estimated annual costs of approximately $1.04m - $1.17m per annum to cover these, dependent on the number of Board members and the level of their fees.

~~60~~66 Resourcing for the Ministry's system oversight role is likely to be an additional $1.1m - $1.4 m per annum. This cost covers the resourcing associated with requirements set out in the Bill for producing and maintaining guidance, regular reporting on the state of the regulatory management system and supporting the responsible Minister to undertake their role in the issuing of notices to the House for classes of bills and acts that may be exempt from requirements, and providing approvals for exemptions to the requirements for Government amendments.

~~61~~67 The financial implications for the Ministry for Regulation will be managed within baseline.

Legislative implications

~~62~~68 The Regulatory Standards Bill was proposed as category 2 in the 2025 Legislation Programme (must be passed by the end of 2025).

Impact analysis

Regulatory Impact Statement

~~63~~69 The Ministry for Regulation Regulatory Impact Analysis team has determined that a number of proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement. The exemptions are on the grounds that the proposals have minor economic, social, or environmental impacts given the changes are to the internal administrative or governance arrangements of the New Zealand government. Exempted proposals include strengthening regulatory stewardship expectations and parts of the proposal relating to the Ministry for Regulation's oversight function (excluding information-gathering powers). For the remaining proposals contained in this paper, a Regulatory Impact Statement has been completed and is attached in **Annex 2.**

~~64~~70 [Panel statement – to come]

71 The policy proposal in this Cabinet Paper is largely the same as the one put forward in the November 2024 discussion document.

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

Population implications

73 The Treaty Impact Analysis that accompanies this paper as **Annex 3** includes the Ministry for Regulation's analysis of the proposals from a Treaty/te Tiriti perspective.

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

75 A contemporary Te Tiriti claim (Wai 3440) in relation to the proposed bill is currently before the Waitangi Tribunal. The Tribunal is currently considering an application for urgency in relation to the claim.

Human rights

76 I consider that the proposals in the Bill do not present any issues for the fundamental human rights and freedoms of New Zealanders and are not likely to be considered inconsistent with New Zealand's international human rights obligations.

~~65~~77 To ensure consistency with the right to freedom of expression and the right to be secure against unreasonable search and seizure the Bill would specify that information gathering powers would not override prohibitions or restrictions on the sharing of information already set down in legislation.

Use of external resources

~~66~~78 The Ministry for Regulation has engaged two policy contractors to support the policy development process for the Regulatory Standards Bill, as well as some external support for analysing the overall view of submissions received through public consultation. Some external legal support has also been engaged.

Consultation

79 The following agencies have been consulted: Crown Law, the Office of the Clerk, the Department of Corrections, New Zealand Customs Service, the Department of Internal Affairs, the Department of Conservation, the Education Review Office, the Government Communications Security Bureau, the New Zealand Security Intelligence Service, the Ministry of Housing and Urban

Development, Inland Revenue, Land Information New Zealand, the Ministry of Business, Innovation and Employment, the Ministry for Culture and Heritage, the Ministry for Women, the Ministry of Defence, New Zealand Defence Force, the Ministry of Education, the Ministry of Health, the Ministry of Justice, the Ministry of Transport, the Ministry for Primary Industries, the Ministry for Pacific Peoples, the Ministry of Social Development, Oranga Tamariki, the Serious Fraud Office, the Social Investment Agency, the Ministry for Ethnic Communities, Whaikaha – the Ministry of Disabled People, and the Reserve Bank of New Zealand. The Department of the Prime Minister and Cabinet has been informed.

80 A summary of departmental feedback is included as **Annex 4** to this paper.

81 Agencies have asked for the following comments to be included in the paper.

82 **Te Puni Kōkiri** considers that the coalition commitment to pass a Regulatory Standards Bill to improve the quality of regulation could be met by passing legislation that respects the diverse range of perspectives and values New Zealanders have, including the perspectives and values of Iwi, Hapū and Māori, and does not elevate values of more importance to some New Zealanders above values of more importance to others. Te Puni Kōkiri does not consider that the proposals in the Cabinet Paper achieve that (which is reflected in the proportion of submissions on the discussion document which oppose the Bill). Te Puni Kōkiri is also concerned:

82.1 that the Regulatory Standards Bill (as currently proposed) does not recognise either the rights and interests of Iwi, Hapū and Māori recognised or created by the Treaty/te Tiriti or the constitutional importance of the Treaty/te Tiriti

82.2 at the resourcing and cost burden that would be imposed on the public service and, therefore, the Crown by the proposal that initial consistency assessments of all primary and secondary legislation must be undertaken not later than 10 years after any Regulatory Standards Bill comes into force.

67 The **Office of the Clerk** supports efforts to improve legislative quality. In particular, a statutory requirement for agencies to report on legislative quality matters could be useful. Moreover, a formal process for post-legislative review, supported by an agency with appropriate resources, would potentially be an important development. Some aspects proposed for the bill would more appropriately be dealt with through the House's rules and practice. The Office of the Clerk would like to feed into consideration of how the proposed bill would link in with parliamentary scrutiny. As law-making is a constitutional matter, the Office of the Clerk suggests that it would be appropriate to develop the principles for regulation on a cross-party basis.

~~68~~83

84 The **Ministry of Justice** notes that the principles of responsible regulation describe several concepts differently from existing law and guidance while omitting others. In particular, the 'liberties' principle departs from how rights and freedoms, and the circumstances in which limitations on them may be

justified, are expressed in the New Zealand Bill of Rights Act 1990. The principles refer to one role of the courts to interpret legislation but not other important roles. The omission of the Treaty/te Tiriti does not recognise the constitutional significance of the Treaty/te Tiriti, nor the Crown's positive duty to acknowledge the rights and interests of Māori in the development of policy and legislation. The Ministry of Justice considers certainty and clarity of the law would be better served if the principles more closely aligned with generally accepted legal values and concepts.

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

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

~~69~~

86

~~70~~87 s 9(2)(h)

s 9(2)(h)

~~71~~

Public consultation

~~72~~88 Public consultation on the proposal set out in the discussion document ran for just over eight weeks (19 November 2024 to 13 January 2025), with approximately 23,000 submissions received. A summary of submissions is attached in **Annex 1**.

Communications

~~73~~89 I propose to publicly announce the next steps in the progression of this Bill by media release, once Cabinet decisions have been made.

Proactive release

~~74~~90 I propose to proactively release this Cabinet paper and substantive advice (including briefings) related to the proposed Regulatory Standards Bill, with appropriate redactions, once Cabinet decisions have been taken, in accordance with the Government's proactive release policy.

Recommendations

~~75~~91 The Minister for Regulation recommends that the Committee:

a. **notes** the summary of submissions made on the discussion document *Have your say on the Regulatory Standards Bill* that Cabinet agreed to release in November 2024 (CAB 0437 refers) attached as Annex 1

b. **notes** that, after having considered the submissions, I have decided to proceed on the basis of a substantially similar approach to the one set out in the discussion document

Purpose

c. **agree** that the purpose of the Bill would focus on:

i. promoting the accountability of the Executive to Parliament in relation to the development of high-quality legislation and regulatory stewardship

ii. supporting Parliament to scrutinise Bills and oversee the power to make delegated legislation

Principles

d. **agree** that the Bill would include principles covering the following areas:

i. *Rule of law* - The law should be clear and accessible; the law should not adversely affect rights and liberties, or impose obligations, retrospectively; every person is equal before the law; there should be an independent, impartial judiciary; and issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion

ii. *Liberties* - Legislation should not unduly diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and

dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person

iii. *Taking of property* - Legislation should not take or impair, or authorise the taking or impairing of, property without the consent of the owner unless there is good justification for the taking or impairment, fair compensation for the taking or impairment is provided to the owner, and compensation is provided to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment

iv. *Taxes, fees and levies* - Legislation should be consistent with section 22 of the Constitution Act 1986 (Parliamentary control of public finance); legislation should impose a fee for goods or services only if the amount of the fee bears a proper relation to the costs of efficiently providing the good or service to which it relates; and legislation should impose a levy to fund an objective or a function only if the amount of the levy is reasonable in relation to both the benefits/risks to that class of payers, and the costs of efficiently achieving the objective or providing the function

v. *Role of courts* - Legislation should preserve the courts' constitutional role of ascertaining the meaning of legislation; and legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review

vi. *Good law-making* – good law-making should include:

- consulting, to the extent practicable, the persons or representatives of the persons that the responsible agency considers will be directly and materially affected by the legislation
- carefully evaluating the issue concerned, the effectiveness of any relevant existing legislation and common law; whether the public interest requires that the issue be addressed; any options (including non-legislative options) that are reasonably available for addressing the issue; and who is likely to benefit, and who is likely to suffer a detriment, from the legislation
- establishing that legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons
- establishing that legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available

Consistency assessment requirements

e. **agree** that the Bill apply new requirements for assessing the consistency of proposed and existing legislation with the above principles to:

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

ii. all makers of secondary legislation

f. **agree** that the Bill provide that the Minister responsible for a Government Bill must ensure that its explanatory note includes:

   i. an independent statement from the responsible Chief Executive stating that the Bill has been assessed for consistency with all the principles and providing the results of that assessment

   ii. a statement from the Minister explaining the reasons for any inconsistency that was identified

g. **agree** that the Bill provide that, unless the Minister for Regulation certifies that a proposed Government amendment would not materially change a Bill, the responsible Minister must ensure the same statements as in (f) above are included in the explanatory note to that amendment

h. **agree** that the Bill provide that, if it is not practical for the responsible Minister to complete the statements in (g) above in the time available, the responsible Minister may present them to the House as soon as possible following consideration of the amendment

i. **agree** that the Bill provide that the explanatory note to any proposed secondary legislation should contain the same notices as (f) above, with the independent assessment of consistency done by the Chief Executive of the administering agency and the explanations for any inconsistency provided by the responsible Minister (or other maker)

j. **agree** that the Bill provide that agencies be required to develop and periodically report against plans to review existing legislation (both primary and secondary) that is subject to consistency reviews for consistency with the principles

k. **agree** that the Bill provide that agencies be required to complete initial reviews of all legislation existing at the point this requirement comes into force via the plans in (j) above within a period of 10 years unless the legislation is repealed or revoked before the review

l. **agree** that the Bill provide that, as agencies complete the reviews in (k) above for each Act, the responsible Minister would be required to present to the House:

   i a statement from the responsible Chief Executive confirming that that Act had been assessed for consistency with the principles, and the results of that assessment

   ii a statement from the Minister setting out reasons for any inconsistency identified or the proposed actions that would be taken to address the inconsistency

m. **agree** that the Bill provide that, as agencies complete the reviews in (k) above in relation to secondary legislation, the responsible agency must ensure the publication of:

   i a statement by the Chief Executive of the administering agency that an assessment of the consistency of that secondary legislation has been carried out and the results of the assessment

ii a statement by the responsible Minister or other maker explaining the reasons for any inconsistency identified or the proposed actions that would be taken to address the inconsistency

n. **agree** that the Bill provide that both the responsible Chief Executive and ~~of~~ the responsible agency must act independently from the Minister or maker in relation to making the assessments of consistency described above

o. **agree** that the Bill provide that the Minister for Regulation may issue guidance jointly with the Attorney-General, to support agencies making consistency assessments, and Ministers in making their statements, including on:

i how the principles should be applied

ii how to review legislation for consistency with the principles

iii the content and presentation of the statements and plans required

p. **agree** that the Bill exclude some types of Government legislation from consistency assessments and regular review requirements, including:

i Imprest Supply Bills or Appropriation Bills

ii Statutes Amendment Bills

v legislation that primarily relates to the repeal or revocation of legislation identified as spent

~~iii~~iv revision bills prepared by PCO under the Legislation Act 2019

~~iv~~v confirmation bills prepared by PCO under the Legislation Act 2019

vi Treaty Settlement Bills or any other bill that provides redress for Treaty of Waitangi claims

~~v~~vii the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

q. **agree** that the Bill should allow the Minister for Regulation to issue a notice, following approval by the House, to specify classes of bills or secondary legislation that should be excluded from consistency assessments or review by the Board

r. **agree** that the Bill should also exempt:

i. Government amendments from consistency assessments and planned review where they relate to the classes of texcluded legislation

ii. A~~a~~cts resulting from excluded bills, where a bill becomes a principal A~~a~~ct

iii. Amendment Acts (as their provisions would be captured as part of the assessment of the Act that was amended)

iv. any secondary legislation created under an excluded class of primary legislation

v. Local, Private and Members' Bills, their Acts, and related secondary legislation.

