Briefing Paper
MFR2025-238

Ministry for Regulation
Te Manatū Waeture

To	**Hon David Seymour, Minister for Regulation**		
Title	**RSB - Further advice and responses to FEC questions**	Number	**MFR2025–238**
Date	**1 September 2025**	Priority:	**High**
Action Sought	**Agreement to the recommendations in this briefing**	Due Date	**4 September 2025**
Contact Person	**Pip van der Scheer, Manager, Regulatory Management System**	Phone	s 9(2)(a)
Contact Person	**Olivia Cross, Principal Advisor, Policy**	Phone	s 9(2)(a)
Attachments	**Yes (Annex 1)**	Security Level	**IN CONFIDENCE**

Purpose

1. This briefing provides you with our proposed responses to requests made by the Finance and Expenditure Committee (FEC) following consideration of the departmental report on the Regulatory Standards Bill, for your information (**Annex 1**).

2. It also provides further advice in relation to matters identified during the process for drafting the revision-tracked version of the Bill in relation to:
   - exemption of Acts (as well as Bills) via notices
   - the exclusion of Acts resulting from Revision Bills
   - responsibility for appointing the Chair of the Regulatory Standards Board.

Recommended action

3. We recommend that you:

Responses to FEC requests

a	**note** the Ministry's proposed response to requests from FEC set out in Annex 1	*Noted*

Exemption of Acts via notices

b	**agree** to the Ministry providing FEC with a recommendation to clarify that the mechanism for	*Agree / Disagree*

	issuing notices to exempt classes of legislation is intended to apply to Acts as well as Bills	

Revision Bills and resulting Acts

c	**note** that Revision Bills prepared under subpart 3 of Part 3 of the Legislation Act 2019 are currently excluded from the Bill	*Noted*
d	**agree** to seek Cabinet agreement to an Amendment Paper during the Committee of the Whole stage that brings Acts resulting from Revision Bills within scope of the Bill	*Agree / Disagree*

Responsibility for appointing a Regulatory Standards Board Chair

e	**note** that the Bill as currently drafted would require Regulatory Standards Board members to elect their Chair	*Noted*

EITHER

f	**agree** to the Ministry providing FEC with a recommendation that the Bill provide that the Board Chair be appointed by the Governor-General, on the recommendation of the Minister for Regulation	*Agree / Disagree*

OR

g	**agree** to seek Cabinet agreement to an Amendment Paper during the Committee of the Whole stage that provides for the Board Chair to be appointed by the Governor-General, on the recommendation of the Minister for Regulation	*Agree / Disagree*
h	**note** parallel provisions for removing a Board Member as the Chair would also be provided for	*Noted*

Next steps

i	**note** that, should you wish to make the identified amendments during the Committee of the Whole stage, we will provide you with a draft Cabinet paper to seek necessary Cabinet decisions	*Noted*

j	**agree** that the Ministry for Regulation release this briefing at an appropriate time following the report back to the House by the FEC, 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: 1 September 2025	Hon David Seymour **Minister for Regulation** Date:

Ministry response to FEC questions

4. During consideration of the departmental report on the Regulatory Standards Bill, FEC requested:
    - a breakdown of the number of submissions in support of the Bill that specifically mentioned the three key themes on page 9 of the departmental report
    - further advice on how the Bill could clarify that the principles of good regulation provided for in clause 8 do not prohibit a decision-maker also considering any other principles that could be relevant in the making or review of legislation.
5. Consistent with our discussion with you on 13 August, our response to the second question notes that an additional provision is not legally necessary. However, it outlines some potential options, should FEC wish to add further clarification:
    - adding a guidance note clarifying that clause 8 is not intended to provide a comprehensive expression of principles that are relevant to the development of high-quality legislation
    - adding a new provision explicitly stating that that other principles, standards or guidelines relating to the development of high-quality legislation are not limited or affected by the principles set out in the Bill
6. These options are all consistent with the policy intent of the Bill and would not change the application of the principles.
7. The Ministry's full response to both questions from FEC is set out in **Annex 1**.

