



To	Hon David Seymour, Minister for Regulation		
Title	Regulatory Standards Bill: Advice to support further Ministerial engagement	Number	MFR2025-092
Date	11 April 2025	Priority:	High
Action Sought	Agree to the recommendations in this paper	Due Date	14 April 2025
Contact Person	Pip van der Scheer, Manager, Regulatory Management System	Phone	s 9(2)(a)
Contact Person	Elisa Eckford, Lead Advisor, Policy	Phone	s 9(2)(a)
Attachments	No	Security Level	IN CONFIDENCE

Executive summary

1. This briefing provides you with advice on updating the proposed Regulatory Standards Bill Cabinet paper to reflect your recent discussions with your Ministerial colleagues and support further engagement with them.
2. It seeks your agreement to amend the Cabinet paper to:
 - remove requirements for all existing legislation to be reviewed within a 10-year time period
 - exclude all existing secondary legislation from consistency assessment requirements, unless brought in by notice after the Bill has come into effect.
3. The briefing also provides you with options to address concerns raised by Ministers and agencies about application of consistency assessment requirements to some secondary legislation, including to secondary legislation issued by the Chief of Defence Force.
4. In addition, the briefing updates you on proposed next steps to support Ministerial engagement and to introduce the Bill to the House.

Recommended action

5. We recommend that you:
 - a **agree** to amend the Cabinet paper to:
 - i. remove requirements for all existing legislation to be reviewed within a 10 year time period Agree / Disagree
 - ii. exclude all existing secondary legislation from consistency assessment requirements, unless brought in by notice after the Bill has come into effect Agree / Disagree



- b **note** that we have discussed with you options to address concerns raised by Ministers and agencies about application of consistency requirements to specific legislation, including Defence Force Orders *Noted*

EITHER amend the Cabinet paper to: (Ministry's preferred option)

- c **agree** that the Ministry for Regulation will work with agencies to apply a consistent approach to identify and recommend classes of legislation that would be exempted via an initial notice that would be made before the consistency assessment requirements come into effect *Agree / Disagree*
- d **agree** to report back to Cabinet with a proposed list of exemptions, while the Bill is in the House *Agree / Disagree*

OR

- e **amend** the Cabinet paper to recommend excluding legislation that we can identify as being of "constitutional" significance in the time available *Agree / Disagree*

OR

- f **amend** the Cabinet paper to create a specific exclusion for secondary legislation made by the Chief of the New Zealand Defence Force *Agree / Disagree*

OR

- g **amend** the Cabinet paper to create an exclusion for secondary legislation made by non-public service departments and court rules *Agree / Disagree*
- 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*

Pip Van der Scheer

Manager, Regulatory Management System
Ministry for Regulation

Date: 11 April 2025

Hon David Seymour

Minister for Regulation

Date:



Purpose of report

6. This briefing provides you with options for updating the proposed Regulatory Standards Bill Cabinet paper to reflect your recent discussions with your Ministerial colleagues in relation to:
 - consistency assessment requirements for secondary legislation, and requirements for review of all existing legislation within a ten-year timeframe
 - exclusions and exemptions from consistency assessment requirements.
7. The briefing also updates you on proposed next steps to support Ministerial engagement, and introduce the Bill to the House.

Options for updating the Cabinet paper

Narrowing consistency assessment requirements

8. In the light of your recent discussions with your Ministerial colleagues, you have indicated a preference to update the proposal in the Cabinet paper to:
 - remove requirements for all existing legislation to be reviewed within a 10-year time period
 - exclude all existing secondary legislation from consistency assessment requirements, unless brought in by notice.
9. Removing the 10 year timeframe will not affect the requirement for responsible departments to develop and periodically report against plans to review the consistency of existing legislation. This requirement will help to transparently show how departments intend to discharge their consistency assessment obligations (and the Regulatory Standards Board's ability to investigate complaints in relation to existing legislation could help focus departmental and Ministerial attention on those areas where addressing inconsistency is a higher priority).
10. Making existing secondary legislation exempt from consistency assessment requirements by default and removing the 10 year timeframe will help to address some of the concerns raised during consultation about the costs for agencies – although it will not address questions raised by some agencies and Ministers about the appropriateness of some secondary (and primary) legislation being subject to consistency requirements. Possible approaches to exclusions and exemptions are discussed further below.
11. The table on the following page sets out how these amended consistency requirements would apply to proposed and existing legislation.



Table 1: Status of proposed and existing legislation under the revised proposal

	Proposed legislation	Existing legislation
Primary	All Government Bills would be subject to consistency assessment requirements and able to be reviewed by the Board, except where explicitly excluded by the Regulatory Standards Act, or where exempted via a notice (material Government amendments to included Bills would also be subject to requirements)	All Acts would be subject to consistency assessment requirements and able to be reviewed by the Board, except where explicitly excluded in the Regulatory Standards Act, or where exempted via a notice
Secondary	All proposed secondary legislation would be subject to consistency assessment requirements, except where explicitly excluded in the Regulatory Standards Act, or were exempted by a notice. The Board would not review proposed secondary legislation.	Only secondary legislation that has been explicitly included via a notice would be subject to consistency assessment requirements and Board review.