Regulatory Standards Board

~~q.~~s. **agree** that the Bill should establish a Regulatory Standards Board to make its own independent assessments of the consistency of legislation

~~r.~~t. **agree** that the Bill should provide for the Board to:

i comprise between five and seven members appointed by the Minister for Regulation on the basis of that Minister's assessment of members having the requisite knowledge, skills and experience.

ii carry out inquiries either following a complaint, at the direction of the Minister, or on its own accord into whether legislation is inconsistent with the principles

iii make non-binding recommendations

~~s.~~u. **agree** that the Bill provide for the Board to investigate the consistency of legislation by:

i looking at consistency assessments of Bills as introduced into the House while they are being considered by a Select Committee~~, and providing a report to Select Committees considering the bill on its findings~~

ii looking at existing legislation and carrying out an inquiry into whether the legislation is consistent with the principles, and reporting to the Minister on its findings

~~t.~~v. **agree** that the Bill provide that the Board should:

i consider only legislation subject to consistency assessments

iii not be able to investigate decisions in relation to individual cases

~~ii~~iii operate '~~on the papers'~~ on the basis of reviewing written documents rather than holding formal hearings

~~vi~~vii provide to the Minister for Regulation an annual report summarising its recommendations and findings for the Minister to present to the House.

w. **agree** that the Chief Executive of the Ministry for Regulation would be responsible for the provision of administrative and secretarial services to the Board

~~u.x.~~ **agree** that Board findings and key relevant supporting information would be published (subject to the equivalent provisions of the Official Information and Privacy Acts)

Ministry for Regulation's regulatory oversight role

~~u.y.~~ **agree** that the Bill would:

i require public service Chief Executives to uphold a principle to proactively steward the regulatory systems associated with the legislation they administer

ii set a requirement for the Ministry for Regulation to produce a regular report for the Minister for Regulation to present to Parliament assessing the overall performance of the Regulatory Management System

iii set a power for the Ministry for Regulation to require provision of information from public service departments to support this regular reporting

~~w.~~z. **agree** that the Bill would provide information-gathering powers to enable the Chief Executive of the Ministry for Regulation to require information to be provided on request, to support the effective and efficient conduct of regulatory reviews from:

i public service agencies as defined in section 10(a) of the Public Service Act 2020)

ii statutory Crown entities as defined in section 7(1)(a) of the Crown Entities Act 2004

iii any entity that makes or administers secondary legislation, including local government

iv any entity authorised by an Act to undertake a regulatory function, for example the Reserve Bank and statutory occupational licensing bodies

v any entity contracted by the government to support the delivery of a regulatory function, also known as third-party service providers

x. aa. **agree** that the Bill would set a requirement for review reports to be presented to the House together with the Government's response

y. bb. **agree** that the Bill would specify in relation to the proposed information-gathering powers in (z) above:

i the powers would only be used when necessary for the effective and efficient conduct of the regulatory reviews carried out by the Ministry for Regulation

ii in relation to information held by third party service providers, the Ministry would first seek this information from the public service agency that holds the contract, or make the request in conjunction with the responsible agency

iii in relation to entities that make or administer secondary legislation and entities authorised to undertake a regulatory function (e.g. the Reserve Bank) the Ministry would make a request only if the information is not already available through a responsible government agency

iv the powers would not override prohibitions or restrictions on the sharing of information already set down in legislation.

~~vi~~ the powers would not apply to an Office of Parliament, the Office of the Clerk of the House of Representatives, or the Parliamentary Service

Commencement and transitional arrangements

~~z.~~cc. **agree** that the Bill would come into force on 1 January 2026, with transitional arrangements providing for consistency assessment requirements for agencies and Ministers to be brought in via Order in Council, but commence no later than six months after the date the Bill comes into force

~~aa.~~dd. **agree** to the repeal of the current disclosure requirements set out in Part 4 of the Legislation Act 2019

~~bb.~~ee. **note** that I will report back to Cabinet on proposed changes to the Cabinet Office Circulars for Disclosure Requirements for Government

Legislation [CO(13)3] and Impact Analysis Requirements [CO(24)7], to ensure alignment with the Bill

s 9(2)(h)

~~cc.~~ff. **agree** that the Bill include clauses clarifying that:

i the purpose of the Bill is only given effect to by the specific provisions of the Bill

ii the Bill does not confer or impose any legal rights or duties or affect the validity of any legislation.

Financial and other implications

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

hh. **note** that these costs could be offset to some degree where new requirements substitute for existing legislative stewardship activity, or where agencies realise savings over time as a result of reduced effort in reviewing and amending legislation and/or operational efficiencies

ii. **note** that the Ministry for Regulation will have additional costs associated with its new functions to provide system oversight and secretariat support to the Regulatory Standards Board, as well as the cost of Board fees. The financial implications will be managed within baseline.

~~ee.~~jj. **note** [statement on whether impact analysis requirements have been met]

Next steps

~~ff.~~kk. **authorise** the Minister for Regulation to instruct the Parliamentary Counsel Office to draft the Regulatory Standards Bill to implement the proposals described in this paper

~~gg.~~ll. **authorise** the Minister for Regulation to make technical policy decisions as needed to support the development of these drafting instructions not inconsistent with the decisions in the paper

mm. **agree** to proactively release this Cabinet paper and substantive advice (including briefings) related to the Regulatory Standards Bill, with appropriate redactions, in accordance with the Government's proactive release policy

nn. **agree** the Minister for Regulation to issue a media release to publicly announce the next steps in the progression of this Bill

~~hh.~~oo. **agree** for Cabinet Legislation Committee (LEG) to consider the Bill by 15 May 2025.

Authorised for lodgement

Hon David Seymour

Minister for Regulation

Ministry for Regulation
Te Manatū Waeture

Regulatory Impact Statement: proposed Regulatory Standards Bill

Decision sought	This analysis is produced for the purpose of informing final Cabinet decisions on a proposed Regulatory Standards Bill.
Agency responsible	Ministry for Regulation
Proposing Ministers	Minister for Regulation
Date finalised	*ie, date the RIS was signed out*

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

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

The proposed Bill will seek to achieve this by:

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

Summary: Problem definition and options

What is the policy problem?

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

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

sometimes insufficient understanding of what is required to deliver quality. There are also different views on what is meant by 'quality'.

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

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

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

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

What are the policy objectives?

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

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

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

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

Preferred policy packages include:

- setting standards for regulatory quality by establishing legislative design and good law-making principles in primary legislation; requiring assessments of proposed and existing primary and secondary legislation for consistency with these principles, unless exempted; providing for a regulatory oversight role for the Ministry in legislation; and establishing a statutory Board to independently consider the consistency of proposed and existing legislation (**Minister's preferred package**)
- setting standards for regulatory quality in secondary legislation by building on the disclosure statement regime (through Part 4 of the Legislation Act 2019 coming into force); requiring disclosure against those standards for proposed primary legislation and selected secondary legislation; providing for a regulatory oversight role for the Ministry in

legislation; and EITHER establishing a statutory Board to independently consider the consistency of proposed and existing legislation OR having the Ministry fulfil this role. (**Ministry's preferred package**).

Other options considered – standards for regulatory quality:

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

Other options considered – assurance function:

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

What consultation has been undertaken?

Public consultation

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

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

Of those that expressed views, submissions analysed tended to prefer existing arrangements that support transparency and accountability in the law-making process, including RISs and disclosure statements, with feedback noting these could be strengthened. Submissions included suggestions for additional or alternative principles. Submissions also suggested improving the proposed assurance function, identifying specific desirable features and processes. A summary of submissions has been provided with the Cabinet paper.

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

Agency consultation

Drafts of the Cabinet paper, RIS, and Treaty Impact Analysis were circulated to government agencies[2] for consultation. Many Government agencies generally supported the objectives of the proposal, but with a general preference for these to be achieved in other ways, such as strengthening existing RMS tools or Parliamentary mechanisms. Several agencies expressed support for the Ministry's preferred option identified in the RIS.

However, agencies expressed that the proposed approach in the Cabinet paper (being the Minister's preferred option in the RIS) may not meet the intended aims of the proposal. Concerns related to the impact of the Bill on existing constitutional arrangements, s 9(2)(h) In particular:

- the components of the proposed Bill would duplicate, or add complexity, to existing RMS tools that support regulatory quality and transparency – for example, the proposed Regulatory Standards Board could duplicate the role of the Regulations Review Committee and cut across individual Ministerial responsibility where the Board has a role in reviewing legislation before the House
- the proposed regulatory responsibility principles deviating from similar concepts in existing guidance, or conflicting with objectives within existing legislation and regulatory systems
    - the lack of recognition in the proposal of the rights and interests of iwi, hapū and Māori recognised or created by a lack of specific reference to the Treaty of Waitangi/te Tiriti o Waitangi or the constitutional importance of the Treaty/te Tiriti
- the proposed inclusion of all secondary legislation by default in the requirement to assess consistency with the principles, and the requirement for all initial consistency assessments to be undertaken within a 10-year period would result in significant cost and resourcing implications on agencies (and currently uncosted costs on local government should bylaws be in scope of consistency assessments); with nearly all agencies indicating that it would be challenging or unworkable to undertake the work involved within existing baselines without impacting on future government priorities and legislative programmes
    - several agencies provided feedback around classes of secondary legislation that should be excluded from the requirements for consistency assessment on the basis that it would be costly and add little value– for example, where secondary legislation merely outlines internal administrative arrangements within government, implements international treaty obligations under existing Free Trade Agreements, or reflects codes and notices that are highly technical in nature
    - some agencies further noted that the proposed requirements would detract from resources available to undertake stewardship of the regulatory systems they administer, given the considerably narrower focus on legislation.

[2] Consultation on the draft Cabinet paper was primarily undertaken with government agencies within the core Crown. Note that some aspects of the Cabinet paper reflected policy decisions and directions from the Minister after public consultation had concluded (e.g. secondary legislation being in scope of consistency assessments unless expressly excluded by notice), meaning that there has not been an opportunity to consult with wider state sector agencies and local government on those aspects of the Bill (e.g. the application of consistency assessment requirements to bylaws).

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

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

- The Cabinet paper proposal is to establish standards by establishing a set of legislative design and good law-making principles in primary legislation. The Ministry's preferred option is that there should be provisions for the making of standards in primary legislation, but that those standards themselves should be set in secondary legislation (that is, bringing Part 4 of the Legislation Act 2019 into force).
- s 9(2)(h) If principles are to be set in primary legislation, the Ministry's preferred option is to instead establish very high-level principles that more comprehensively cover all aspects of regulatory quality (e.g. all matters covered in the *Legislation Guidelines*), with further detail about their application set through non-legislative mechanisms.
- The Cabinet paper proposal includes a requirement that existing primary and secondary legislation within scope of the new requirements is reviewed for consistency with the principles within 10 years to help ensure there is a sufficient focus by Ministers and agencies on the quality of the existing legislation they are responsible for. Rather than setting a specific timeframe, the Ministry's preferred option would aim to achieve a similar objective by designing alternative mechanisms for ensuring that reviews are targeted and occur in a robust and timely way, including setting out clear expectations in guidance (note that in the Ministry's preferred option, these reviews would focus more broadly on the stewardship of regulatory systems in line with a broader set of regulatory quality standards rather than assessing individual pieces of legislation for consistency with principles).
- The Cabinet paper proposal includes secondary legislation by default in the requirements to assess legislation for consistency with the principles, with provision for notices to be issued excluding classes of secondary legislation (as well as classes of primary legislation). The Ministry's preferred option would be to exclude secondary legislation by default, and to allow selected classes of secondary legislation to be brought into scope over time, to enable a smoother transition and ensure that agencies can focus on reviewing legislation where there is the potential for most benefit.
- The Cabinet paper proposal includes the establishment of a statutory Board (the Regulatory Standards Board) to independently review the consistency of proposed and existing legislation, acting as an incentive for Ministers and agencies to undertake robust assessments. The Ministry considers that the same objective could be achieved by the Ministry for Regulation playing an assurance role in relation to assessments of consistency (which could have the benefit of less cost, more flexibility and potentially greater stakeholder trust/buy-in) but acknowledges that there are also advantages to a statutory Board playing this role (which could have the benefit of being more effective as an incentive for Ministers/agencies to ensure robust assessments have been completed).

The Ministry's preference is that the assurance function should be limited to reviewing existing legislation rather than proposed legislation, regardless of who is carrying it out – however we have not been able to fully reflect the rationale of this view in the options analysis in the time available (see the *Limitations and constraints on analysis* section below).

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

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

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

The primary costs are:

Agencies with responsibility for administering legislation:

- Reviewing all proposed legislation against the principles in the proposed Bill and producing consistency statements.
- Reviewing all existing primary and secondary legislation within scope of the new requirements against the principles within ten years of the proposed Bill coming into force. The proposed Bill would require the assessment of applicable secondary legislation for consistency with the principles coming into effect after there has been an opportunity to identify classes of secondary legislation that do not warrant these assessments.
- Strengthened regulatory stewardship expectations for all agencies responsible for administering legislation.

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

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

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

- The proposed Bill provides an avenue for some classes of legislation being excluded from requirements (secondary legislation currently accounts for 90% of reviews). It can be expected that not all secondary legislation will ultimately be within scope, reducing overall cost once the secondary legislation has been considered against the principles for exclusion.
- There may be potential savings from the ability to use technology to support analysis.
- We also have not determined current resourcing levels dedicated to reviewing stock of legislation (separately to other stewardship activities), which we would also expect to offset this figure.

Without discounting for these various factors, assuming between 0.5 – 3 FTE are required for each review and 60 hours of work is involved for producing a CAS for new and existing legislation it is likely to cost between $50-60 million per year across the Public Service. The costs will not be distributed evenly across the Public Service. For example, we understand 15 agencies are responsible for 90% of all secondary legislation.

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

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

Ministry for Regulation

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

There are no direct costs to the wider public and any indirect costs (e.g. time and cost of engagement with government agencies to inform reviews of consistency for proposed or existing legislation) are variable. Regulatory reviews or stewardship activity carried out by agencies may impact on the level of costs borne by the public under that regime, either positively or negatively. Notably, the principles as contained in Annex 1 would require costs to the public from the regulation under review to be actively considered and justified as a part of that review.

Benefits (Core information)

The Minister's preferred option is expected to result in greater transparency of whether legislation does or does not meet the specific standards expressed as principles of responsible regulation, and justifications for inconsistencies. This transparency, along with the incentive effect potentially added by the proposed Regulatory Standards Board, could have the effect of influencing decisions made during the development, implementation and stewardship of legislation, and ultimately increase the amount of legislation that is consistent with the principles over time. However, as with the Ministry's preferred option, delivery of these benefits will be heavily dependent on the impact of competing incentives, and the effectiveness of implementation (including allocation of appropriate funding/resourcing).

If the proposed Bill was to have the impact as described, this would be in relation to the principles as currently proposed (see **Annex One**). Given the selective nature of the principles, and the fact that they do not include many of the aspects of regulatory quality covered in the Legislation Guidelines (as noted by a number of submitters to the public

consultation process) it is difficult to assess the impact on overall regulatory quality even if there are high degrees of compliance with new requirements under the Bill.

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

Balance of benefits and costs (Core information)

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

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

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

Implementation

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

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

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

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

Limitations and Constraints on Analysis

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

To elaborate, the challenges associated with assessing relative benefits of options include the following:

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

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

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

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

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

s 9(2)(h) [redacted]

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

- Inclusion of secondary legislation by default, unless exempted
- A requirement that existing primary and secondary legislation within scope of the new requirements is reviewed for consistency with the principles within 10 years.
- Extension of the assurance mechanism to consider not only existing but proposed legislation.

