

Regulatory Impact Statement: providing certainty on legislative references to the Treaty of Waitangi

Decision sought	Analysis produced for the purpose of informing Cabinet policy decisions.
Agency responsible	Ministry of Justice
Proposing Ministers	Hon Paul Goldsmith, Minister of Justice, in discussion with the Ministerial Oversight Group, also including: • Hon Shane Jones, Deputy Leader, New Zealand First • Hon Judith Collins KC, Attorney General • Hon Tama Potaka, Minister for Māori Crown Relations.
Date finalised	13 November 2025

The Minister of Justice’s substantive proposals for changes to references to the Treaty principles in legislation are:

- repeal the following Treaty provisions, subject to the agreement of each responsible Minister as appropriate:
 - *Section 536A(1), Education and Training Act 2000.*
 - *Section 6(d), Energy Efficiency and Conservation Act 2000.*
 - *Section 4, Land Transport Management Act 2003.*
 - *Section 4, Organic Products and Production Act 2023.*
 - *Section 3AB, Smokefree Environments and Regulated Products Act 1990.*
- amend (or repeal and replace) the following Treaty provisions:
 - *Section 14(a), Data and Statistics Act 2022.*
 - *Section 8, Hazardous Substances and New Organisms Act 1996.*
- in situations where a Treaty weighting standard is needed, no higher standard than “take into account” should be used. This change impacts the 13 provisions set out on page 49.

Summary: Problem definition and options

What is the policy problem?

The Government is concerned that some existing Treaty provisions do not appear to be based on robust and detailed Treaty and policy analysis, resulting in indeliberate variability between provisions and uncertainty as to their legal application.¹ The Government considers that this

¹ CAB-24-MIN-0346.

uncertainty may increase the risk of litigation and non-compliance, and may discourage economic investment.

What is the policy objective?

The objective is to give effect to Cabinet’s decision to ensure that where it is appropriate to encapsulate the Treaty or the Treaty relationship in legislation, the provisions are clear as to how the Treaty applies in the context of each legislative regime, to reduce uncertainty and support better compliance.

What policy options have been considered, including any alternatives to regulation?

For each provision in scope of the review, the following options have been considered:

Option One – Retain (Status Quo)

The existing provision is retained as currently drafted. Provisions would be reviewed gradually over time as legislation is updated or replaced. The Treaty Provisions Oversight Group (TPOG) would continue to undertake its function of supporting more considered and coherent approaches to providing for the Treaty in new legislation.

Option Two – Non-legislative change

The existing provision is retained and non-legislative measures are implemented to improve clarity on the purpose and effect of the provision.

Option Three – Amend to be more prescriptive

The provision is amended (or replaced) to prescribe how the Treaty is relevant to the Act e.g. by:

- being more prescriptive about what actions are required to meet the Crown’s Treaty obligations. This could include providing more detail about how the Treaty is provided for under the Act already, or introducing additional operative measures; and/or
- specifying which Treaty principles and/or specific Māori rights and interests are considered relevant.

Further policy work would be required to develop more defined policy proposals in line with this option.

Option Four – Repeal

The existing provision is repealed in its entirety.

Option Five – Amend all Treaty standards to be no higher than “take into account”

This option was a late addition proposed by the Minister for Justice. Under this option the provision is amended so that the standard of Treaty obligation is no higher than to “take into account” the Treaty. This option is relevant to provisions where the current standard is higher than “take into account”, specifically those with the Treaty standard “give effect to” or “honour”. It does not apply to purpose provisions, long titles, and appointment provisions as those provisions do not typically impose standards or obligations.

What consultation has been undertaken?

The Minister of Justice directed a process that has not included engagement with iwi and hapū (as Treaty partners), the general public, or external stakeholders.

Consultation with iwi and hapū is one of the principal mechanisms through which the Government discharges its responsibility to make informed decisions and act in good faith towards Māori. There is a strong argument that the Treaty and Treaty relationship gives rise to

an obligation to consult Māori early on this review, including as part of the policy development process.