Excluding or exempting particular legislation

12. In discussion with your office, we also agreed to provide further advice on what other classes of legislation could be excluded or made exempt from consistency assessment requirements to address concerns raised by a number of Ministers and agencies, particularly where these requirements impact on separation of powers, or potentially raise “constitutional” issues.
13. In particular, the Minister of Defence has requested that secondary legislation produced by the New Zealand Defence Force (NZDF) is excluded entirely from the scope of the Bill, s 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED] We have not had time to make our own assessment of whether these concerns would suggest NZDF secondary legislation merits exclusion from requirements relative to other legislation (noting that there are other examples of legislation applying to the NZDF such as traffic rules that we think would be subject to the same issues). However, we agree that impacts on the efficiency of decision making would be a particular consideration for this area, and this may be a good reason to exempt secondary legislation produced by the Defence Force (along with a range of other legislation across multiple portfolios as discussed below).
14. Under the current proposal, there are two ways in which consistency assessment requirements can be waived for some legislation that would otherwise be covered:
 - Legislation can be excluded from the requirements in the Bill itself – current exclusions include legislation that do not make significant policy changes (e.g. Statutes Amendment Bills) or whether there would be an impact on Crown commitments under Treaty settlement legislation (e.g. Treaty Settlement Bills). These exclusions are consistent with exclusions in other legislation – for instance under current Part 4 of the Legislation Act.



- There is also the ability to exempt legislation via notices issued by the Minister for Regulation and affirmed by the House.
15. During departmental consultation on the Cabinet paper, there was significant feedback on legislation (particularly secondary legislation) that agencies thought should be excluded or exempted from consistency requirements. Reasons given included that:
- the legislation is technical, or the principles do not easily apply
 - there is a high volume of the legislation and/or it needs to be produced quickly, and it is therefore not practical to subject it to consistency assessment requirements
 - including the legislation could impact on Treaty settlements
 - there are existing review requirements or mechanisms in place for the legislation
 - s 9(2)(h) [REDACTED]
16. Agencies indicated that the legislation they identified was a non-exhaustive list and there are likely to be many other examples - particularly secondary legislation that may warrant consideration for exclusion for similar reasons as the examples provided.

Option one - Make all exemptions via a notice (Ministry's preferred option)

17. Our previous advice to you was that we did not think it was feasible in the time available to identify all potential candidates for exemption, and apply a consistent approach to consider whether an exemption is warranted. We therefore recommended that we work through these issues in consultation with agencies, with the aim of having a notice exempting all primary and secondary legislation identified as warranting an exemption before the consistency assessment requirements come into force.
18. Our current view is that this would still be the best approach to avoid a situation where some legislation is excluded or exempted, while other legislation that may equally warrant an exclusion is subject to consistency requirements. It is also likely that, if some exclusions or exemptions are made without articulation of a clear approach, other Ministers and agencies will seek further exemptions before the Bill is introduced, or raise reasonable concerns about the consistency of the approach.
19. If you wanted to proceed with this option, we could add a further recommendation to the Cabinet paper to note the Ministry for Regulation will work with agencies to apply a consistent approach to identify and recommend classes of legislation that would be exempted via a notice. A further option could be to offer to report back to Cabinet with a proposed list of exemptions, while the Bill is in the House.
20. This approach would not address the concern raised by the Minister of Defence [REDACTED]
s 9(2)(h) [REDACTED]
[REDACTED] However, as mentioned above, we have not been able to make our own assessment of whether this legislation should be excluded in the Bill, rather than exempted via notices (which require the approval of the House).
21. Additional options to address this specific concern, or to allow broader exemptions are therefore outlined below – noting that we have not had time to fully work through the implications of any of the options, but that all of them are likely to result in inconsistencies in the approach to exclusions.



Option two - Exclude legislation of “constitutional” significance

22. Excluding an exhaustive list of legislation on the basis of constitutional significance (and where scrutiny by the Ministry, the Minister or the Board could be inappropriate) would not be straightforward. This is because there is a range of legislation that provides for New Zealand’s constitution, including some legislation that may be considered “constitutional” without being labelled as such. Attempting to identify an explicit list may risk oversimplifying the nature of constitutional legislation or overlook some legislation that might be appropriate to include.
23. However, should you wish to exclude a selection of legislation, a starting point could be examples of legislation that reflect constitutional principles as identified in LDAC’s Legislation Guidelines and the Cabinet Manual (noting neither document purports to provide a comprehensive list). This includes (but is not limited to) the following Acts:
- Constitution Act 1986
 - New Zealand Bill of Rights Act 1990
 - Public Finance Act 1989
 - Public Service Act 2020
 - Electoral Act 1993
 - Ombudsman Act 1975
 - Official Information Act 1989
 - Legislation relating to the courts.
24. Consideration should also be given to how legislation that gives effect to the recognition of Māori rights and interests under the Treaty of Waitangi would be included in such a class.
25. The examples provided in the Legislation Guidelines and the Cabinet Manual do not appear to contemplate legislation made or administered by the NZDF. However, this option could also include secondary legislation made by the Chief of the Defence Force based on reasons provided to you by the Minister of Defence s 9(2)(h) [REDACTED] noting that this may make it more likely other departments and Ministers seek further exclusions.