These policy design aspects were not explicitly publicly consulted on. Ministry staff were not able, in the time available, to conduct detailed analysis on the full range of impacts of those proposals such as unintended consequences, whether they deliver the policy objective, alternative options, and how they might be implemented. That said, there has been an attempt to calculate the system-wide cost of including all secondary legislation as well as the requirement to assess primary and secondary legislation within 10 years.

Summary: Ministry for Regulation's preferred option

Costs (Core information)

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

- A different approach being taken to secondary legislation – which would likely mean less secondary legislation is in scope of the Bill – and the absence of a set timeframe by which reviews of existing legislation need to be undertaken.
- s 9(2)(h)

Benefits (Core information)

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

The Ministry's preferred option may enable a relatively higher focus on regulatory system stewardship, which is where the biggest gaps in the RMS currently exist. Although the provisions relating to regulatory stewardship in this option are similar to those in the Minister's preferred, there are relatively fewer new/different requirements relating to new regulatory proposals for agencies to implement and likely a lower volume of reviews required altogether (e.g., through more classes of secondary legislation being initially out-of-scope). Reviews of existing legislation can also have a broader scope that includes considering different dimensions of operational performance and is more tailored to the perceived risks and opportunities available.

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

Balance of benefits and costs (Core information)

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

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

In relation to the assurance function, the proposed Statutory Board could prove an effective way to support implementation of the changes in the RMS provided for in the proposed Bill.

However, a function within the Ministry would cost less than establishing a new mechanism and would allow for more flexibility to adapt in changing circumstances.

Implementation

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

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

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

Limitations and Constraints on Analysis

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

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

Responsible Manager(s) signature:

Pip van der Scheer

Manager, Regulatory Management System

[Insert date]

Quality Assurance Statement

Reviewing Agency:	**QA rating:** [Meets, partially meets, does not meet]
Joint quality assurance panel with members from the Ministry for Regulation, Ministry of Justice, Ministry of Business, Innovation and Employment and the Treasury.	

Panel Comment:

Section 1: Diagnosing the policy problem

What is the context behind the policy problem?

The nature of regulation

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

Regulatory quality is important...

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

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

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

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

8. Despite the measurement difficulties, a few international organisations attempt to assess the quality of regulation across countries. Understanding the methodology and data is important to properly interpreting the results, but New Zealand consistently ranks well for different aspects of regulatory quality, even among advanced countries.

    - Before it was discontinued, New Zealand was one of the top-rated countries in the World Bank's Ease of Doing Business survey, and remained one of the top-rated

countries for regulatory quality in the World Bank's Worldwide Governance Indicators for 2023 [3]

- New Zealand ranked 6th in the World Justice Project's Rule of Law Index for 2024, including for the regulatory enforcement component[4]
- New Zealand scored better than the average in the OECD's Product Market Regulation survey for 2024[5], though our ranking has been falling as other countries have improved faster in recent years. Ironically, more regulation in areas such as digital markets and political lobbying would much improve our PMR ranking.

… but New Zealand could still do much better …

9. Some of these international measures just assess the existence and nature of relevant rules, and do not consider levels of compliance and how well they might work in practice. Poorly designed or implemented regulation has been implicated in a number of major New Zealand disasters resulting in huge costs or lives lost – e.g. failed finance companies, leaky buildings, the Pike River mine explosion.

10. Survey work done by the NZ Productivity Commission in 2014[6] found that "two-thirds of regulator chief executives reported they had to work with legislation that is outdated or not fit-for-purpose" and also that "only 23% of the 1,526 businesses surveyed agreed or strongly agreed that regulatory staff are skilled and knowledgeable".

11. The Rules Reduction Taskforce in 2015[7] reported that they were "struck by the number of instances where the good intentions of the rule-makers are somehow lost in the translation to the real world".

12. We have no reason to think that matters have improved in the interim. We still know very little about the state and performance of our major regulatory systems, as there is no systematic approach to the monitoring and review of most systems. If we don't know how well they are working, it's unlikely we are managing them well.

… and the scope and complexity of New Zealand regulation continues to grow …

13. Recent Parliamentary Counsel Office (PCO) data[8] indicates that NZ has around 1000 Public Acts. While that number has been relatively stable for a few years, PCO reports that the number of words in those Public Acts has grown at an average net rate of 2.4% per year over the last 15 years and currently stands at around 23 million words.

14. PCO also publishes around 2500 pieces of secondary legislation, whose collective word count has also grown at an average net rate of 2.3% per year and currently stands at around 9.7 million words. PCO estimates there are a further 7200 pieces of agency secondary legislation published elsewhere within the State sector, for which we lack data on word count or growth rate.

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[3] Accessed at https://www.worldbank.org/en/publication/worldwide-governance-indicators
[4] Accessed at https://worldjusticeproject.org/rule-of-law-index/
[5] Accessed at https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/product-market-regulation/New%20Zealand_PMR%20country%20note.pdf
[6] New Zealand Productivity Commission, Regulatory institutions and practices - Final report, June 2014
[7] Rules Reduction Taskforce, The loopy rules report, Aug 2015
[8] Parliamentary Counsel Office, Annual Report on Legislative Practices 2023-2024, January 2025, accessed at https://www.pco.govt.nz/corporate-publications/annual-report-on-legislative-practices/annual-report-on-legislative-practices-2024

15. As of October 2023, there were also approximately 900 bylaws referred to on council websites across New Zealand.

16. In this issue of scope and complexity New Zealand is not alone – the same pressures exist in all developed countries. Australian federal legislation shows a similar growth rate[9].

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

17. There are many reasons for this growth, and not all support a conclusion that more words mean greater regulatory burden. For example, plain language drafting is intended to improve the readability and understanding of legislation but tends to increase the number of words used. And there is increased demand for smarter, more tailored and more flexible regulation, but this also tends to require more words.

18. There are other contributing factors. For example, new scientific knowledge about harms from human activities, ongoing technological developments, increased international connections, new disruptive business models etc, all naturally lead to the expanding and deepening of regulatory systems, with consequently more words. Changing attitudes to risk may also increase the demand for regulation but may be a natural consequence of increasing wealth (people have more to lose) and increased beliefs that risks can be anticipated and managed and not just accepted.

19. However good the reasons, this increased scope and complexity does have consequences. As PCO has noted, it represents an "increased challenge for citizens and businesses to understand the sum total of legislation in the areas that impact on them".[10] And while New Zealand tends to want to regulate the same range of issues as other developed countries, we lack the economies of scale of larger countries when it comes to public resources available to invest in the development, communication, and ongoing care and maintenance of those regulatory systems.

Good regulatory design and implementation is demanding…

20. Independent of the question of scope, designing, developing and maintaining effective regulatory systems is demanding work:

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

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

[10] Parliamentary Counsel Office, Annual Report on Legislative Practices 2023-2024, January 2025 (see 6)

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

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

21. Further complicating matters, we all have cognitive limitations and systematic biases. For example, we are prone to jump to conclusions about the nature of the problem or a preferred solution because we systematically overestimate our understanding of how things actually work, and we are prone to limit our scrutiny of those conclusions because of confirmation bias and optimism bias.

22. We also have incentives that can conflict with the demands of good regulation. As noted in the RIS for the 2011 Regulatory Standards Bill[11], Ministers face strong pressures to:

    - respond quickly and decisively to the latest risk, accident or misdeed
    - commit to concrete action, even without evidence that the action will address the problem or that the benefits are likely to exceed the costs
    - stick to a political commitment once made and
    - deliver on the commitment as soon as possible.

23. It's not just Ministers. There are limited incentives for Members of Parliament to carefully scrutinise and improve proposed legislation as it does not usually bring them media attention - and may not align with party political positions. It can be challenging for public servants to meet their statutory obligation to provide free and frank advice, while navigating Ministerial relationships, particularly where the agency view differs from that of a Minister and is likely to become public. Agencies can be working in silos and find it challenging to allocate scarce resources to invest in a whole-of-government perspective. And nobody that promoted a particular regulatory change has great incentives to look for and disclose evidence that it isn't working as intended.

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

24. Given the challenges discussed above, governments interested in the quality of regulation have, over time, approved a range of expectations, tools and processes to try to support good regulatory decisions and more effective regulation. We call this the Regulatory Management System (RMS).

25. These measures are in addition to the legislative scrutiny arrangements of the House of Representatives set out in Standing Orders (select committee consideration, public submissions, specialist Regulations Review Committee, provision for disallowance, provision for petitions).

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

26. The most long-standing and successful of these is the requirement to use the expert legislative drafting resource located in the Parliamentary Counsel Office. This is the intervention with the most concrete impact on the legislative development process. Another long-standing requirement is for the Attorney-General to advise the House on identified inconsistencies with rights and freedoms contained in the Bill of Rights Act 1990. Both these requirements are enshrined in legislation passed by Parliament.

27. Other than some commitments to good regulatory practices in recent comprehensive free trade agreements (such as the NZ-EU FTA), most of the remaining RMS expectations, tools

[11] Regulating for Better Regulation - What is the Potential of a Regulatory Responsibility Act? - 15 March 2011 - Regulatory Impact Statement - The Treasury

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

- the expected provision of impact analysis for proposed legislative changes, produced by the lead policy agency and independently quality assured, to accompany a Minister's Cabinet paper and to be published when the relevant government Bill or Order in Council is introduced or made[12]
- an expert Legislative Design and Advisory Committee (LDAC)[13] that provides advice to government agencies on legislative design questions and publishes the Legislation Guidelines, which Cabinet has adopted as the government's key reference point for assessing whether legislative proposals are consistent with accepted legal and constitutional principles
- the expected provision of a disclosure statement to accompany government Bills on introduction that brings together information intended to support Parliamentary and public scrutiny of key aspects of the proposed legislation[14]
- a set of formal Government Expectations for Good Regulatory Practice,[15] which cover both expectations for the design of regulatory systems and for regulatory stewardship (the ongoing care of regulatory systems) by government agencies
- stewardship responsibilities for Chief Executives under the Public Service Act 2020[16].

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

How is the status quo expected to develop?

Current trends and pressures are expected to continue

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

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

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

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

[12] Regulatory Impact Analysis (RIA) | Ministry for Regulation
[13] The Legislation Design and Advisory Committee
[14] Disclosure statements for government legislation | Ministry for Regulation
[15] https://www.regulation.govt.nz/assets/Uploads/Government-Expectations-for-Good-Regulatory-Practice.pdf
[16] Public Service Act 2020, section 12 Public service principles

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

32. Good regulatory practice commitments in recent free trade agreements will also increase the pressure for more systematic reporting of plans for changes to secondary legislation, for periodic reviews of existing legislation, and for a more systematic commitment and approach to public consultation.

33. We also think PCO's work to improve the accessibility of secondary legislation they do not already publish will eventually allow quicker and better analysis of the full scope and characteristics of our existing regulatory systems. The additional resources now going into the Ministry for Regulation, if sustained, should also modestly increase the pressure and support for better practice, at least within government agencies.

34. However, the tight fiscal situation in the next few years will likely affect the ability of government agencies to improve their regulatory practices. It may also increase the level of regulatory failures and under-performance, and delay work to identify and act on legislation that is no longer fit-for-purpose unless it is a Ministerial priority of the day.

What is the policy problem or opportunity?

Incentives and knowledge deficits undermine regulatory quality

35. In our view, the key policy problem is the competing drivers and insufficient incentives on government decision-makers and advisers, and sometimes limited awareness of what it takes, to develop and maintain good quality legislation and regulatory systems. The nature of some of the key incentives, and the demanding nature of good regulatory design and implementation have been briefly outlined above.

36. The political priority for speed, in particular, conflicts with the amount of work desirably undertaken to design and deliver good quality legislation and regulatory systems. Pressure on resources, organisational silos and an inadequate assignment of responsibilities for different elements of regulatory systems also encourage a "set and forget" approach to regulatory change – until any problems can no longer be ignored. Frequent turnover in Ministerial positions and government agencies and a longstanding lack of investment in monitoring and evaluation undermines available system knowledge and regulatory expertise to inform proposals for change.

37. The problem does not seem to be confined or focussed in particular areas of regulation and therefore is likely to affect all New Zealanders. Well-resourced and connected people and organisations may be able to better manage any adverse impacts, but where the costs, including opportunity costs, of poorer regulation likely fall is difficult to judge.

Current RMS tools and processes have provided only limited mitigation

38. The government's regulatory management system (RMS) tries to lean against some of those incentives and deficits. For example, requirements for impact analysis are an attempt:

- to reduce the potential for solution-jumping and analytical biases by introducing a systematic framework for presenting agency policy advice on proposed regulatory changes that prompts for advice that is evidence-informed, is clear about assumptions and limitations, has tested the nature and scope of the problem, has identified and carefully considered the relative merits of a range of options and has benefited from the views of subject matter experts and interested parties
- to make the results of that analysis available to Ministers to better inform their decisions on recommendations for regulatory change

- to subsequently make the results of that analysis available to Parliament and the public to better inform their scrutiny of the proposed regulatory change

39. Unfortunately, the political imperative for speedy policy decisions, exacerbated by deficits in agency system knowledge and analytical expertise, significantly undermines the first two objectives. Cabinet can choose to waive or ignore its own requirements and policy decisions are generally not delayed due to the absence or poor quality of available impact analysis. In particular, the quality of analysis is frequently compromised by Ministerial timeframes, is usually produced too late (and perhaps not in an easily digestible form) to inform Ministerial recommendations and potentially complicates their decision-making if taken seriously, so is often not valued by them.

40. Impact analysis does seem to be valued by opposition MPs for House debates (in the absence of better information), but this transparency function potentially further undermines Ministerial support for its production when analysis does not fully support the proposal. Regardless, the political and reputational costs of publishing poor impact analysis seem to be low, given how frequently it is tolerated by Ministers and agencies.