In its report, *Ngā Mātāpono*, the Waitangi Tribunal made the following findings relating to consultation with Māori on the review:²

- a lack of Māori engagement in the process and involvement in decision-making on clauses would be inconsistent with the principle of partnership.
- the timeframe proposed for the review, and lack of adequate time for engagement with Māori would be inconsistent with the principle of partnership.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

For the following provisions, the preferred option in the Cabinet paper is Option Four (repeal) and the preferred option in this RIS is Option One (status quo):

- *Section 4, Land Transport Management Act 2003.*
- *Section 4, Organic Products and Production Act 2023.*
- *Section 3AB, Smokefree Environments and Regulated Products Act 1990.*

For the following provisions the preferred option in the Cabinet paper is Option Four (repeal) and the preferred option in this RIS is Option Three (amend to be more prescriptive):

- *Section 536A(1)(ii), Education and Training Act 2020.*
- *Section 6(d), Energy Efficiency and Conservation Act 2000.*

For the following provisions the preferred option in the Cabinet paper is Option Three (amend to be more prescriptive) and the preferred option in this RIS is Option One (retain the status quo):

- *Section 14(a), Data and Statistics Act 2022.*
- *Section 8, Hazardous Substances and New Organisms Act 1996.*

Option Five is not a preferred option in this RIS. Option Five is the preferred option (or one of a combination of preferred options) in the Cabinet paper for the 13 provisions set out on page 49.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

In summary, costs of the preferred options in the Cabinet paper include:

- damage to the Māori-Crown relationship as Māori have not been consulted on any of the proposals and because in some instances the preferred options in the Cabinet paper may negatively impact Māori interests.
- option Five has the potential for wide-ranging impacts on Māori social, cultural, economic, and environmental interests. It has not been possible to fully explore or quantify those impacts in the time available.
- proposed repeals may reduce legal certainty as it will become less clear how Parliament considers the Treaty to be relevant to each Act.

² These findings are based on a May 2025 Cabinet paper which had proposed Māori engagement prior to Cabinet policy decisions (CAB-25-MIN-0144).

- the proposals to amend section 14(a) of the Data and Statistics Act 2022 and section 8 of the Hazardous Substances and New Organisms Act 1996 to be more prescriptive in line with Option Three could limit flexibility in a way that is impractical and negatively impacts Māori interests.
- expected increase in litigation costs for the Crown and Māori as Māori may file new claims with the Waitangi Tribunal and the Courts.
- fiscal costs for Crown agencies, Crown entities, and other statutory bodies related to implementation and administration.
- fiscal costs for Māori to understand how proposed changes will affect their interests.

Benefits (Core information)

There is a possibility that amendments to section 14(a) of the Data and Statistics Act 2022 and section 8 of the Hazardous Substances and New Organisms Act 1996 could result in improved certainty on how the Treaty is to apply, if amendments can be designed that will improve certainty, while enabling sufficient flexibility to maintain a responsive system.

Balance of benefits and costs (Core information)

Overall, the suite of proposals in the Cabinet paper carries significant risks due to the lack of consultation with Treaty partners and the potential for some proposals to negatively affect Māori interests. The potential benefits of the proposals are low and do not outweigh costs to the Māori-Crown relationship and Māori interests.

There is limited evidence available to support the assumption that existing provisions are causing uncertainty and that the proposals would result in greater certainty. In all instances, repeal is likely to increase, rather than decrease, uncertainty. This is consistent with advice from the independent Advisory Group to the review which was provided to officials.

Option Five has no apparent benefits and carries significant risk to the Māori-Crown relationship, including because it is likely to be seen as intended to reduce the legislative Treaty protections available to Māori. As this was a late proposal from the Minister of Justice, there has been insufficient time to fully understand the impacts of this proposal for each provision affected.

Implementation

If Cabinet approves the proposed measures, a Bill or Bills will likely be enacted in mid-2026. Following commencement, any changes would need to be implemented by those responsible under each Act.

Where repeals are proposed, the individuals, groups and entities who are currently responsible for complying with those provisions will need to consider how/whether this impacts current operations under each Act. As identified in the analysis, repeal would have uncertain legal effect meaning in most instances it would be unclear if it would require a change to current operations.

The Cabinet paper notes that identifying specific measures to amend section 14(a) of the Data and Statistics Act 2022 and section 8 of the Hazardous Substances and New Organisms Act 1996 will require subsequent policy decisions, and that depending on the extent of additional work required, amendments may need to be progressed through an alternative legislative change process. The Minister of Justice is seeking Cabinet authorisation to make further policy decisions on such matters.

Decisions on how to effectively implement these amendments would benefit from consultation with key stakeholders, including Māori as Treaty partners and other statutory bodies that will be directly responsible for the ongoing operation and/or enforcement of any changes.

Limitations and Constraints on Analysis

The Minister of Justice directed a process that has not included engagement with iwi and hapū (as Treaty partners) or relevant stakeholders to understand their views and shape policy options.