Option three - Create a specific exclusion for secondary legislation made by the Chief of the New Zealand Defence Force

26. We understand you have previously been open to making a specific exclusion for secondary legislation made by the Chief of the New Zealand Defence Force (NZDF). Such a provision would make a broad exclusion in the Bill for any secondary legislation made under the provisions of Defence Act 1990 or the Armed Forces Discipline Act 1971 or otherwise issued by the Chief of the Defence Force under any other statutory instrument.
27. We have not undertaken analysis to assess whether the scope of such an exemption is appropriate, but we understand that the NZDF is comfortable that the concerns raised by the Minister of Defence would be addressed by this approach. We can provide you with specific wording if you wanted to take this approach.
28. We note that there will be secondary legislation made by other agencies or individuals who also have independent roles and/or requirements to operate at arm’s length from



Government, that arguably would also have good rationale for exclusion. For example, the New Zealand Police, Local Government and entities such as the Remuneration Authority.

Option four - Create an exclusion for secondary legislation made by non-public service departments and court rules

29. Another option could be to exclude secondary legislation made by the Non-Public Service Departments and court rules. This approach could provide a blanket exclusion for all secondary legislation made and administered by the Non-Public Service Departments¹ in both the Executive and Legislative branches of Government (Office of the Clerk of the House of Representatives, the Parliamentary Service, NZDF, New Zealand Police, and the Parliamentary Counsel Office).
30. Excluding the Non-Public Service Departments would recognise the different relationship and independent role of those entities collectively (instead of the narrower focus of an NZDF exemption). However, we note that a department-focused exclusion would sit at odds with other exclusions set out in the proposed Bill, that are focused on specific pieces or types of legislation. The exclusion would not identify the specific legislation covered and could result in legislation that may not otherwise have a clear reason for exclusion being excluded by default. We have not had an opportunity to test this option and the potential implications with relevant departments.
31. Under this option you could also consider an exemption for court rules to avoid any perception of increased oversight from the Executive on the rules of procedure for Courts as proposed by the judiciary. We would need to consult with the Ministry of Justice to better understand the process for making court rules and how such an exemption could be provided. We understand court rules, while recommended by a statutory Rules Committee, are made by the Governor-General following recommendations being provided to Cabinet by the Rules Committee. We would suggest if such an exemption is provided it should be broad enough to include the Māori Land Court Rules as provided for under the Te Ture Whenua Māori Act 1993.
32. We note this approach could also create inconsistency by excluding the Office of the Clerk but not the Speaker or the House of Representatives who we understand can make some secondary legislation. There are also a range of entities that make secondary legislation but are traditionally at arms-length from Government that this approach would not address, for example the Remuneration Authority.

¹ Departments that are not established under or covered by the Public Service Act (or its predecessors).



Next steps

33. We are currently working to provide you with worked examples of consistency assessments in advance of your meeting with Hon Nicola Willis, Hon Judith Collins KC and Hon Shane Jones on Thursday 17 April. These include examples in your portfolios and cover both primary and secondary legislation.
34. The table below sets out the key dates that would need to be achieved over the next four weeks to enable introduction of the Bill by 19 May and the first reading by 22 May. We note this timeline is dependent on PCO drafting the Bill by 30 April, and that PCO has indicated that they may not be able to update some elements of the Bill's drafting until clear decisions are made on changes to the Cabinet paper. If 30 April is not achieved by PCO, the LEG paper could still be consulted on, even though this is not ideal. The absolute latest date the draft Bill should be available is 8 May, to be able to lodge the LEG Cabinet paper.
35. We also note that this approach involves significantly truncated agency and Ministerial consultation processes.

Date	Action
Tue 15 April	Ministry provides you with an updated Cabinet paper reflecting your decisions on this briefing
Wed 16–Thu 17 April	Further consultation with Ministers and agencies on updated Cabinet paper
Fri 18 – Mon 21 April	EASTER
Wed 23 April	Lodgement of updated Cabinet paper
Fri 25 April	ANZAC DAY
Mon 28 April	Cabinet policy decisions
Wed 30 April to Mon 5 May	Departmental and Ministerial consultation on a LEG paper
Thu 8 May	Lodgement of LEG paper
Thu 15 May	LEG consideration of paper
Mon 19 May	Cabinet consideration of LEG paper and introduction of Bill
Thu 22 May (earliest)	First Reading