41. Bill of Rights Act vetting and disclosure statements also primarily serve a transparency function, intended to support Parliamentary scrutiny of government legislative proposals. Website statistics suggest that MPs and interested members of the public find this information useful to inform debates and submissions, but the government so dominates Parliament that the information's direct impact on legislative quality seems to be limited. For example, experience shows that Governments are willing to promote legislation, and Parliaments are willing to pass that legislation unchanged, even when clearly informed of incompatibilities with the rights and freedoms in the Bill of Rights Act 1990.

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

42. For example, current tools and processes give only limited attention to implementation issues. There is also no public reporting on impact analysis quality and compliance at a system level. Expectations and advice on analysing different types of impacts (e.g. effects on competition, or business compliance costs) are very limited. The accuracy of information in disclosure statements and about consistency with the Legislation Guidelines is not independently checked. Commitments to public consultation, including providing advance notice of proposed reviews and regulatory proposals, could be usefully strengthened.

43. This is supported by comparative results of the OECD's indicators of regulatory policy and governance (iREG) survey. New Zealand rates above the OECD average for its regulatory impact assessment practices and stakeholder engagement but is not among the OECD leaders and is well below the maximum score, indicating room to improve.

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

44. As already noted, New Zealand currently has few expectations, tools and processes for the review and maintenance of existing legislation and regulatory systems. New regulatory proposals get most of the public and political attention, but the state of our significant and growing stock of existing regulation gets very little.

45. This would seem to present considerable opportunities for improvement, in response to a growing need. At present we only have the regulatory system stewardship expectations in the government's expectations for good regulatory practice, and stewardship obligations for Chief Executives under the Public Service Act 2020. The stewardship expectations are unsupported by more specific tools and processes (aside from some historical reporting

requirements for a few major regulatory agencies, currently suspended) and consequently receive practical attention from only a limited number of government agencies.

46. The potential to do more in this area is supported again by the results of the OECD's iREG survey. OECD country scores for governance practices supporting the review of existing legislation are much lower on average than for regulatory impact assessment or stakeholder engagement, but New Zealand scores well below that average, and considerably lower than countries we would normally compare ourselves against.

47. Unlike the development of regulatory proposals, the political demand for speed is likely to be less of a problem for the effectiveness of any specific stewardship tools and processes. The level of agency resources and Ministerial support for the use of agency resources for that purpose are likely to be the main challenges to overcome.

What objectives are sought in relation to the policy problem?

48. The policy problem described above is broad, multi-faceted and difficult to address. Other countries also struggle with the same issues. As such, the options assessed in the remainder of this RIS do not attempt to solve the entirety of the policy problem. Rather, the options seek to identify feasible steps forward in relation to this broad policy problem through changes or enhancements to current RMS tools and processes but without upsetting existing constitutional arrangements or relationships between the three branches of government.

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

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

50. However, as noted above, there are difficulties of defining the 'quality of regulation' in this context, given the subjective nature of the judgements required (including even in relation to whether regulation has met its intended purpose), the wide variety of dimensions involved (ranging from the process by which regulation was developed, the design of any legislation and the quality of its implementation) and the complexity of assessment across these dimensions.

What consultation has been undertaken?

Public consultation

51. The consultation process on the *Have your say on a proposed Regulatory Standards Bill* discussion document opened on 19 November 2024 and closed on 13 January 2025, with approximately 23,000 submissions received. The submission process asked for feedback on what a Bill should aim to do, and what it should include, rather than the specific provisions or wording of a Bill. The public consultation process was supported by an accompanying interim Regulatory Impact Statement, and interim Treaty Impact Analysis[17].

52. Most public submissions (around 88%) opposed the proposal for a Regulatory Standards Bill, with key reasons being the perceived narrow focus of the proposal in strengthening individual rights and liberties at the expense of other objectives, the lack of provision for the Treaty/te Tiriti and broader Māori rights and interests and the likely costs relative to effectiveness. 0.33% of submissions supported or partially supported the proposal for a

[17] The Regulatory Standards Bill | Ministry for Regulation

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

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

Agency consultation

54. Drafts of the Cabinet paper, RIS, and Treaty Impact Analysis were circulated to government agencies[18] for consultation. Government agencies generally supported the intent of improving the quality of regulation, with several agencies expressing support for the Ministry's preferred option. However, government agencies expressed that the proposed approach in the Cabinet paper (being the Minister's preferred option in the RIS) may not meet the intended aims of the proposal. Key concerns related to the impact of the Bill on existing constitutional arrangements, s 9(2)(h) and costs and resourcing implications for government agencies. In particular:

- the components of the proposed Bill would duplicate, or add complexity, to existing RMS tools that support regulatory quality and transparency
- several of the proposed regulatory responsibility principles deviate from similar concepts in existing guidance (e.g. the taxes and levies principle differing from the Treasury and Office of the Auditor-General's guide relating to fees and funding), and others may contrast with existing regulatory system objectives (e.g. the personal liberties principle contrasting with justifiable limitations on liberty in the criminal justice system), therefore creating uncertainty in their application
- proposed requirements to assess existing primary and secondary legislation within a 10-year time period carries significant cost and resourcing implications on agencies; with nearly all agencies indicating that it would be challenging or unworkable to undertake the work involved within existing baselines without impacting on future government priorities and legislative programmes
    - some agencies further noted that the proposed requirements would detract from resources available to undertake stewardship of the regulatory systems they administer, given the considerably narrower focus on legislation
- the requirement to assess secondary legislation for consistency against the principles would be costly and add little value in many cases – for example, where secondary legislation merely outlines internal administrative arrangements within government, implements international treaty obligations under existing Free Trade Agreements, or reflects codes and notices that are highly technical in nature.

[18] Consultation on the Cabinet paper was primarily undertaken with government agencies within the core Crown. Note that some aspects of the Cabinet paper reflected policy decisions and directions from the Minister after public consultation had concluded (e.g. secondary legislation being in scope of consistency assessments unless expressly excluded by notice), meaning that there has not been an opportunity to consult with wider state sector agencies and local government on those aspects of the Bill (e.g. the application of consistency assessment requirements to bylaws).

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

What scope will options be considered within?

56. This section is in two parts. **Subpart One** analyses options for setting standards for responsible regulation, and mechanisms for encouraging and assessing compliance with standards. **Subpart Two** analyses options for establishing standards as principles in primary legislation.

57. The option sets in Subpart One also include some accompanying measures to further support regulatory quality.

58. This RIS will use the current status quo (Option One) as a baseline for assessing the set of options, given that Part 4 of the Legislation Act has not yet come into force and comparative assessments would require several assumptions around its impacts at a future point in time.

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

59. The following criteria will be used to compare options to the status quo:

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

Subpart One: What options are being considered – overarching approach

Option One – Status Quo

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

Standards for regulatory quality

61. The status quo includes a mix of statutory and non-statutory measures intended to set standards for regulatory quality. These standards relate to processes for good lawmaking, legislative design and regulatory stewardship and include:

- the regulatory impact analysis (RIA) requirements, set out in Cabinet circular CO (24) 7 and accompanied by guidance issued by the Ministry for Regulation, which set out

requirements and considerations to encourage a systematic and evidence-informed approach to policy development.

- the Legislative Design and Advisory Committee (LDAC), which advises departments on legislative design issues and consistency with fundamental legal and constitutional principles. It also publishes the Legislative Guidelines, which have been endorsed by Cabinet in CO (21) 2, as the government's key reference point for assessing whether legislative proposals are consistent with accepted legal and constitutional principles.
- the Government Expectations for Good Regulatory Practice, which establishes expectations for the design of regulatory systems and regulatory stewardship. Some government agencies also publish resources to support aspects of regulatory stewardship, such as improving regulatory system capability
- section 12(e) of the Public Service Act 2020, supported by non-legislative guidance issued by the Public Service Commission, establishing considerations for stewardship of legislation administered by agencies.

Mechanisms for encouraging and assessing compliance with standards

62. There are a range of existing mechanisms focused on encouraging agencies to comply with the standards above, and to assess whether they are being met.

63. Cabinet's RIA requirements set out in CO (24) 7 set out a non-legislative expectation for RISs to be independently quality assured, and for QA panel assessments to be included in Cabinet Papers – however this relates to the quality of the analysis, not the proposal itself.

64. Non-legislative requirements for disclosure statements for Government-initiated legislation are set out in Cabinet Office Circular CO (13) 3, This establishes a process for agencies to provide information to support Parliamentary scrutiny of proposed legislation, with a focus on existing government expectations for the development of legislation and significant or unusual features that should be used with care.

65. The Ministry of Justice and/or Crown Law conduct vetting of Bills against the Bill of Rights Act (BoRA) and provides advice to the Attorney-General on consistency. Where inconsistency with the BoRA is identified and not resolved prior to introduction of a Bill, the Attorney-General must notify the House.

66. In Cabinet papers seeking approval to introduce a government Bill, departments are expected to identify whether any aspect of the Bill departs from the default approach in LDAC's Legislation Guidelines and to justify any departures. LDAC also examines some government Bills after introduction, assessing for inconsistency with the Legislation Guidelines. LDAC may make submissions to parliamentary select committees if substantial inconsistency is identified.

Accompanying measures

67. The Ministry for Regulation has several internal functions which are intended to provide oversight of and support the functioning of the RMS. This includes providing early engagement, established by CO (24) 7, reviewing bid for the 2025 Legislation Programme as per CO (24) 6, and second opinion advice on regulatory proposals for agencies.

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

Option Two – Principles set out in primary legislation (Minister's preferred option)

Standards for regulatory quality

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

Mechanisms for encouraging and assessing compliance with standards

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

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

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

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

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

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

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

74. It is currently proposed that these requirements would apply to both primary and secondary legislation under this option. The proposed Bill would exempt some classes of primary legislation from consistency assessments (largely for technical types of legislation), with an ability for the Minister for Regulation to issue notices exempting further classes of primary or secondary legislation, with the assent of the House. There would be a delay in requirements for consistency assessments for secondary legislation coming into effect to enable the identification of classes of secondary legislation that do not warrant these assessments.

75. Under this option, responsible agencies would be required to plan for all primary and secondary legislation they administer that is subject to the above consistency assessment requirements to be assessed for consistency no later than 10 years after the proposed Bill has come into force.

Accompanying measures

76. Option Two also contains additional components to give effect to the Ministry for Regulation's regulatory oversight role.

77. Under this option, the proposed Bill would also include a statutory power that enables the Ministry for Regulation to require information to be provided on request, to support the effective and efficient conduct of regulatory reviews. Information could be gathered from:

    - Public Service agencies (as defined in section 10(a) of the Public Service Act 2020)
    - Statutory Crown entities (as defined in section 7(1)(a) of the Crown Entities Act 2004)
    - any entities that make or administer secondary legislation, including local government
    - any entity authorised by an Act to undertake a regulatory function, for example the Reserve Bank and statutory occupational licensing bodies; and
    - any entity contracted by the government to support the delivery of a regulatory function (also known as third-party service providers), if the information is not available from the relevant public service agency who holds the contract. If the request is made directly to the third party, it would be made in conjunction with the responsible agency.

78. The power to gather information from entities that make or administer secondary legislation and entities authorised to undertake a regulatory function would only be used if the information is not already available through a responsible government agency.

79. Information could be gathered directly by the Secretary for Regulation from any entity that falls within the above categories. Approval would not be required from the Prime Minister or responsible Minister (for statutory entities) nor would there be an expectation that information would be sought from the relevant central government agency (for example the agency holding the contractual relationship with a third party service provider) in the first instance.

80. Information gathering powers would not override prohibitions or restrictions on the sharing of information already set down in legislation. Including this restriction on the scope of the information-gathering power aligns with the restriction on the Public Service Commissioner's power to obtain information as provided for in schedule 3, 3 of the Public Service Act 2020.

81. Other provisions to give effect to the Ministry for Regulation's oversight role under this option would include[19]:

    - a requirement for public service chief executives to uphold a principle to proactively steward the regulatory systems associated with the legislation they administer
    - a requirement for the Ministry for Regulation to produce a regular report for the Minister for Regulation to present to Parliament assessing the overall performance of the Regulatory Management System

[19] These elements of the proposal were exempted from the regulatory impact analysis requirements (per Cabinet Office circular (24) 7), under the criteria minor or limited economic, social, or environmental impacts.

- a power for the Ministry for Regulation to require provision of information from public service departments to support this regular reporting
- a requirement for the Ministry for Regulation's regulatory review reports to be presented to the House together with the government's response.

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

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

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

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

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

Standards for regulatory quality

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

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

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

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

Mechanisms for encouraging and assessing compliance with standards

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

90. The main mechanism to encourage consistency with the standards would be through the requirement for Chief Executives to independently prepare and publish disclosure statements for Government-initiated legislation, as currently provided for in section 103 of the Legislation Act. This could be further supported by periodic reviews by the Ministry for Regulation of what disclosures reveal and the accuracy of those disclosures.

91. Section 110 of that Act also provides that the Minister may issue directions to support consistency of disclosures – for example, in relation to how disclosure statements are set out, or providing for other elements that disclosure statements must include, with directions being published and presented to the House of Representatives.

92. As with Option Two, this option includes a separate duty on agencies for regular review, maintenance and improvement of the legislation they administer, and requires responsible agencies to develop and publicly report against plans to review their stock of legislation. However, under Option Three, reviews would focus more broadly on the stewardship of regulatory systems rather than assessing individual pieces of legislation against selected principles. The Ministry's preference is for legislation to be silent on timeframes for such reviews, with review expectations instead set out in guidance.

Accompanying measures

93. As with Option Two, this option establishes a regulatory oversight role for the Ministry for Regulation, enabling the Ministry to produce regular reporting for Parliament assessing overall performance of the wider Regulatory Management System, including the disclosure requirements. It is also includes strengthened regulatory system stewardship requirements for public service chief executives.

94. Under this option, the proposed Bill would also include a statutory power that enables the Ministry for Regulation to gather information, for the purpose of initiating and conducting regulatory reviews, from public service agencies, and from statutory Crown entities with the written approval or direction from the Prime Minister or Minister responsible for the Crown entity. Where information is required outside of central government (i.e. from local government or third-party service providers), information requests would be directed to the relevant agency responsible for the regulatory system.

