

Memo

MFR2026-011



Ministry for Regulation
Te Manatū Waeture

Update on approach to exclusions to the Regulatory Standards Act

| | | | |
|-------------------------|-----------------|-----------------|-------------|
| Date | 22 January 2026 | Priority | High |
| Security classification | In confidence | Tracking number | MFR2026-011 |
| Attachments | No | | |

Action sought

| Required from | Action |
|-----------------------------------------------------------------------|--------------------------------------|
| Sam Purchas Senior Ministerial Advisor, Minister for Regulation | Note the enclosed information |

Contact for discussion if required

| Name | Position | Phone number | 1 st contact |
|--------------------|-------------------------------------------------|--------------|-------------------------------------|
| Olivia Cross | Principal Advisor, Regulatory Management System | s 9(2)(a) | <input type="checkbox"/> |
| Pip van der Scheer | Manager, Regulatory Management System | s 9(2)(a) | <input checked="" type="checkbox"/> |

Minister's office to complete

- Noted Needs change
 For discussion No further action

Comments



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Purpose

This memo summarises our proposed approach for identifying possible exclusions from the requirements under the Regulatory Standards Act 2025 (RSA), based on cost-effectiveness.

Background

1. In September 2025 the Minister agreed to a draft framework and process for identifying possible exclusions from the requirements of the RSA via an initial notice (MFR2025-235 refers).
2. The framework included a category of exclusions for legislation for which consistency assessment and review requirements would not be cost-effective or valuable. Legislation was put forward under this category by agencies on the basis that it was:
 - minor or technical
 - routine and involving little or no discretion on the part of the maker
 - administrative rather than substantive (i.e. not imposing restrictions on rights and liberties)
3. Following the Minister's consideration of BR2025-332 *Update and further decisions on exclusions to the Regulatory Standards Act* he indicated a preference for the threshold to exclude legislation to be higher than our initial assessment, with a particular focus on ensuring legislation that impacts on the public (including impacts to individuals or businesses), regardless of how minor or technical, is subject to RSA requirements.
4. To undertake further analysis, we are using the pool of legislation identified under this category as the starting point. We are then applying an additional framework to further assess the appropriateness of the identified legislation for exclusion based on the feedback provided by the Minister at the end of last year.



Parameters we are using to undertake additional analysis

5. We are using the following parameters to undertake additional analysis:

| Consideration being applied | Further explanation | Example legislation that would be included in the initial notice (i.e. not subject to CAS or regular review requirements) | Example legislation that would <u>not</u> be included (i.e. is subject to CAS or regular review requirements) |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Legislation would be included in the initial notice if it is minor or administrative and:</p> <ul style="list-style-type: none"> only applies to interactions between the broader state sector except where there is an obvious impact on the public only applies to how public service departments or Crown entities govern themselves | <p>This legislation would not have a direct public impact.</p> | <p>Section 49 - Official Information Act 1982: Power to amend Schedule 1 of the OIA – Amendments when agencies are established or disestablished.</p> <p>Section 10 - Flags Emblems and Names Protection Act 1981 - Rules relating to flying of New Zealand flags The rules for flying the NZ flag on government buildings</p> <p>Section 146 - Water Services Act 2021 Record-keeping requirements for monitoring and reporting purposes Only applies to internal record-keeping for council/water organisation and government networks i.e. interactions between broader state sector.</p> | <p>TBC.</p> |
| <p>Legislation would be included in the initial notice if it is administrative – i.e. secondary legislation that is merely giving effect to requirements in primary legislation</p> | <p>For example if legislation did one or more of the following it would not fit in this category:</p> <ul style="list-style-type: none"> legislation that is minor or technical but can impact on how individuals or businesses | <p>Section 518(3) Education and Training Act 2020 - Payment of salaries of relieving teachers and employment-based trainee teachers Allows for central payment for salaries for a relieving teacher or an employment-based trainee teacher when justified.</p> | <p>Amendments to the Electricity Industry Participation Code under section 38 Electricity Industry Act 2010. Code relates to a range of matters including competition, reliable</p> |

