



Minister and Portfolio	<b>Hon David Seymour, Minister for Regulation</b>		
Title	<b>Talking points for Cabinet paper <i>Policy Approvals for Progressing a Regulatory Standards Bill</i></b>	Number	<b>MFR2025-076</b>
Date	<b>27 March 2025</b>	Security level	<b>IN CONFIDENCE</b>

**Purpose** Provide you with talking points to support your attendance at the Cabinet Expenditure and Regulatory Review Committee (EXP) meeting on 1 April 2025

**Date of meeting** 1 April 2025

## Overview

- You are taking a paper to the Cabinet Expenditure and Regulatory Review Committee on 1 April 2025 seeking:
  - final policy decisions on the Regulatory Standards Bill; and
  - agreement to issue drafting instructions to the Parliamentary Counsel Office (PCO).
- 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.
- A Regulatory Standard Act aims to make responsible Ministers and agencies more transparently accountable for good quality regulation. It would do this by making clear where standards relating to responsible regulation are being met. Where they are not being met, the justification for not meeting them will need to be provided by the Responsible Minister, or maker of secondary legislation.
- The requirements aim to reduce the amount of unnecessary and poor regulation and bring the same discipline to regulatory management as New Zealand has for fiscal management.

## Components of the proposal

- The Regulatory Standards Bill is a critical policy stabilising initiative – it is crucial that we improve the quality and stability of our regulatory environment. The reason is our woeful productivity growth. New Zealand's low wages can be blamed on low productivity, and low productivity can be blamed on poor regulation.
- To lift productivity and wages, we need to pass a Regulatory Standards Act. The Act will codify principles of good regulatory practice for existing and future regulations. It seeks to bring the same level of discipline to regulation that the Public Finance Act 1989 brings to



public spending, with the Ministry for Regulation playing a role akin to that of Treasury, ensuring regulatory decisions are based on principles of good law-making and economic efficiency.

*The proposals set out in the paper provide for:*

- a benchmark for good legislation through a set of principles of responsible regulation
- mechanisms to transparently assess the consistency of proposed and existing legislation
- a mechanism for independent consideration of the consistency of proposed and existing legislation in response to stakeholder concerns, or at the direction of the Minister for Regulation via a Regulatory Standards Board
- mechanisms to support the Ministry for Regulation's regulatory oversight role.

Proposed talking points if the following matters raised during departmental consultation are discussed:

**The scope of the principles and how they will apply to different regulatory systems**

- I understand some government departments have raised concerns about the nature of some of the principles and how they would apply to different regulatory systems.
- The proposed Bill will not prevent legislation that is inconsistent with the proposed principles being passed or staying in place. It will instead provide transparency when legislation does not meet the standards and ensure justification for any inconsistencies is provided by the responsible Minister or maker of secondary legislation.
- There is no statutory requirement for inconsistencies to be addressed, with discretion resting with the responsible Minister or maker to determine what (if any) actions would be taken to remedy or justify any inconsistencies.

**Intersection between role of Chief Executive and Responsible Ministers when making consistency statements**

- It has been raised that there may be tensions between responsible Chief Executives and Ministers if there are differing views on the consistency of legislation with the principles.

**Talking points to address feedback received during departmental consultation**  
(if needed)



- The proposal aims to ensure agencies can give free and frank advice where they identify inconsistencies, and Ministers are held accountable for their response to that advice.

## **Inclusion of a principle relating to the Treaty of Waitangi/ Te Tiriti o Waitangi**

- I do not propose the inclusion of a Treaty/Te Tiriti principle, s 9(2)(h)  
[REDACTED]
- The proposed Bill excludes Treaty settlement Acts (existing and future), from the Bill's requirements to avoid potential impacts on Crown commitments under Treaty settlement legislation.
- I am now also proposing to exclude the Marine and Coastal Area (Takutaki Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 for similar reasons to the exclusion for Treaty settlement legislation.

## **Implications for Local Government**

- I acknowledge the inclusion of secondary legislation within consistency assessment requirements will have resourcing implications and potential overlap with existing statutory requirements for reviewing bylaws under the Local Government Act 2022.
- However, good regulatory practices are just as important for local government as they are for central government. There is no requirement in the proposed Bill for consistency assessments to be undertaken in isolation to other review activity. Therefore, it will be up to local authorities to consider how they wish to manage review requirements across different pieces of legislation to make best use of their resources and avoid duplication.

## **Inclusion of secondary legislation in review requirements and 10-year timeframe for reviewing existing legislation**

- For the proposed Bill to make a difference to overall legislative quality, I intend for consistency assessment requirements to apply to a broad range of primary and secondary legislation.
- However, I acknowledge there may be classes of legislation where it may not be practical or cost effective for consistency requirements to be undertaken. The proposed Bill includes the ability for the Minister for Regulation to exclude classes of legislation via notice, following approval by the House of Representatives.



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- Officials will continue to work with agencies to enable exemption notices to be issued in time before the coming into force of the relevant provisions. This is currently proposed to be six months following commencement.

