



To	Hon David Seymour, Minister for Regulation		
Title	Regulatory Standards Bill: Update on Waitangi Tribunal proceedings and departmental consultation	Number	MFR2025-122
Date	16 May 2025	Priority:	High
Action Sought	Agree to the recommendations in the paper	Due Date	19 May 2025
Contact Person	Pip van der Scheer, Manager, Regulatory Management System	Phone	s 9(2)(a)
Contact Person	Jeremy Shoebridge, Acting Head of Legal	Phone	s 9(2)(a)
Attachments	Yes (Annex 1)	Security Level	IN CONFIDENCE

Executive summary

1. As requested by your office, this briefing updates you on:
 - the outcome of the Waitangi Tribunal Regulatory Standards Bill (Bill) Urgent Inquiry (Wai 3470)
 - progress with resolving New Zealand Defence Force's (NZDF's) concerns about application of the Bill to NZDF secondary legislation.
2. It also confirms that the Ministry of Justice Bill of Rights vetting has been completed, and did not identify any inconsistencies with the New Zealand Bill of Rights Act 1990.

Summary of Waitangi Tribunal inquiry interim report

3. The Waitangi Tribunal (Tribunal) has issued an interim report following the Tribunal hearing held virtually on Wednesday, 14 May 2025.
4. The Tribunal has found that the Crown has breached the Te Tiriti o Waitangi/Treaty of Waitangi (te Tiriti/Treaty) principles of partnership and active protection by failing to meaningfully consult with Māori before Cabinet took significant decisions on the Bill.
5. It also found that the Crown would breach the te Tiriti/Treaty principles of partnership and active protection if it proceeds to enact the Regulatory Standards Act without first meaningfully consulting with Māori, and would be in breach of these same principles should it introduce the Bill to the House.



6. The Tribunal recommends that the Crown immediately halt the advancement of the Bill, to allow for meaningful engagement with Māori and the dialogue envisioned by the te Tiriti/Treaty partnership.
7. We note Cabinet will have the opportunity on Monday to discuss the report and its findings/recommendations.

Progress with resolving NZDF concerns

8. We understand that the Attorney-General has commissioned joint advice from the Parliamentary Counsel Office (PCO) and the New Zealand Defence Force (NZDF) on issues raised by NZDF about exclusion of NZDF secondary legislation from the provisions of the Bill.
9. We also understand that PCO and NZDF are recommending different approaches to resolving these issues:
 - NZDF's preferred option is that a specific decision be sought at Monday's Cabinet meeting [LEGALLY PRIVILEGED: s 9(2)(h)]
[REDACTED]
 - PCO's preferred option is that [LEGALLY PRIVILEGED: s 9(2)(h)]
[REDACTED]
10. We do not have any indication of the Attorney-General's likely response to the briefing.
11. [LEGALLY PRIVILEGED: s 9(2)(h)]
[REDACTED]
12. In addition, if there are significant changes required to the drafting as a result of the Cabinet discussion, PCO may not be able to make these changes in time for introduction on the same day.



Recommended action

13. We recommend that you:

a **note** the contents of this briefing

Noted

b **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: 16 May 2025

Hon David Seymour

Minister for Regulation

Date:



Purpose of report

14. As requested by your office, this briefing updates you on:
- the outcome of the Waitangi Tribunal Bill Urgent Inquiry (Wai 3470)
 - progress with resolving New Zealand Defence Force's (NZDF's) concerns about application of the Bill to NZDF secondary legislation.
15. It also updates you on the vetting of the Bill for consistency with the New Zealand Bill of Rights Act 1990.

Summary of Waitangi Tribunal interim report

16. On 7 May 2025, the Crown indicated to the Tribunal that a paper seeking approval to introduce the Bill, along with the draft proposed Bill, will proceed directly to Cabinet on 19 May 2025.
17. In light of this, the Tribunal confirmed that an urgent hearing on the Bill would be rescheduled from the original date of 6 June 2025 to 14 May 2025. The hearing was held virtually over the course of Wednesday, 14 May and the Tribunal considered submissions from Counsel for claimants and the Crown on whether the proposed process or content of the Bill may be in breach of te Tiriti/the Treaty.
18. The Tribunal has released its interim report under embargo today outlining its findings following the urgent hearing (interim report). The embargo will be lifted at 5pm.