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|---------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| with negligible or no ongoing public impact | <p>operate or impose costs and obligations.</p> <ul style="list-style-type: none"> • in most cases legislation that sets out information requirements that impact on or create obligations for the public (including individuals and businesses) • legislation that provides for accreditation or similar processes • secondary legislation that sets definitions for the purposes of a piece of legislation that impacts the public or businesses • codes of conduct, ethics etc and industry regulations as they impose costs and obligations. • secondary legislation providing for the making of fees or levies unless it can only be done in accordance with specific formulas set out in the primary Act or there is no discretion on the amount of the fee or levy. | <p>Section 46 Building Act 2004 Copy of certain applications for building consent must be provided to Fire and Emergency New Zealand Requires applications to be provided to FENZ, does not create additional obligations.</p> <p>Section 233 Copyright Act 1994 Denial of copyright to persons connected with countries not giving adequate protection to New Zealand works Orders under this section lists countries that do not provide sufficient protection for New Zealand works.</p> | <p>supply of electricity and efficient operation of the electricity industry.</p> <p>Rules relating to Chartered professions Engineers Section 67 Registered Architects Act 2005 Board must make and have rules relating to matters including minimum standards of competence and a code of ethical conduct.</p> <p>Real Estate Agents Act (Professional Conduct and Client Care) Rules Section 14 Real Estate Agent Act 2008</p> <p>Passport (Fees) Regulations 2015 Passport Act 1992 As provides for the prescribing of fees with discretion.</p> <p>Consumer Information Standards Section 27 Fair Trading Act 1986 Consumer standards may require disclosure of information, and specify how and the form of information.</p> |



6. There is some primary legislation with empowering provisions that enable a broad range of matters to be provided for in secondary legislation. Some of those matters may be considered minor or administrative, while others enable broader matters, such as the setting of fees or creating offences, in secondary legislation. For example, the same secondary legislation may provide for the prescribing of forms (minor) but also provide for the making of fees. In such cases it is difficult to differentiate between minor and more substantive matters, and therefore we would not propose making specific exclusions to avoid inadvertently excluding substantive matters to which CAS requirements should apply.
7. One exception to this approach we will recommend in next week's briefing is when an empowering provision enables secondary legislation to provide for "any other" matters necessary to give effect to the Act. In those situations, if the remainder of the empowering provision meets the parameters set out above we would recommend an exclusion.
8. The briefing will also seek direction from the Minister on whether he would like to exclude secondary legislation if it for the purpose of making exemptions from legislative or other requirements. Exemption powers are provided in a range of legislation, generally to pre-emptively recognise that in some situations the regulations may be overly onerous, or address situations that may not have been contemplated when the legislation was first put in place. The ability to provide exemptions in those situations have the effect of reducing regulatory burdens. However, in some cases may also result in additional costs or obligations on others as a result. Some examples of these types of provisions include:
 - **Section 45 Takeovers Panel may grant exemptions, Takeovers Act 1993:** To address unintended consequences or circumstances not contemplated by the Takeovers Code, the Takeovers Act provides the Takeovers Panel with an exemption power for individuals, classes, transactions or offers.
 - **Section 12 Private Security Personnel and Private Investigators Act 2010:** Can declare certain people or classes of people are not private investigators for the purposes of the Act
 - **Exemptions and waivers under the Animal Products Act 1999:** Removes legal obligations.
9. As we are still working through the analysis there may be additional considerations needed. We will work through any matters as they arise and provide further advice in next week's briefing to the Minister if needed.

Next steps

10. We are also undertaking further work to implement the direction provided by the Minister relating to other types of legislation such as international agreements and emergency legislation as provided on BR2025-235.
11. A briefing will be provided to the Minister next week (Thursday 29 January) seeking his final agreement to exclusions from RSA requirements in the initial notice, based on our additional analysis.