## **Resourcing and financial implications**

- I understand agencies have raised concerns about the resourcing and financial implications of the consistency requirements in the proposed Bill and the potential for consequential impacts on agencies' ability to deliver on other priorities within portfolios.
- I acknowledge that the proposal has implications for agencies who will be required to pay more attention to the quality of the new and existing regulation for which they are responsible. However, agencies should already be undertaking work to fulfil their current legislative stewardship obligations under the Public Service Act 2020.
- My view is there will also be cost savings and broader benefits beyond the public sector to the extent that the proposal reduces the amount of poor quality or unnecessary legislation.
- The ability to exclude classes of legislation via notice will also reduce the level of resource burden for some agencies as exclusions can be made via this mechanism where it may not be practical or cost effective for consistency requirements to be undertaken.

## **Role and makeup of the proposed Regulatory Standard Board (Board)**

- The Board's role is focused on supporting the accountability of the Executive to Parliament for the development of high-quality legislation. The Board will achieve that through considering whether existing and proposed legislation is consistent with the principles of responsible regulation. Ministry for Regulation officials with a broad range of knowledge and expertise will support the Board in its role and ensure appropriate implementation and operationalisation of its functions.

## **Ministry for Regulation regulatory reviews, including scope of information-gathering powers**

- I do not propose for the scope and function of Ministry for Regulation regulatory reviews to be provided for in legislation.
  - However, the proposed Bill does provide for information-gathering powers to support the efficient and effective conduct of Ministry for Regulation regulatory reviews. The Cabinet paper specifies that information-gathering powers would not override prohibitions or
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restrictions on the sharing of information already set down in legislation.

- Following feedback, the paper also clarifies that the powers would not apply to the House of Representatives, the Speaker, Offices of Parliament, the Office of the Clerk of the House of Representatives, and the Parliamentary Service who may be responsible for, or support the making of, legislation in some instances.

## Purpose of the Bill

- s 9(2)(h)
  - the purpose of the Bill is only given effect to by the specific provisions of the Bill and is focused on promoting accountability of the Executive to Parliament.
  - the Bill does not confer or impose any legal rights or duties or affect the validity of any legislation.

## Parallels between the role of LDAC and the Regulatory Standards Board

- It is not novel for the Executive to express views on bills before Parliament. For example, the Legislation Design and Advisory Committee (LDAC) may review Government Bills against the Legislation Guidelines after their introduction into the House. If the review raises issues of inconsistency with the Legislation Guidelines, LDAC may make a submission to the relevant Select Committee. In the same vein, the Board may review departments' consistency statements that will be part of the explanatory note of a Government Bill and submit a report with its findings to the relevant Select Committee.
- There is a possibility the Regulatory Standards Board and LDAC may choose to submit to Select Committee on the same proposed bill. If this situation occurs Select Committees are well versed in managing multiple advice streams and will be able to determine what to do with any advice it receives, even if there are discrepancies.

## Differences between the role of the proposed Board and the role of Regulations Review Committee (RRC)

- I note that a key component of the Board's role will be to look into complaints about proposed and existing primary legislation. In that sense the Board's role does not overlap with the current role of the RRC.
- The Board will be undertaking a specific statutory role. It will include parts of the policy development process that RRC is unlikely to inquire

**Matters raised during ministerial consultation**  
(if needed)



into. For example, the Board will look into whether thorough options analysis was undertaken while developing the legislation under review, and whether the legislation is expected to produce or has produced benefits that exceed the costs to the public.

#### *Managing any overlap*

- There is currently some potential similarity between the review criteria for the Board when looking into complaints about secondary legislation, and the RRC's criteria.
- The Board will have discretion about which matters it looks into which may provide a mechanism for avoiding duplication.
- My officials have discussed the potential role of the Board with the Office of the Clerk and are further considering how the Board or the Ministry for Regulation can operate to provide the most assistance to RRC in undertaking its role.

#### **Risk of the Regulatory Standards Board being judicially reviewed**

- Inquiries undertaken by the Regulatory Standards Board could be subject to judicial review.
- Given the Board's recommendations following an inquiry are not binding and that the Board will not be looking into individual cases, I would expect it is improbable that the courts devote time to judicially review the Board's recommendatory decisions.

#### **Issuing of guidance**

- The proposed Bill now sets out that the Minister responsible for the Act jointly with the Attorney-General may issue guidance that sets out recommended best practice or their expectations for how the principles should be applied, how to review legislation for consistency, and the content and presentation of consistency statements and review plans.
- It is appropriate for guidance to be jointly issued given the role and responsibilities of the Attorney-General are relevant to some of the principles, particularly in relation to the rule of law.

- s 9(2)(h)

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## Exceptions for materiality of amendments

- The proposed Bill will require proposed Government amendments to comply with consistency assessment requirements unless the Minister for Regulation certifies that a proposed amendment would not materially change the bill.
- I anticipate guidance will be developed to support an efficient process for providing certifications in such cases.

## Impact of the proposed Bill on current Regulatory Impact Statement requirements

- Existing Cabinet-mandated provisions for disclosure statements for Government bills and regulatory impact analysis should be adjusted to support completion of required consistency assessments and avoid duplication. I will report back to Cabinet in due course on proposed changes to relevant Cabinet Office circulars.

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## Next steps

- I propose Cabinet Legislation Committee consider the Bill by 15 May 2025 and for the Bill to proceed to Cabinet by 19 May 2025.
- This timeline allows for the Bill to be introduced to the House on or before 22 May 2025.

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