Further recommended amendments to the Bill

8. FEC agreed to all recommendations in the departmental report and instructed the Parliamentary Counsel Office (PCO) to draft the amendments into a revision-tracked version of the Bill. That redrafting has highlighted some minor issues we now suggest need to be resolved in the Bill, consistent with the policy intent.

Exemption of Acts via notices

9. The Bill provides two mechanisms for excluding legislation – either explicitly in the Bill or through the ability for the Minister for Regulation to issue notices to exempt classes of legislation following approval by the House.
10. During drafting of a simplified approach to give effect to exclusions in the Bill (as recommended in our departmental report and subsequently agreed by FEC), it has been identified there was an ambiguity about whether there is an ability to issue notices that exempt classes of existing Acts. This would mean that the notice-

making power could only be used to exclude Bills, new Acts resulting from an excluded Bill or secondary legislation.

11. This is inconsistent with the policy intent agreed by Cabinet that the Bill should enable the Minister for Regulation to issue a notice to exempt particular classes of legislation (i.e. any Bills, Acts, and secondary legislation), following approval by the House [CAB-25-MIN-0148 refers].

12. Cabinet's agreement did not distinguish between new and existing legislation with the intention that notices should be able to cover both. Therefore, we consider a clarification is within scope of the policy intent and does not require further Cabinet agreement.

13. With your agreement, we intend to recommend to the FEC that the Bill clarify the Minister for Regulation may issue notices excluding any Bills, Acts, and secondary legislation, following approval of the House.

14. A draft of our advice and recommendation is attached in **Annex 1**.

Revision Bills

15. Revision Bills are bills prepared under subpart 3 of Part 3 of the Legislation Act 2019. Their purpose is to update selected Acts to use plain, modern language and formatting to improve accessibility. They are not intended to change the effect of the provisions in the Act. Once revised, the bill is introduced into Parliament for enactment and repeal of the original Act.

16. Revision Bills are a bespoke type of Bill. Examples of enacted Revision Bills are the Partnership Law Act 2019 and the Contract and Commercial Law Act 2017. The revision programme for 2024 – 2026 expects three revision bills to be enacted: the Land Valuation Proceedings Bill, Protected Flags, Emblems, and Names Bill and the Valuers Bill.

17. Revisions Bills are one type of Bill explicitly excluded from the Regulatory Standards Bill, on the basis that they do not make substantive policy changes. Given Revision Bills are not intended to change the effect of provisions, the RSB does not require Revision Bills to include consistency assessments. However, the RSB by default also excludes Acts resulting from excluded Bills, meaning the resulting replacement Act would be excluded.

18. While excluding resulting Acts is appropriate in other cases such as Imprest Supply or Appropriation Bills, excluding the resulting Acts from Revision Bills (i.e. the new primary Acts themselves), does not align with the overall policy intent. We therefore recommend amending the Bill to ensure that Acts resulting from Revision Bills are not excluded by default.

19. As Cabinet has previously agreed that all excluded Bills would result in excluded Acts [CAB-25-MIN-0148 refers] a new Cabinet decision would be required in order to make this change.

20. There is insufficient time to seek Cabinet agreement and progress a change through the Select Committee process, as FEC is considering the revision-tracked version of the Bill on 10 September. This means any amendment would need to be made via an Amendment Paper during the Committee of the Whole.

21. If you agree to proceed with this amendment, we will prepare a draft Cabinet paper seeking the necessary policy approvals to enable drafting of the Amendment Paper.

Responsibility for appointing the Chair of the Regulatory Standards Board

22. The Bill as currently drafted is silent on how the Chair of the Regulatory Standards Board would be appointed. Given the new provisions relating to the independence of the Board, this means that the Chair of the Regulatory Standards Board would need to be selected by the Board members themselves, for any period they think fit. The Minister for Regulation and Cabinet would not have a direct role in appointing the Chair.

23. If this is not your preferred outcome, then the Bill would need to be amended to explicitly provide that the Chair appointment would be made by the Governor-General, on the recommendation of the Minister for Regulation, consistent with provisions for the appointment of Board Chairs for independent Crown entities (ICEs). This would also require parallel provisions for removing a Board Member as the Chair.