95. As with Option Two, information gathering powers would not override prohibitions or restrictions on the sharing of information already set down in legislation. Including this restriction on the scope of the information-gathering power aligns with the restriction on the Public Service Commissioner's power to obtain information as provided for in schedule 3, 3 of the Public Service Act 2020.

96. Accompanying non-legislative measures could be introduced or continued to complement the strengthened disclosure regime and certification mechanisms. More specifically, they could include:

    - Updating Cabinet Circular (24) 7 on the RIA requirements, to reflect the regulatory principles set out in notices under Part 4 of the Legislation Act 2019, as well as further system improvements that enhance the quality of analysis and supporting quality assurance arrangements for Regulatory Impact Statements.
    - Refreshing the *Government Expectations for Good Regulatory Practice* to reflect the requirements under the disclosure statement regime, and regulatory principles (particularly those pertaining to good law-making practices).
    - Embedding regulatory standards in the policy development process, such as reflecting good law-making practices into the RIA requirements or Legislation Guidelines which support the development of regulatory policy.

97. Option Three is the Ministry's preferred option.

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

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

	Option One – *Status Quo*	**Option Two – *Principles set out in primary legislation, with requirements for consistency assessments (Minister's preferred option)***	**Option Three – *Build on the disclosure statement regime and create new legislative provisions for regulatory stewardship and regulatory oversight (Ministry's preferred option)***
Effectiveness	0	+ This option has the potential to improve overall regulatory quality compared to the status quo, through increasing the attention given to specific standards and departures from those standards. Setting the principles in primary legislation will require the House to assent to these principles, which could make it more likely (at least initially) to pay attention to CASs and Ministers' reasons for inconsistencies and develop enduring processes to consider the information provided, increasing the effectiveness of this approach. However, the effectiveness of this option could be lessened because: • setting specific standards via principles in primary legislation requires choices to be made about what aspects of regulatory quality they can cover, and how they are articulated, if they are to comply with standards of good legislative design. To cover the full range of aspects of regulatory quality (as set out in the current *Legislation Guidelines*), principles in primary legislation would need to be very broad and high level, which could lessen their effectiveness as clear standards for regulatory quality. Alternatively, if they are more definitive, they would need to be more selective, which could mean that some aspects of good regulatory quality would not be covered, resulting in those aspects being deprioritised relative to the ones selected for inclusion in legislation – potentially resulting in a decline in some aspects of regulatory quality • having to apply the same standards to the assessment of most primary and secondary legislation means the value of some of those assessments will be questionable • the choice to require agencies to focus on all secondary legislation along with the 10-year time frame makes it more likely that agencies will treat assessments of consistency as tick-box exercises (unless significantly more resource is available), lessening their effectiveness • the comprehensive nature of this approach could crowd out more broadly-based and better targeted regulatory stewardship or ex post review work.	++ This option has the potential to improve overall regulatory quality compared to the status quo, through increasing the attention given to specific standards and departures from those standards. Since the House will have a say in the setting of those standards, the House is more likely to pay attention to disclosures against the standards and develop enduring processes to consider the information provided, increasing the effectiveness of this approach. Ministerial explanations could be included in disclosures under this option, but this would be at the government's discretion. The default exclusion of secondary legislation from the disclosure requirements in Part 4 provides flexibility and time to decide what types of secondary legislation warrant a disclosure and what sort of information it will be useful to disclose. Again, with the House having a say in what secondary legislation is included and what information must be disclosed, the chances of the chosen disclosures being used and useful in supporting legislative quality are increased. Notices under this clause would need to be made consistently with the purpose of the Legislation Act, which may decrease the chances the standards set novel or unorthodox descriptions of law-making processes. As this option provides greater flexibility for agencies to review regulatory systems they administer (e.g. as it does not provide for a 10-year deadline to review all legislation), agencies will be able to better target their resources towards regulatory systems that are most at risk, or would experience greater benefit from periodic review. This could, in turn, increase the effectiveness and value-add of stewardship activity undertaken by agencies.
Durability	0	-- A statutory obligation is a more credible and enduring commitment than the current administrative requirement. However, establishing standards via principles in primary legislation also reduces flexibility over time as the principles would be more difficult to amend to respond to unforeseen scenarios, changes in priorities and/or unintended consequences. This could result in the legislation becoming less fit for purpose over time, lessening its durability in the longer term. In particular, given the need to be more selective when establishing principles in primary legislation, the principles will likely reflect political judgements about values and priorities at a particular point in time. Where subsequent governments make different judgements, the legislation would have to be amended, with an increased chance the legislation as a whole would be repealed	+ A statutory obligation is a more credible and enduring commitment than the current administrative requirement. The use of secondary legislation to determine the relevant standards provides more flexibility to adapt and amend disclosures to reflect changing views on best practice or what issues matter most, as well as lessons learned about how the standards are best expressed.

Costs	0	-- This option would be potentially significantly more costly relative to the status quo. Government agencies would incur additional costs associated with certifying new legislation for compliance with the principles and associated with regulatory stewardship obligations contained in the proposed Bill (e.g. developing plans and undertaking periodic reviews of existing legislation), including higher costs for assessment and justifying where inconsistency is identified. s 9(2)(h) The inclusion of secondary legislation would potentially increase the volume of legislation captured by the proposed Bill from around 1,000 existing Acts to up to around 10,500 existing pieces of primary and secondary legislation (excluding bylaws, which numbered approximately 900 in October 2023). This will significantly increase costs for responsible agencies and local government (as the makers of bylaws). The requirement to review existing primary and secondary legislation that is subject to consistency assessments within 10 years of the proposed Bill being enacted will exacerbate the impacts of the costs and is likely to result in less resourcing and funding available for other policy/regulatory activity (assuming no additional funding is provided).	- Disclosures of consistency against standards set in secondary legislation would be more formal than under the status quo, resulting in the potential for higher costs of compliance. However, these costs would be less than under Option Two due to fewer pieces of legislation being in scope for assessment from the outset (secondary legislation would only be brought in by notice under this option as opposed to being excluded by notice). While agencies would incur more costs through the enhanced requirement to review legislation relative to the status quo, this option would be less costly than Option Two due to the flexibility around the scope and timing of such reviews.
Feasibility/efficiency	0	-- The inclusion of all secondary legislation under this proposal and the imposition of a 10-year timeframe for reviews of all existing primary and secondary legislation is likely to be challenging in the likely absence of additional resource, particularly for those agencies with responsibilities for significant amounts of legislation, including local government. It is difficult to estimate these impacts, as this aspect of the proposal was not consulted on publicly. There are also likely to be inefficiencies created as agencies will be less able to focus attention on proposed or existing legislation where reviews would be most impactful.	0 Having only selected secondary legislation subject to assessments of consistency, and a more flexible approach to assessment of existing legislation is likely to make the proposal easier to implement for agencies, and reduce inefficiencies associated with assessment of legislation where there is limited benefit in doing so.
Overall assessment	0	--	+

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

98. As noted above, any additional measures to strengthen the RMS and incentives on Ministers and agencies will incur a cost, compared to the status quo. In addition, the overall effectiveness of any option is uncertain and likely has limits given the strong competing incentives on Ministers and agencies.

99. In this context, both Options Two and Three would use legislative mechanisms to set standards for regulatory quality, and to establish processes for agencies and Ministers to assess and report on whether legislation is consistent with those standards. In both cases, the involvement and approval of Parliament provides a more credible and enduring commitment to supporting scrutiny of legislation than the current administrative disclosure requirements. Both options could, to a degree, strengthen incentives for Ministers and agencies to ensure legislation is consistent with the selected standards.

100. However, the Ministry considers that Option Three is more likely to advance the policy objectives, at lower cost and with fewer unintended consequences. The disclosure statement regime under Part 4 of the Legislation Act 2019 would achieve many of the same benefits for increasing regulatory quality without generating the same costs and risks as including principles in primary legislation. Specifically, existing provisions under Part 4 provide for the setting of standards and mechanisms for assessing and reporting on consistency with those standards. Those standards can draw on the full range of default principles currently set out in the Legislation Guidelines or elsewhere, at a greater level of detail and with more scope for tailoring the selection of standards to different types of legislation than if the standards were set out as principles in primary legislation.

101. In addition, the use of secondary legislation to determine the relevant standards provides more flexibility to adapt and amend disclosures to reflect changing views on best practice or what issues matters most, as well as lessons learned about how the standards are best expressed to elicit useful assessments. That flexibility also means that compliance costs can be more easily managed, which can also support durability.

102. The default exclusion of secondary legislation from the disclosure requirements in Part 4 provides flexibility and time to decide what types of secondary legislation warrant a disclosure and what sort of information it will be useful to disclose. And with decisions able to be made about what standards to apply at the same time as decisions on what classes of secondary legislation to include, the chances of the chosen disclosures being used and useful in supporting legislative quality are increased, while also minimising unnecessary compliance costs for government agencies. This would likely strengthen the durability, reduce the costs and increase the efficiency of the overall proposal - even though the exact regulatory standards themselves may change over time in response to changes in Government and Parliamentary interests or the external environment.

103. s 9(2)(h)

104. A drawback with Option Three is that it may not be as effective in increasing the incentives on agencies and Ministers to ensure legislation complies with standards, relative to Option Two where principles set out in primary legislation could be seen as holding more weight compared to standards set out in secondary legislation. However, our view is that the relative effectiveness of other components in Option Three (such as enhanced measures relating to regulatory stewardship) would, on balance, outweigh this.

105. Option Two includes a requirement that existing primary and secondary legislation within scope of the new requirements is reviewed for consistency with the principles within

10 years to help ensure there is a sufficient focus by Ministers and agencies on the quality of the existing legislation they are responsible for. Rather than setting a specific timeframe, Option Three would aim to achieve a similar objective by designing alternative mechanisms for ensuring that reviews are targeted and occur in a robust and timely way, including setting out clear expectations in guidance. In addition, under Option Three these reviews would focus more broadly on the stewardship of regulatory systems in line with a broader set of regulatory quality standards, rather than assessing individual pieces of legislation for consistency with principles.

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

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

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

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

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

109. **Annex 1** to this RIS then provides further analysis of the specific principles that form part of the Minister's preferred option.

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

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

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

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

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

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

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

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

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

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

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

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

118. These high-level principles could include:

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

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

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

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

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

122. Option Four is modelled on Queensland's Legislative Standards Act[20], which has been in place since 1992. The Act identified two overarching "fundamental legislative principles" (FLPs) that are said to underlie a parliamentary democracy based on the rule of law, which are that "legislation has sufficient regard to:

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

123. The Legislative Standards Act then sets out examples of issues that relate to the rights and liberties of individuals, and others that relate to the institution of Parliament. As these issues are presented as examples, additional issues relating to the two FLPs can also be considered when developing primary legislation, and additional examples can be added while still being a non-exhaustive list. Non-legislative guidance from the Office of Queensland Parliamentary Counsel identifies a range of further issues that also apply – with a broadly similar function to LDAC's Legislation Guidelines in New Zealand.

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

- set out broad principles (as previously proposed) establishing them as fundamental legislative principles, or something similar, for the purposes of the proposed Bill
- include a principle related to the Treaty of Waitangi
- set out more detailed considerations as examples of things to be applied when assessing the consistency of legislation with the principles
- provide for the ability for further considerations to be added via notices approved by the House
- set out how the principles and considerations should be applied – for instance to clarify that these principles are provided to support Parliamentary scrutiny of legislation, have

[20] Accessed at Legislative Standards Act 1992.

no interpretative effect, and do not affect the validity of any legislation with a non-exhaustive list of examples and supporting guidance.

Option Five – Good lawmaking principles only set out in Regulatory Standards Bill

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Costs of the Minister's preferred option

133. The net costs to agencies over time as a result of the requirements on agencies to produce CAS for new legislation and review all existing legislation for consistency with the principles in the proposed Bill are difficult to assess and may change over time.

134. We have estimated the level of effort to undertake high quality analysis to support the production of CAS and undertake reviews of existing legislation for consistency with the principles in the proposed Bill. We consider the level of resourcing indicated below to be the minimum required. Some assessments may take more resourcing based on complexity and scope, however this is likely to be balanced with other assessments requiring less resourcing.

135. We have calculated an estimate using the anticipated FTE that would be required for each assessment, based on a broad assumption of how agencies may choose to undertake the work. Our assumptions have used data that is available on the volumes of stock and flow of legislation across public sector agencies. However, we note this data does not directly translate to the level of difficulty that may be involved in assessments. There is a significant range in the scale and complexity of each piece of legislation and a range of context specific factors that will impact how agencies would need to undertake their assessments. As a result, we have very few precedents to look to for the evidence of how much effort will be required.

136. Assuming there is no additional funding for resourcing provided for agencies to undertake the work there may be an opportunity cost associated with prioritising resourcing to undertake CAS and reviews of consistency at the expense of other policy work.

137. There are factors that may reduce the financial burden on agencies over the long term that our calculations do not account for. For example, the costs may be offset with saving over time from increased consistency of the stock and flow of primary and secondary legislation that results in reduced effort in reviewing and amending legislation and/or operational efficiencies. There could also be broader savings beyond the public sector to the extent that the proposal reduces the amount of poor quality or unnecessary legislation. It is difficult to assess the likely savings as it is not possible to monetise the comparison between legislative quality of the status quo with the possible quality of future legislation as a result of the proposed Bill.

Benefits of the Minister's preferred option

138. The Cabinet paper proposal is expected to result in greater transparency of whether legislation does or does not meet the specific standards expressed as principles of responsible regulation, and justifications for inconsistencies. This transparency, along with the incentive effect potentially added by the proposed Regulatory Standards Board (covered in section 2B), could have the effect of influencing decisions made during the development, implementation and stewardship of legislation, and ultimately increase the amount of legislation that is consistent with the principles over time.