Issues

19. The interim report focuses on two primary issues:
- a. Did the Crown's process in developing the Bill policy breach the principles of te Tiriti/the Treaty?
 - b. Given what we currently know of the proposed Bill, would enacting the Regulatory Standards Act constitute a breach of the principles of te Tiriti/the Treaty?

Key points

20. The Tribunal noted that it cannot say concretely what prejudice is likely to arise in terms of changes to Government law-making, in the absence of a full draft of the Bill, or further information on how the legislative design principles are to be applied.
21. In respect of the Bill process and content, the Tribunal found that:
- a. progressing the Bill significantly without targeted and meaningful engagement with Māori was a breach of te Tiriti/the Treaty principle of partnership, and did not appropriately balance the powers and obligations of the respective kāwanatanga and tino rangatiratanga spheres of authority



- b. progressing the policy in the face of clear opposition as to constitutional significance, and potential impacts on Crown ability to uphold te Tiriti/Treaty obligations, was a breach of the principle of active protection
 - c. developing the consultation document, and releasing accompanying material with redactions for legal privilege was not a breach of te Tiriti/the Treaty. However, the fact those engaging in the consultation process did not have a full picture reinforced Crown's obligations to engage in good faith directly with Māori
 - d. the Bill is constitutional in nature and inherently relevant to Māori, and will have an uncertain impact on te Tiriti/the Treaty principles of redress and active protection
 - e. given the potential risk the 'every person is equal before the law' sub-principle undermines legislation providing for substantive equality for Māori, the principles of equity and active protection are relevant to the Crown's obligation to meaningfully consult with Māori prior to introduction of the Bill
 - f. Crown actions in the Bill process without engaging with Māori adequately has been damaging to the Crown-Māori relationship and caused stress and uncertainty for Māori by the potential (but unknown) impacts of the Bill.
22. The Tribunal does not consider the Bill should progress in its current form and recommends that the Crown should engage in good faith consultation with Māori, including about options to improve regulatory standards outside the currently proposed Bill (further information under the *Recommendations* heading below).

Recommendations of the Tribunal

23. The overarching recommendation from the Tribunal is that there should be good faith dialogue between te Tiriti /Treaty partners on the issues the Bill seeks to address before further steps are taken to introduce the Bill.
24. The Tribunal suggests the following points be covered by that dialogue:
- a. all aspects of the Bill;
 - b. whether the Bill is necessary as a piece of legislation
 - c. the potential impacts of the Bill on Māori.
25. The Tribunal concluded that it is of particular importance that the Crown meaningfully engage with Māori on:
- a. What further exemptions in the Bill may be required to protect Māori rights and interests and ensure the Crown can fulfil its te Tiriti/Treaty obligations to Māori; and




- b. The potential impacts of the 'rule of law' legislative design principle on Government measures to pursue equitable outcomes for Māori.
26. We note Cabinet will have the opportunity on Monday, 19 May 2025 to discuss the report and its findings/recommendations.
27. We also understand your office has a copy of the interim report and so have not attached a further copy to this briefing. We note Cabinet will have the opportunity on Monday to address the report and its findings/recommendations.

Progress with resolving NZDF concerns

28. As we previously briefed you in MFR2025-112, NZDF has raised concerns about [LEGALLY PRIVILEGED s 9(2)(h)]
[REDACTED]
29. We understand that the Attorney-General has now commissioned joint advice from the Parliamentary Counsel Office (PCO) and NZDF on this issue in advance of Monday's Cabinet meeting, and sought advice from the CLO.
30. [LEGALLY PRIVILEGED s 9(2)(h)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].



31. We do not have any indication of the Attorney-General's likely response to the briefing.
32. [LEGALLY PRIVILEGED: s 9(2)(h)]

33. In addition, if there are significant changes required to the drafting as a result of the Cabinet discussion, PCO may not be able to make these changes in time for introduction on the same day.

Consistency with the New Zealand Bill of Rights Act 1990

34. We received the Attorney-General's advice about the consistency of the Regulatory Standards Bill with the New Zealand Bill of Rights Act 1990. The Attorney-General has concluded that the Bill appears to be consistent with that Act. The Attorney-General's advice is attached as **Annex 1**.

Annex 1 is available on the Ministry of Justice website:
<https://www.justice.govt.nz/assets/Documents/Publications/19052025-Regulatory-Standards-Bill.pdf>