24. This amendment could be made in one of two ways:

- *by recommending this amendment to FEC for incorporation in the revision-tracked version of the Bill*. In our view, such an amendment is consistent with the overall intent of the recommendations in the departmental report to align the Board appointment and removal provision with that of ICEs, noting that there is no specific Cabinet decision on Board Chair appointments or removals. Our view is that this is a minor policy decision within the realm of your decision-making powers that does not require further Cabinet agreement.

- *via Amendment Paper during the Committee of the Whole stage*. Alternatively, given the expressed interest amongst some of your Ministerial colleagues regarding the independence of the Board, you might want to consider taking an Amendment Paper to Cabinet. This approach allows a higher degree of visibility around this decision and would allow Cabinet to confirm that the Minister for Regulation will recommend to the Governor-General who should be appointed and removed as Chair of the Board.

Next steps

25. We are required to provide our advice in Annex 1 to FEC by close of play Friday 5 September, ahead of its consideration of the revision-tracked version of the Bill on Wednesday 10 September. Should you wish to proceed with the clarification on the Chair appointment and removal process without an Amendment Paper, we will include those matters in that advice to FEC.

26. Should you wish to proceed with an Amendment Paper relating to Revision Bills or the Chair process, we will prepare a draft Cabinet paper seeking the necessary policy decisions and provide you with further details of the timing and steps required. We would anticipate seeking one set of Cabinet decisions to minimise any delays to the progression of the Bill through the House.

27. The timing would be tight and require both policy approvals and agreement to introduction of an amendment paper to go directly to Cabinet. By doing so we anticipate necessary decisions could be made and an Amendment Paper prepared for the end of October, still meeting the timeframes for the Bill to be enacted by 1 January 2026, subject to necessary House time.

Ministry for Regulation
Te Manatū Waeture

Regulatory Standards Bill

Further advice and responses to questions from the Finance and Expenditure Committee

[X] September 2025

Contents

Background

1. This document provides the Ministry for Regulation’s responses to questions received from the Finance and Expenditure Select Committee at the Committee’s meeting on 13 August 2025.

2. In addition, we are providing a further recommendation to clarify a matter that has been identified during drafting of the revision-tracked (RT) version of the Bill.

Submissions in support by theme

3. The Committee requested that the Ministry provide the number of submissions in support of the Bill that specifically mentioned the following three themes summarised on page 9 of the Ministry's departmental report:
    - the Bill promotes greater transparency and accountability
    - the Bill will help to improve the quality of regulation; and
    - the Bill will help reduce unnecessary regulatory burden and compliance costs, supporting greater productivity and growth.

4. The numbers set out below have been provided by Allen + Clarke, who the Ministry for Regulation contracted to assist with submission analysis.

5. Allen + Clarke identified 1,317 submissions as 'substantive' out of the 3,000 submissions that were coded and analysed to produce the summary of main themes reflected in the departmental report. Of those 1,317 submissions, 178 were identified as either supporting or conditionally supporting[1] the Bill. For further details of this process, please refer to the approach to submission analysis set out on pages 3 to 5 of the departmental report, with explanation of the methodology followed set out in Annex Two.

Theme	Number of substantive submissions identified as supporting or conditionally supporting the Bill that cited this theme	Percentage of substantive submissions identified as supporting or conditionally supporting the Bill that cited this theme[2]
The Bill promotes greater transparency and accountability	53	30%
The Bill will help to improve the quality of regulation	29	16%
The Bill will help reduce unnecessary regulatory burden and compliance costs, supporting greater productivity and growth	See comment below	

[1] Conditional support refers to submissions that supported the Bill in principle, but made recommendations for change.
[2] Out of the 178 submitters identified as either supporting or conditionally supporting the Bill from the 3,000 coded submissions.

6. Allen + Clarke specifically coded submissions that made general comments relating to the first two themes, and were therefore able to supply us with the numbers in the table above. However, they did not specifically code for the third theme, due to the broader nature of the theme.

7. Following the Committee's request the Ministry for Regulation therefore reviewed the 178 submissions and identified 66 submissions (37%) that made comments relevant to this theme.