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

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

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

Assumptions for cost-benefit analysis

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

CAS for new legislation

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

Review of existing legislation for consistency with the principles of responsible regulation within ten years

- 100 public Acts and 1,000 pieces of secondary legislation reviewed per year. There are approximately 1,000 existing public Acts and 10,000 pieces of secondary legislation (excluding by-laws). These numbers assume an even spread across the ten-year period in which the Bill will require all legislation to be reviewed within. We note that some agencies may backload review requirements for a range of reasons including prioritising other work or managing resources.
- Assumes Principal Advisor resource. Senior resourcing reflects the technical and complex nature of the considerations involved in undertaking assessments against the principles. The Principal band is a middle ground - some resourcing will likely come from a lower salary base while legal support, managerial oversight and Ministerial input is from a higher salary base. 25% overhead has been included.
- The estimated average cost of a review of existing legislation is considerably higher than for new legislation because it cannot take advantage of all the policy work already done as part of developing new legislative proposals. Further, the great majority of the cost relates to the assessment of existing legislation against the good law-making principles,

rather than the legislation design principles, due to the nature of the analysis required if the analysis is to be of a useful quality.

- Assumes three categories of reviews:
  1. Primary legislation and associated secondary legislation reviewed as a package. (Approx. 50 primary Acts, with 750 associated pieces of secondary legislation per year with 3 FTE).
  2. Primary legislation with no associated secondary legislation. (Approx. 50 primary Acts per year with 1 FTE).
  3. Remaining secondary legislation. Not packaged with a primary Act due to different administering agencies and/or subject matter and complexity requires separate review (Approx. 250 per year with 0.25 FTE).

143. A significant proportion of the costs relate to secondary legislation, with secondary legislation making up the majority of assessments. At the outset, all secondary legislation will be within scope of the requirements and therefore have been included in the costs (with the exception of bylaws that are included in the requirements but where the implications have not yet been costed). However, the proposed Bill provides a mechanism for classes of legislation to be excluded from requirements via notice issued by the Responsible Minister following approval by resolution of the House. Given the exemption ability, it can be expected that not all regulation will ultimately be reviewed. This will reduce the overall cost.

Limitations

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

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Ministry for Regulation	Costs to the Ministry involve: • Additional resource or reprioritised resource to prepare guidance, for the responsible Minister to issue, on the application and interpretation of principles, content and presentation of consistency statements, how to prepare and how to carry out plans for agencies to regularly review legislation • Supporting the Minister for Regulation to issue notices under the legislation to exclude classes of legislation from the requirements set out in the proposed Bill.	Medium - the Ministry for Regulation may require additional resourcing in order to carry out some of these functions, or deprioritise other work. Estimation by the Ministry suggests approximately $1.1m-$1.4 million per annum in FTE costs.	Medium

	• Supporting the Minister for Regulation in their role to approve exemptions from consistency statements for Government amendments that do not materially change the related Bill. • Providing training and guidance to agencies on new requirements and develop agency capability • Reviewing agency consistency statements and stewardship reporting to support regular reporting to the Minister on the overall performance of the regulatory management system.[21]		
Other government agencies (including in-house legal practitioners)	Costs to other agencies involve: • Producing and publishing consistency statements to certify new legislation (primary and secondary) is compliant with the principles. We estimate there are around 100 relevant government Bills or Amendment Papers and 1,350 pieces of secondary legislation each year. • Developing and reporting on plans for reviews of existing legislation • Undertaking a review of all legislation – primary and secondary within ten years. • Supporting responsible Ministers to make statements on any inconsistencies identified in reviews of primary legislation and/or publishing statements on any	Variable medium – high. Costs will not be distributed evenly across the public service. For example, we understand 15 agencies are responsible for more than 90 percent of all secondary legislation. Also contributing to the uneven distribution is the varying volumes and complexity of regulatory systems managed across the public service. Approximately $8.6m per year for consistency statements for new legislation.	Low- Medium

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

	inconsistencies found in secondary legislation • Providing information to the Ministry for Regulation for regulatory reviews if requested. • Providing information to or responding to recommendations from the Regulatory Standards Board. s 9(2)(h) Increased costs associated with internal legal review required to ensure compliance with the principles provided for in legislation. Potential costs of prioritising reviews of new regulatory proposals and existing legislation against the principles to ensure compliance over other policy work.	Approximately $50m per year for ten years for reviewing existing legislation for consistency with the principles in the proposed Bill.[22] This is the level we believe would be the minimum required to undertake well considered reviews. However, if no additional funding is provided, the actual cost of reviewing existing legislation is likely to be considerably lower, but with subsequent implications for the quality of assessments, and therefore the benefits of assessments.	
Crown	s 9(2)(h) There may also be costs arising from the application of the principles to policy initiatives which are also too uncertain to	Uncertain but could be significant.	Low

[22] For context, we currently estimate that the Government spends approximately $1B per year on its policy processes.

	estimate, for example costs associated with more consultation, or costs arising from providing compensation for any impairment of property.		
Judiciary/Legal practitioners	s 9(2)(h)	s 9(2)(h)	Low
Members of the public	Some indirect transactional costs – e.g. some parties may face additional costs from changes resulting from reviews of existing legislation. There may be costs associated with regulatory uncertainty as it will potentially be easier to challenge regulatory settings or reviews of existing legislation may result in more frequent regulatory amendments. Updates may result in businesses needing to adapt systems/processes to comply with changes.[23]	Variable – low to medium. Depends on the regulatory system members of the public interact with and the likelihood of legislative amendments as a result of consistency assessments of legislation.	Low
Total monetised costs	The Ministry's estimate includes costs to Ministry for Regulation and other government agencies only. It does not include the potential costs for local government from including by-laws within scope of the proposed Bill or any potential administrative costs associated with Parliament's receipt of 100 consistency statements per year.	Variable – medium to high. But higher compared to taking no action. Approximately $60m, if the work is to be done to a reasonable standard. Costs will be much lower in practice if not funded, but with commensurate impacts on assessment quality	Low - Medium

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

Non-monetised costs		Higher compared to taking no action.	Medium
Additional benefits of the preferred option compared to taking no action			
Ministry for Regulation	Greater ability to assess the effectiveness of other government agencies stewardship of the regulatory systems they administer. Forward plans for reviewing legislation, published by government agencies, could result in greater information certainty on the pipeline of new regulatory proposals which can facilitate Ministry for Regulation functions (e.g. administration of the RIA system).	Low to medium	Medium
Other government agencies (including in-house legal practitioners)	If requirements for more regular review of legislation result in more up to date legislation, then this could make it easier for government agencies to do their jobs. Increased understanding within agencies of impact of regulatory decision making in practice, through increased reviews. Possible increase in regulatory quality due to agencies undertaking more robust assessments.	Variable, low to medium, relative to the status quo depending on the agency's existing regulatory practices and whether regular review leads to changes to legislation.	Low
Parliament	Potential for improved Parliamentary scrutiny through having additional mechanisms to evaluate new legislation introduced into the House. Flow-on benefits of more robust debate on the quality of legislation.	Medium	Low
Members of the public	Benefits derived if there are improvements in regulatory quality over time. Potential avoidance of regulatory failure which may otherwise result from the lack of monitoring and	Variable, depending on the positive impact of changes, e.g. avoidance of regulatory failure could result in benefits	Low

	evaluation of existing regulation/regulatory systems.		
Total monetised benefits		-	-
Non-monetised benefits	Likely higher compared to taking no action.	Uncertain	Low

What are the marginal costs and benefits of the Ministry's preferred option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the Ministry's preferred option compared to taking no action			
Ministry for Regulation	The responsibilities are similar to Option Two, involving: • Drafting guidance and supporting material to establish principles via government notice relating to good regulatory design and good law making principles • Drafting guidance on the application and interpretation of high-level principles • Providing training and guidance to agencies on how to comply with new requirements • Reviewing agency disclosure statements and stewardship reports • Preparation of periodic agency compliance report • Ongoing review of principles	Medium - the Ministry for Regulation may require additional resourcing to carry out some of these functions, or deprioritise other work. Despite similar responsibilities, the costs are likely to be lower than Option Two because it can build more easily on existing disclosure statement and LDAC guidelines and experience. Estimation by the Ministry suggests something under $1m per year on average in FTE costs, though likely to be lumpy across years.	Medium
Other government agencies (including in-house legal practitioners)	Costs to other agencies involve: • Producing and publishing disclosure statements for new primary legislation and some secondary legislation. This process would be more formal	Variable but likely to be higher - the obligation to periodically review existing legislation will likely impose significant costs on agencies, especially	Low

	than under the status quo, likely resulting in higher compliance costs. • Producing and reporting on plans for review of existing legislation • Undertaking additional stewardship activity, such as monitoring, evaluation, and review of regulatory systems • Providing information to the Ministry for Regulation for regulatory reviews and periodic agency compliance report if requested.	those that administer a large number of regulatory systems or complex regulatory systems; particularly for agencies that are less advanced in their regulatory stewardship work.	
Parliament	Potential increase in need for House time to approve principles set out in Government notices and directions on consistency mechanisms, depending on frequency of updates.	Low. The volume and frequency of notices is unlikely to utilise significant House time but will be higher than under the status quo.	Low
Judiciary	s 9(2)(h)	Variable depending on the initiation of judicial review. Will be lower than under Option Two but higher than under the status quo.	Low
Lawyers / Legal Practitioners outside of the public sector	s 9(2)(h)	Variable depending on the initiation of judicial review. Will be lower than under Option Two but higher than under the status quo.	Low
Members of the public	Level of certainty as to expected standards required from legislation may reduce if principles are updated/ evolved frequently.	Variable depending on the regulatory system members of the public interact with.	Low
Total monetised costs		Variable but higher compared to taking no action.	Low

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

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

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

145. Section 2B analyses options around how to design and implement an assurance mechanism independent from agencies to support the application of the principles. The proposed assurance mechanism would be an integral part of the regime introduced by the proposed Bill as it would support an increased volume of New Zealand's new and existing legislation to be assessed for consistency with the principles for responsible regulation over time.

146. The proposed assurance mechanism was previously referred to in the interim Regulatory Impact Statement (RIS), October 2024, as a "recourse mechanism." While the discussion document was exclusively focused on delivering the function via a statutory Board, the options presented in this document consider a range of ways to implement the above-described function, including the option for a statutory Board.

What scope will options be considered within?

147. The objective of setting up the proposed assurance mechanism is to complement and support new proposed components of the Regulatory Management System, namely by providing an independent mechanism for inquiring into the consistency of primary and secondary legislation against the set of proposed principles for responsible regulation.

148. This proposed function is intended to act as an incentive for agencies to devote a greater amount of their finite resources to assessing the primary and secondary legislation they develop and administer, against the principles in the proposed Bill and do this with an adequate level of rigour.

149. To achieve the above objective the range of feasible options considered was narrowed by clear Ministerial direction that agencies are expected to undertake consistency assessments against the regulatory principles when they are reviewing existing primary and secondary legislation they administer periodically (and completing this task within a 10-year timeframe).

150. The Minister's preference is that the assurance mechanism should be set-up to add value in two ways:

- provide for independent inquiry into complaints from the public that specific existing primary and secondary legislation is inconsistent with the principles. The Minister for Regulation and/or the independent reviewers themselves should also be able to instigate an inquiry, and
- look into agencies' consistency assessment statements for Bills or amendments once they are introduced into the House and step-in in a timely manner where an agency may have made a poorly substantiated statement.

151. Lastly, the assurance mechanism is expected to deliver non-binding recommendary findings independent of Ministers responsible for and agencies administering the legislation under assessment.

Options that have not progressed for further analysis

152. This RIS outlines three feasible options regarding the form the proposed mechanism could take instead of the status quo. Another five options to deliver the assurance function were identified, briefly considered and discarded for the reasons explained below.

153. The options that have not progressed for further analysis are:

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

Criteria for analysing the options

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

- Effectiveness
- Durability
- Costs
- Feasibility and efficiency.

155. The criteria used below have the same meaning as for the other areas of this RIS except for the effectiveness criterion. For the assurance mechanism options analysis,

effectiveness means that an option lends to seamless and comprehensive delivery of the assurance function.

What options are being considered?

Option One – status quo

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

Current ways existing primary and secondary legislation are assessed for quality

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

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

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

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

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

Current ways new legislation and amendments are assessed for quality

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

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

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

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

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

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

165. There is a range of methods through which individuals and businesses can currently raise complaints about existing primary and secondary legislation. Those institutions were listed in the Interim RIS (see page 37) and the discussion document (see page 30). These institutions will continue to operate unheeded by the implementation of the proposed Bill they will under all options considered in this suite.

Submitters' views

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

Option Two – Ministry for Regulation-led assurance mechanism

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

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

How the Ministry would deliver the assurance function

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

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

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

171. To support the efficient delivery of the assurance mechanism objectives the Ministry could set up a dedicated team comprised of existing staff and appoint an internal manager

with accountability for the assurance function. This person, and their team, would offer an additional level of assurance regarding any recommendations, drive the pace of work and be the central point of interaction with the Minister for Regulation.

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

Submitters' views

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

Option Three – A statutory Board

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

175. The proposed Board would:

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

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

177. The establishment of the statutory Board would follow the guidance prepared by the Public Service Commission.[24] The Board members would not be public servants, or Members of Parliament. This is a design choice rather than a prohibition. It is intended to create a degree of independence from the public service and Parliament.

178. Board members would be appointed by the Minister for Regulation. Board members would be remunerated in line with both the provisions of the proposed Bill and the relevant sections of the Cabinet Fees Framework.[25]

Submitters' views

179. As already indicated, most submitters who commented on the proposal that an independent statutory Board is established as a recourse mechanism questioned the need for it and suggested it should not be established. Some submitters commented that it would be important for any such Board to be independent of the public service and

[24] Public Service Commission, "Establishing a ministerial advisory committee" (August 2022).
[25] Cabinet Office Circular, "CO(22)2 - Cabinet Fees Framework", (October 2022).

Parliament. Many submitters objected to the proposal that the Minister for Regulation appoint the members of the Board, on the grounds that they considered this to be inappropriate as it would lead to a shared political bias among members, or cause conflicts of interests, among other issues.

Option Four – An Officer of Parliament

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

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

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

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

184. This staff complement has not been estimated in size or costs because this option is not preferred. For comparison only, the Parliamentary Commissioner for the Environment Vote for 2023/24 financial year was for $4.42m.[26] We do not consider the costs of the proposed Officer of Parliament would be comparable to that of either the Ombudsman or the Auditor-General (which are approximately $56m[27] and $163m[28] respectively).

Submitters' views

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

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

Option Four assessment

187. This option has advantages, such as independence from government agencies and Ministers responsible for the primary and secondary legislation under assessment and

[26] Vote Parliamentary Commissioner for the Environment 2024/25 Financial year.
[27] Vote Ombudsman 2024/25 Financial year.
[28] Vote Audit 2024/25 Financial year.

could deliver the assurance function in a highly effective manner. However, the costs of this option are likely to be prohibitive.

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

	Option One – Status Quo	Option Two – *Ministry for Regulation-led assurance mechanism*	Option Three – *Statutory Board*	Option Four– *Officer of Parliament*
Effectiveness	0	+ The Ministry for Regulation has been set-up with a core mandate to strengthen New Zealand's Regulatory Management System (RMS) and to improve the quality of regulation, including the experience that New Zealanders have of complying with regulation. Ministry staff including the Chief Executive have been appointed because they had the skills and capabilities required to deliver on this mandate. Therefore, using existing Ministry staff to deliver the proposed assurance function would ensure seamless and comprehensive delivery of the functions' intended objectives as staff have the knowledge and experience required to: • conduct inquiries into potential inconsistencies of legislation with the principles (function akin to regulatory reviews) and • assess agencies' statements of consistency for Bills and amendments before the House (function akin to RIA) and submit a report at Select Committee (somewhat similar to activities of the second opinion team).	++ For the Board to deliver the assurance function with support from Ministry staff. As already indicated Ministry staff have the capability and expertise to deliver the assurance function and could do so through supporting the operations of a Board. The Board's impact would always be dependent on the level of skill, knowledge and mana of its members. With both the stock and flow of legislation the Board would need to apply discretion and prioritise where to spend its efforts for most value. That said, a Board comprised of members that have the drive and appetite to focus on uplifting the quality of regulation, supported by Ministry staff, could deliver the assurance function effectively and prove a driving force behind raising consistency with the principles in the legislation stock and flow.	++ Having a dedicated Officer of Parliament would be an effective way to deliver the assurance function. This is because the resources and efforts of the Officer would be focused on conducting inquiries into potential inconsistencies of legislation with the principles and assess agencies' statements of consistency for Bills and amendments before the House. The Officer of Parliament would have dedicated staff with appropriate skills and expertise including administrators, analysts, corporate functions, and managers. The Officer, and their staff, would produce a higher volume of reports (than other options) and so this would raise the visibility of the work Ministers and agencies need to do to achieve consistency of legislation with the principles of responsible regulation. As with options two and three, with both the stock and flow the Officer of Parliament would need to apply discretion and prioritise where to spend review and assessment effort for most value.
Durability	0	+ The level of flexibility in this option is high because the Ministry can adjust and recalibrate the delivery of this function based on how often the public uses the complaints' function, Ministerial direction, agency feedback, resource availability and decisions relating to opportunity cost regarding other areas of work the Ministry is called to deliver on. The level of expected buy-in is higher than options three and four as some submitters have questioned the need for a Board when considering the Ministry for Regulation's newly established functions to review regulatory systems. Some of these submitters expressed their preference for Ministry staff to conduct the consistency assessments over un-elected Board members.	- The level of flexibility in this option is medium to low. For the Board to update its approach and operating parameters in the face of changing circumstances and new information it could take significant time. The Board as a group would need to process information, evaluate its significance and agree to an updated approach. There is a lower level of buy-in for this option than the status quo and option two. We heard several concerns from the submitters on the Discussion Document about a range of factors related to the proposals for the Regulatory Standards Board. For example, submitters did not want the Minister to appoint members, were concerned the Board would act in favour of individual interests and against public wellbeing, and may not have sufficient skills, experience and representation to perform the intended functions of the Board well.	- The level of flexibility in this option is medium. Officers of Parliament are provided for by Standing Orders which are in themselves difficult to adjust, as well as relevant Acts (see Environment Act 1986, Ombudsmen Act 1975, and the Public Audit Act 2001). However, the Officer and its staff could update and change their operational approach to delivering the function in the face of changing circumstances and new information. The Officer would necessarily have a staff, and this means the very high cost of this option may well be unacceptable to many parties. See costs discussion below.
Costs	0	+ The Ministry has funding to fulfil its key functions, namely: • ensure the quality of new regulation • improve the functioning of existing regulatory systems • raise the capability of those who design and operate regulatory systems • provide continuous and enduring improvements to the Regulatory Management System.	- The costs for setting up and the ongoing operation of a Board comprising of five to seven members are high. These would include upfront cost for the Ministry to set up secretariat support and assist with the selection and appointment of Board members. There would be ongoing cost of the Board member's pay, expenses, accommodation and flights, however they are not high.	- - There would need to be an appropriation for the proposed Officer of Parliament and its supporting staff. This appropriation would also need to cover facilities, corporate functions, and overhead costs. The costs of this option are likely to be less than those of the Parliamentary Commissioner for the Environment initially; however, the costs may increase over time depending on the

		Any reconfiguration of the Ministry to deliver the assurance mechanism could be within existing headcount if there was decision to deprioritise other work. Alternatively, additional funding could be allocated to the Ministry to carry out the assurance function. Cost incurring for agencies to conduct consistency assessments of existing legislation following recommendation by the Ministry's assurance mechanism, cooperate with the Ministry on inquiries about consistency with the principles, complete assessment statements for Bills and amendments are opportunity costs and these activities are expected to be funded within agencies' existing baselines.	The Ministry would provide facilities for Board meetings and administrative and analytical services that could be absorbed within baselines the same way as if the Ministry was delivering the function.	required level of output. The 2024/25 financial year, the Vote Parliamentary Commissioner for the Environment was $4.42m.[29]
Feasibility and efficiency	0	+ Potential overlap with the assurance mechanism and the regulatory reviews programme of the Ministry for Regulation can be resolved during implementation phase to avoid duplication of effort. The new function would require reallocation of roles and duties to existing staff and teams, and any disruption would be mitigated and minimised with effective change management process. Current regulatory stewardship arrangements, recently set up regulatory review teams and a regulatory red tape complaints portal are already in place, have ongoing funding and are being, and will continue to be, reviewed and adjusted to meet emerging needs.	+ This option requires the establishment and operation of a Board with support from the Ministry for Regulation. These are tasks and functions the Ministry can organise and deliver with some disruption of its daily operations (such as initial change management processes, and ongoing balancing of the assurance workload with the programme of regulatory review work). Depending on the speed of appointments the Board may be up and running reasonably quickly and commence assessment work in a shorter timeframe than in option three (Officer of Parliament). The existing regulatory red tape complaints portal could be used for receiving complaints from organisations and the public. Potential overlap with the work of the Board and the regulatory reviews programme of the Ministry for Regulation can be resolved during implementation phase to avoid duplication of effort.	- Establishing a new Officer of Parliament may have high barriers of entry which may delay its achievement. Even if it is agreed by Parliament, and a suitable candidate is selected to be the Officer, they would require a dedicated staff to support their work as well as a physical premises and corporate functions. All this means delays in the commencement for the Officers' work. Once the work was running, it would be expected to operate at a faster pace than options one and two. Potential overlap with the work of the Officer of Parliament and the regulatory reviews programme of the Ministry for Regulation can be resolved during implementation phase to avoid duplication of effort.
Overall assessment	0	+ This option scores highest-equal, alongside Option Three. It is relatively cost-effective and flexible, and the results of public consultation indicate that it has a level of support. However, its findings may not have as much influence as a Board of independent experts.	+ **This is the Minister for Regulation's preferred option and is included in the Cabinet paper accompanying the proposed Bill.** A Statutory Board could prove effective in discharging the assurance function. However, this option is somewhat costlier than a Ministry delivered assurance mechanism (see tables in next section) and potentially has low durability.	- - This option is not preferred. This option would be very effective in discharging the assurance function. However, it is not easily implementable and it is by far the costliest option to deliver, therefore we expect that it would also have low buy-in from the public.

[29] Vote Parliamentary Commissioner for the Environment 2024/25 Financial year.

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

176. The multi-criteria analysis indicates that there is merit in both Option Two and Option Three. While Option Two is likely to be more cost effective and flexible, the findings of inquiries undertaken by a Statutory Board (Option Three) may be more influential.

177. The policy objective is to create a mechanism for independent assurance of the consistency of new and existing legislation with the principles for responsible regulation. Both Option Two and Option Three meet the policy objectives by setting up an assurance mechanism and applying the Ministry for Regulation's existing capability and infrastructure. While Option Three has the additional aspect of a Board, the research and analysis work in both options would be conducted by Ministry staff.

178. Both options create a new incentive for agencies to conduct sound assessments for consistency with principles of responsible regulation as any incongruence between their assessment and a potential assessment from the Ministry or the Board may signal the agency did not apply an adequate level of rigour.

179. Option Two is expected to provide marginally higher net benefits when compared to Option Three because it is lower cost. The expected costs for Option Two are $980,000 per annum, while Option Three may cost between $1.04m - $1.17m per annum. The main difference between Option Two and Option Three are the costs related to Board members and associated expenses. The costs for both Options Two and Three are likely to be mostly stable over time, when accounting for inflationary pressures.

180. There are several uncertainties for both options; these are noted in the costs and benefits tables below. Ultimately, the actual net benefits of either option will be significantly influenced by implementation details

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

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

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

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Ministry for Regulation	Costs to the Ministry include: • Resource to undertake Board nominations, recruitment and appointment processes both for the initial establishment and ongoing re-appointment or new appointments as terms expire. • Secretariat support of 1 FTE to support preparation of Board papers, administration associated with Board meetings, travel bookings, public queries and ministerial support resourcing. We anticipate the level of work involved in responding to queries from the public about the complaints process, OIA requests etc may be high in the first year. Any overflow	Medium Current estimate is $950,000 per year for the Ministry to provide support functions to the Board.[30] Current Board fee estimates are between $63,000 - $185,000 per year.[31] Additional expenses are variable but could be within the range of $24,000 – 34,000 per year.[32]	Low - medium

[30] One advisor salary costed within the Ministry's advisor payband including 25% overhead for new resourcing. And, three senior advisors, one principal and one principal legal advisor.

[31] The range is broad as it includes the potential fees for 5 board members at the low end of the fee range through to a seven-member board at the high end of the range. A 20% contingency has been included to account for the possibility of an exception to pay above the range. The current range is based on 2025 dollars and would likely increase to account for inflation in outyears.

[32] Additional expenses includes flights, accommodation and daily expenses on a basis of $800 per member per trip.

	in resourcing would need to be covered within baseline or supported by the research and analytical resourcing. • Research and analytical support to the Board of 5 FTE. • Board member fees are based on 5 – 7 Board members meeting 11 times per year with one day of preparation per meeting. Fees are calculated at the midpoint of Group 4, Level 1 of the Cabinet Fees Framework with 20% contingency built-in to account for the possibility of additional Board members and/or a fees exemption to pay above the range if required to attract potential Board members with the necessary skillsets. • Additional expenses are included on the assumption of 5 meetings being held in person per year.	We have not estimated the impact from the potential for duplication in functions between regulatory reviews undertaken by the Ministry and complaints heard by the Board. We assume that implementation design will seek to minimise duplication.	
Other government agencies (including in-house legal practitioners)	There will be costs and opportunity costs, which will be variable depending on the frequency of an agency's processes being subject to review by the Board. Resource is likely required by relevant agencies to support responding to findings from Board. Agencies who undertake regulatory review	Variable for agencies depending on the volume of un-excluded legislation they each administer. This assumes this additional work comes at an opportunity cost to other work programme commitments and Ministerial servicing, unless additional resources are secured.	Low - medium

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

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

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

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

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the Ministry-led assurance function compared to taking no action			
Ministry for Regulation	Costs for the Ministry include: • Increase in salary for an existing manager position that would be reappointed to the role to manage the assurance function.[33] • Complaints portal management. • Resource for analysis and reporting similar as to the Minister's preferred option. • Legal support.	Low Estimated cost of $30,000 for salary increase of an existing management position. Administrative support similar to a Board secretariat role and analytical and legal support may require additional resourcing as with Option Three however, there is more likelihood of resourcing being managed within baseline as part of existing regulatory review and stewardship functions as the Ministry will have an increased ability to align the work of teams.	Low - medium
Other government agencies (including in-house legal practitioners)	Costs associated with responding to recommendary findings reports. This cost would likely fall within baseline as part of an agency's	Medium	Low

[33] Moves salary for a manager up a pay band to recognise additional responsibilities.

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

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

Section 3: Delivering an option

How will the proposal be implemented?

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

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

Responsibility for the operation and enforcement of the new arrangements

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

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

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

Arrangements coming into effect

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

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

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

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

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

Transitional Provisions

192. To allow time for the policy and implementation work, including agency and Minister familiarisation of the new arrangements, certification requirements would apply to Government Bills, and amendments introduced from 1 July 2026.

193. During this time, the Ministry will continue to develop detailed design and implementation plans, and replace the current disclosure regime (established by Cabinet circular) with the new arrangements.

Other agencies involvement in the arrangement's implementation and ongoing operation

194. Government agencies responsible for administering legislation, and makers of secondary legislation of types not excluded from the requirements of the Act will be responsible for assessing consistency of new regulatory proposals against the principles and establishing the related certification processes and programme for reviewing their stock of existing legislation within 10 years. The impact of operationalising this will depend on the size of the agency and its current regulatory stewardship (or similar) function and level of maturity.