8. Please note that these numbers should not be directly compared to the numbers provided by Allen + Clarke, as there may be some small differences in the methodology used and the threshold for inclusion. For instance, where submitters gave these reasons in relation to expressing support for a particular clause, we understand that Allen + Clarke recorded this feedback against that clause, rather than in its analysis of general sentiment, whereas we counted any mention of the theme in our analysis.

Providing clarification that the principles are not intended to be comprehensive

9. The Committee requested further advice on how the Bill could clarify that the principles in clause 8 do not exclude decision-makers from considering any other principles that could be relevant in the making or review of legislation.

Background – consideration of additional principles

10. The departmental report outlines the additional principles that submitters recommended be added to the Bill, including principles from or relating to:
    - the Treaty/te Tiriti
    - existing legislation or guidance including NZBORA, the Human Rights Act 1993, and the Legislation Guidelines
    - the precautionary principle or considerations of public interest/harm
    - kaitiakitanga, environmental stewardship, or climate change mitigation and adaptation
    - natural justice, access to justice, or consistency with international law or obligations
    - intergenerational wellbeing, health and wellbeing, equity, equality and fairness,
    - proportionality, accountability, and transparency
    - protection for animals
    - protection and development of the official languages of New Zealand (including New Zealand Sign Language)
    - transparency relating to lobbying activity
    - effective and efficient implementation.
11. In our consideration of submitters' views, we noted that:
    - the intent is that the principles provided for in the Bill are selective, and are not intended to be a comprehensive list of all principles that could be considered in relation to the design and content of legislation
    - outside the good law-making principles, the principles are intended to focus narrowly on consideration of existing interests and liberties, including property rights, in the development and review of legislation.
12. Most of the additional principles recommended by submitters are not consistent with that intent, as they do not relate either to the impact of legislation on existing interests and liberties, or to the specific processes and considerations to be made when developing legislation.

13. Given that, the departmental report recommended only one addition to the principles recommended by submitters – relating to identification and development of effective arrangements for implementing legislation.

Clarification that principles are not intended to be comprehensive

14. As noted in the departmental report, nothing in the Bill prevents any additional principles from being considered in the process of lawmaking, or in the review of existing law.

15. Clause 26 of the Bill already makes it clear that the Act does not impose limits, restrictions or requirements in connection with the nature, extent or adequacy of any reasons for inconsistency with the principles included in a CAS or a statement from the relevant maker. Ministers and other makers of legislation therefore have considerable flexibility to explain any reasons for inconsistency with the principles of responsible regulation by referencing other principles or factors that may have been considered during the law making or review process.

16. Adding a provision explicitly stating that the principles are not comprehensive, or that other principles are able to be considered in relation to law-making, is therefore not legally necessary.

17. If the Committee wished to add further clarification on this point, it could consider adding a guidance note clarifying that clause 8 is not intended to provide a comprehensive expression of principles that are relevant to the development of high-quality legislation. This would provide clarification without adding an extra provision to the Bill, which may be a more appropriate approach given that such a provision is not legally necessary.

18. Alternately, the Committee could consider adding a new provision explicitly stating that other principles, standards or guidelines relating to the development of high-quality legislation are not limited or affected by the principles set out in the Bill. The reference to 'other principles' would allow for reference to principles in statute or common law, or set out in administrative mechanisms such as Cabinet circulars.

Additional clarification – excluded legislation

19. In our departmental report, we recommended simplifying the approach used to give effect to exclusions to reflect the intent that these matters are entirely excluded from the scope of the Bill. This would help reduce complexity, provide increased clarity, and ensure consistency across the identified exclusions.

20. However, restructuring the exclusions provisions has highlighted that the Bill would not currently allow for existing Acts to be excluded via the notice mechanism, while Bills and secondary legislation can be. This is inconsistent with the policy intent which was to enable the notice mechanism to be used in relation to all legislation, including existing primary legislation. A change would align the approach for existing Acts with that provided for Bills and secondary legislation.

Recommendation:

21. We recommend an additional provision is included to provide clarification that notices can be used to exclude classes of Acts, consistent with the policy intent.

22. This could be achieved by adding Acts of a class specified in a notice to Part 2 of the new Schedule 1A, similar to how the notice powers are currently listed in Parts 1 and 3 of the new Schedule.