195. Agencies will need to respond to findings of the Board, if an inquiry is conducted in response to a complaint.

196. Agencies will also be required to provide information for the Ministry's regulatory reviews, as per the requirements in the Act. Agencies responsible for entities that make or administer secondary legislation and entities authorised to undertake a regulatory function will additionally need to provide information for those entities, where they hold it.

197. Agencies have been consulted through the development of this policy.

Risks and mitigations

198. As identified in the options analysis, there is a risk that due to volume of consistency assessments required, agencies will need to prioritise resource for this, potentially crowding out other work. This may mean Ministers and agencies find it more difficult to resource other policy priorities, potentially resulting in persisting issues or unrealised benefits of regulation, specific to their portfolio. This risk may be mitigated somewhat by the level of agency resource already allocated to regulatory systems and stewardship, meaning that the additional requirements are partially absorbed into these functions. However, the level of this activity is uncertain (presumed low) and variable across agencies.

199. There is also a risk that due to the volume of assessments for new regulatory proposals, agencies and Ministers adopt standard wording and responses, which may reduce the impact of the principles over time. This risk is somewhat mitigated by the Board having access to consistency statements for all new regulatory proposals, and reviewing those which are prioritised. The Minister and Ministry will also be able to update guidance, processes and expectations in response to issues identified.

200. There is a risk that the requirements on Ministers and agencies provided for in the Act are not sufficient incentive amidst competing drivers, and the desired improvements to regulatory quality are not seen. Due to the complexity of the regulatory environment in New Zealand, this risk is apparent under any option. If this occurs, it will only be apparent over the long-term. However, the possibility of a Board inquiry may increase the incentive for robust and thorough assessments and statements by agencies and Ministers. This risk may also be mitigated by the Ministry's review of how the Act is working after 5 years as well as ongoing monitoring of the RMS.

201. s 9(2)(h) [redacted]

s 9(2)(h)

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

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

Responsibility for the operation and enforcement of the new arrangements

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

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

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

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

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

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

Arrangements coming into effect

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

Transitional Provisions

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

Other agencies involvement in the arrangement's implementation and ongoing operation

182. Chief Executives of agencies responsible for administering legislation, and makers of included secondary legislation types will be responsible for preparing and publishing

disclosure statements (section 103 of the Legislation Act) in accordance with any directions issued by the Minister under section 110 of the Legislation Act 2019.

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

Risks and mitigations

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

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

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

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

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

Annex One: Analysis of specific principles

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

	Principle	**Analysis**
Rule of law	The importance of maintaining consistency with the following aspects of the rule of law: (i) the law should be clear and accessible: (ii) the law should not adversely affect rights and liberties, or impose obligations, retrospectively: (iii) every person is equal before the law: (iv) there should be an independent, impartial judiciary: (v) issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion	The exact nature of the rule of law is contestable, and careful work is needed to ensure that any rule of law principles line up with settled legal understandings. The Legislation Guidelines already provide a well-established starting point for thinking about the rule of law in relation to legislative design. In this context, in relation to the components of this proposed principle: • the force with which some of the principles are stated does not reflect some of the inherent uncertainties. For instance, a blanket requirement for all law to be 'clear and accessible' without any qualification could impose very onerous obligations, depending on how it was interpreted. In addition, 'clear' and 'accessible' lack precision in the context in which they are used, and it is not clear to whom the legislation must be clear • the principle that everyone is equal before the law is broadly open to interpretation and carries a risk that it could be interpreted as substantive equality – i.e. a requirement that governments consider how to achieve equal outcomes for people, not just equal treatment (equality in the administration of law).
Liberties	Legislation should not unduly diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary	The values expressed in this principle do not have settled meanings, are open to interpretation, and incorporate concepts in a way that is broader than is generally recognised in other jurisdictions.

	to provide for, or protect, any such liberty, freedom, or right of another person	s 9(2)(h) [redacted] s 9(2)(h) [redacted] s 9(2)(h) [redacted] s 9(2)(h) [redacted]
Taking of property	Legislation should not take or impair, or authorise the taking or impairment of, property without the consent of the owner unless– (i) there is a good justification for the taking or impairment; and (ii) fair compensation for the taking or impairment is provided to the owner; and (iii) the compensation is provided, to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment	Property rights are already provided for in reasonably determinate and well-established rules and principles, including interpretive principles. However, this principle goes much further than current understandings in New Zealand and similar provisions in other jurisdictions. In particular: • the reference to impairment could capture any effect on property, however minor • 'fair' compensation is inherently subjective and therefore could be interpreted in unexpected ways • the idea that compensation should be provided by those who obtain the benefit is a novel concept, does not appear in any overseas jurisdiction, and would be extremely difficult to apply in practice.

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

		concluded does not put the law at issue in a case beyond the reach of legislation.
Good law-making	The importance of consulting, to the extent that is reasonably practicable, the persons or representatives of the persons that the responsible agency considers will be directly and materially affected by the legislation The importance of carefully evaluating— (i) the issue concerned; and (ii) the effectiveness of any relevant existing legislation and common law; and (iii) whether the public interest requires that the issue be addressed; and (iv) any options (including non-legislative options) that are reasonably available for addressing the issue; and (v) who is likely to benefit, and who is likely to suffer a detriment, from the legislation Legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons Legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available.	There are a number of potential issues relating to the good lawmaking principles including: • s 9(2)(h) [redacted] • the inherent difficulty of quantifying the 'benefits' and 'costs' of many proposals – noting that, in many policy areas (for example, in the justice or social policy areas) the 'benefits' are often qualitative rather than quantitative, and 'costs' (notably in the longer term) are not quantifiable • some of the tests set by these principles leave little room for value judgement, even though decisions about benefits and costs routinely involve these types of judgements.

Annex 5

The Treaty of Waitangi/te Tiriti o Waitangi Impact Analysis for the Regulatory Standards Bill

1. The Ministry for Regulation (the Ministry) is undertaking a Treaty Impact Analysis (TIA) on the proposal for a Regulatory Standards Bill (the proposed Bill). This analysis updates the preliminary Treaty Impact Analysis published by the Ministry in November 2024, in light of amendments to the proposal and to incorporate feedback received as part of public consultation on the *Have your say on a proposed Regulatory Standards Bill* discussion document between 19 November 2024 and 13 January 2025.

2. The analysis identifies the Treaty of Waitangi/te Tiriti o Waitangi (the Treaty/te Tiriti) impacts of the range of policy proposals in the proposed Bill on rights and responsibilities recognised or created by the Treaty/te Tiriti, and the implications for Treaty/te Tiriti settlements and agreements. This TIA is informed by guidance for policy makers set out in Cabinet Circular CO (19)5[1] and advice from the Crown Law Office (CLO).

3. This TIA does not provide a full summary of the submissions received on the consultation document, which is contained in the *Consultation on the proposed Regulatory Standards Bill: Summary of Submissions report*.[2]

4. In the submissions, the Ministry heard views on:

    - a lack of recognition and provision for the Treaty/te Tiriti:
    - a lack of recognition for kaitiakitanga and the unique relationship between Māori and the environment:
    - negative impacts on Māori sovereignty, governance and self-determination:
    - a lack of provision for consultation and engagement with Māori:
    - a need to uphold Treaty/te Tiriti settlements and arrangements with iwi and hapū.

[1] Cabinet Office, *Cabinet Office Circular CO (19) 5 Te Tiriti o Waitangi/Treaty of Waitangi Guidance 2019.*
[2] The summary of submissions report is included as Annex 1 with the Cabinet paper and will be published following Cabinet consideration.

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

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

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

7. s 9(2)(h) [redacted]

8. s 9(2)(h) [redacted]

9. In addition, unlike the Courts (which historically defer and resist review of decisions by Ministers to introduce legislation to the House), the Waitangi Tribunal has express authority to consider the policy content of government legislative proposals prior to introduction of a Bill. An urgent application relating to this proposal has been lodged and it is likely that many of the matters discussed in this TIA will be considered in that

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urgent application. s 9(2)(h) [redacted]

10. s 9(2)(h) [redacted]

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

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

12. This approach to consistency assessments does not prohibit any decision-maker considering a regulatory proposal from considering the Treaty/te Tiriti, in either the process or substance of a decision. Ministers may still consider these matters in proposing legislation, and existing Cabinet processes (such as Cabinet circular CO 19(5)), guidance (such as guidance by the Legislative Design Advisory Committee), and legal advice all still require decision-makers to act consistently with the Crown's Treaty/te Tiriti obligations to provide for Māori rights and interests, and with Treaty/te Tiriti settlements and agreements.

13. Having said that, there is a risk that including a set of principles in primary legislation that does not include express reference to the Treaty/te Tiriti creates uncertainty for decision-makers, given the perceived inconsistency with existing guidance or advice. s 9(2)(h) [redacted]

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s 9(2)(h)

14. s 9(2)(h)

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

15. The proposed 'good law-making' principles state the importance of consulting, to the extent practicable, the persons or representatives of the persons that the responsible agency considers will be directly and materially affected by the legislation. Under existing law, and as expressed in guidance to Ministers and agencies, the Crown has a responsibility to take reasonable steps to make informed decisions on matters that affect Māori interests.[3]

16. The 'good law-making' principles could be seen as recognising in legislation the importance of consulting with both Māori and non-Māori who are directly and materially impacted by legislation. s 9(2)(h)

17. s 9(2)(h)

[3] *New Zealand Māori Council v Attorney-General* (the *Lands* case) [1987] 1 NZLR 641, at 683 per Richardson J. See also *New Zealand Māori Council v the Attorney-General* [1996] 3 NZLR 140 per Thomas J at 169.
[4] s 9(2)(h)
[5] s 9(2)(h)

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

18. New Zealand does not have set down in legislation a general protection of property rights from expropriation. s 9(2)(h) [redacted]

19. s 9(2)(h) [redacted]

20. Conversely, the principle may be perceived by decision-makers considering legislative proposals as excluding consideration of Māori cultural values and systems of law relating to property. s 9(2)(h) [redacted]

21. s 9(2)(h) [redacted]

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

22. The proposed 'rule of law' principle includes a specification that 'every person is equal before the law.' New Zealand currently has no equivalent formal statutory recognition for observing the right to equality before the law, although the New Zealand Bill of Rights Act 1990 promotes equality in relation to various civil and criminal legal processes.[6]

23. In the absence of clear guidance, there is a risk that decision-makers assess proposed or existing legislation designed to address unique disparities in outcomes experienced by Māori as being inconsistent with this principle. Existing guidance drives agencies to consider proposals that look to achieve equitable outcomes including addressing inequalities and cultural bias,[7] and many laws and policies recognise the need for specific Māori protections or processes (e.g. Whānau Ora). Under the proposed Bill, there is a risk that such policies would be exclusively measured against a benchmark of equal treatment for all citizens (formal equality), as opposed to considering whether to recognise individual circumstances to ensure equal outcomes (substantive equality). This could lead to a difference between the outcome of a subsequent consistency assessment and current guidance for decision-makers.

24. As noted above, a consistency assessment does not direct the decision-maker to a specific outcome inconsistent with the Crown's Treaty/te Tiriti obligations, or require the decision-maker to only progress legislation directly consistent with the principles. In each case, a Treaty/te Tiriti-compliant course of action would remain open, regardless of whether that course aligned with the principles or not. At a practical level, what will matter is how agencies and Ministers deal with a finding of inconsistency. Implementation guidance will be crucial to avoid confusion and ensure coherence.

Impacts for Māori as part of the 'liberties' principle

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

26. s 9(2)(h) [redacted]

[6] See e.g. sections 21 to 27, New Zealand Bill of Rights Act 1990.
[7] See Te Arawhiti's *Providing for the Treaty of Waitangi in legislation and supporting policy design*, March 2022.

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s 9(2)(h)

27. Conversely, the principle's focus on rights to 'own, use, and dispose' of property focusses on Western concepts of private land 'ownership', and therefore may be seen not to cover Māori (or other public) relationships with land such as kaitiakitanga, wairua, whakapapa, taonga, and environmental protection.

28. s 9(2)(h) As set out above, this potential for a consistency assessment to take a narrower view that excludes wider concepts of ownership does not prevent a decision-maker making policy choices to give effect to these wider interests, but effective implementation will be critical to avoid confusion and ensure coherence. This will be particularly important in relation to amendments to well-established legislative schemes that are based on Māori interests.

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

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

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

30. The proposed Bill excludes Treaty/te Tiriti settlement bills or legislation that gives effect to, or is otherwise related to, full and final Treaty/te Tiriti settlements ('Settlement Legislation') from consistency assessments and from the Board's purview. This approach recognises the different, closely negotiated, approach to Settlement Legislation, and allows for previous and future claim groups to be treated consistently. The Takutai Moana Act and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 are

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also excluded for consistency, as both Acts provide statutory mechanisms and arrangements to give practical effect to recognised customary interest in the marine and coastal area.

31. Through consultation it has been raised that there will be legislation relevant to Treaty/te Tiriti settlements and processes for recognition of customary marine title that the requirements of the proposed Bill will apply to (for example, environmental legislation that also reflects Māori perspectives or priorities).

32. There is a concern that undertaking assessments for consistency against principles that do not include a principle relating to the Treaty/te Tiriti will result in legislation being developed or implemented in a manner that deprioritises Treaty/te Tiriti considerations. Concerns have been raised with us through agency consultation that this could have the effect of settlements being negotiated or implemented within a changed context that does not give the same level of prioritisation to Treaty/te Tiriti matters than when previous settlement legislation was implemented.

33. As noted earlier, the proposed Bill does not direct the decision-maker to a specific outcome inconsistent with the Crown's Treaty/te Tiriti obligations, or require the decision-maker to only progress legislation directly consistent with the principles. The likelihood of the above situation occurring will be mitigated by providing detailed guidance to support agencies in their interpretation of the principles. The potential impact may also be mitigated depending on the level of comfort a responsible Minister has to justify or address inconsistencies with the principles, if an inconsistency did occur from legislation being developed in a way to provide for Treaty/te Tiriti obligations. It is not yet clear the extent to which this will occur, in practice.

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