The timeframes for analysis have been limited for a review of such a broad range of legislation (19 Acts sitting across 13 agencies). Cabinet agreed to the purpose and scope of the review in September 2024. In May 2025, Cabinet agreed to a process for the review, and established an independent advisory group to advise Ministers on whether to retain, amend or repeal provisions with the Ministry of Justice acting as secretariat. The Advisory Group met for the first time in June 2025 and reported back to the Minister of Justice on 8 August 2025. The limited time available for the Ministry of Justice to conduct in-depth analysis has meant:

- there has been limited opportunity to test assumptions underpinning the problem definition and proposed response, and to investigate and understand intended or unintended consequences.
- it has not been possible to undertake a first principles Treaty analysis of all relevant Acts to determine whether the Treaty is being appropriately provided for or not. In place of this, the approach taken has been to identify what information is available about the reasoning behind the provision at the time it was introduced alongside some basic Treaty analysis.
- additional work is required to be more specific about potential changes under Option Three.

Option Five was added recently and has increased the number of provisions in scope of this RIS by 13. It has not been possible in the time available to undertake in-depth analysis of the impact of this change for each provision affected, or to consult with impacted agencies.

The suite of proposals to repeal provisions (other than section 536A(1)(ii) of the Education and Training Act 2020) was also a recent proposal from Ministers. Analysis of those proposals has therefore been carried out under significant time pressure and it has not been possible to consult impacted agencies.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager's signature:



Caroline Greaney
Deputy Secretary – Policy
Ministry of Justice
13/11/2025

Quality Assurance Statement

Reviewing Agency: Ministry of Justice

QA rating: Does not meet

Panel Comment:

The Ministry of Justice's Regulatory Impact Assessment Quality Assurance Panel (QA Panel) has reviewed the *Regulatory Impact Statement: Providing certainty on legislative references to the Treaty of Waitangi* prepared by the Ministry of Justice. The QA Panel considers that the information and analysis summarised in the RIS does not meet the quality assurance criteria.

The review has considered a broad range of legislation. The QA Panel considers that the constraints and limitations imposed by Ministerial direction in terms of the options to be considered, timeframes, and the lack of consultation, especially with iwi and hapū as Treaty partners, are material. The Panel considers these constraints have meant that the analysis is not sufficiently developed to form a basis for Ministers to make informed decisions. This has been exacerbated by the late inclusion of several significant proposals.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Background to the Review

1. The 2023 coalition agreement between the National Party and New Zealand First included a commitment to “conduct a comprehensive review of all legislation (except when it is related to, or substantive to, existing full and final Treaty settlements) that includes ‘The Principles of the Treaty of Waitangi’ and replace all such references with specific words relating to the relevance and application of the Treaty, or repeal the references”.³
2. Following this, in September 2024, Cabinet agreed to a review for the purpose of ensuring that where it is appropriate to encapsulate Te Tiriti o Waitangi | the Treaty of Waitangi or the Treaty relationship in legislation, these provisions are clear about how the Treaty applies in the context of each legislative regime, to reduce uncertainty and support better compliance.⁴
3. In May 2025, Cabinet agreed to establish a Ministerial Oversight Group to make in principle policy decisions on the review, subject to Cabinet confirmation. Cabinet also agreed to establish an independent Advisory Group to advise Ministers on whether to retain, amend, or repeal references in legislation to the Treaty principles. The Advisory Group delivered its final report on 8 August 2025. The Minister for Justice is now seeking Cabinet agreement to policy proposals, in discussion with the Ministerial Oversight Group.

Te Tiriti o Waitangi | The Treaty of Waitangi

4. Te Tiriti o Waitangi | the Treaty of Waitangi (referred to as ‘the Treaty’ for the purposes of this document) is regarded as a founding document of government in New Zealand.⁵ The Treaty was an exchange of promises between sovereign peoples, with rights and obligations for each party. The Court of Appeal has described the Treaty relationship as “akin to a partnership” and one where each party acts in “the utmost good faith which is the characteristic obligation of partnership.”⁶

The Treaty Principles

5. The Treaty principles were first mentioned by Parliament in the Treaty of Waitangi Act 1975. The Treaty principles themselves were not defined in that Act and have instead been developed by the Tribunal and courts through years of jurisprudence. The Courts and Tribunal have emphasised that the Treaty principles are not set in stone and that they may change as the Treaty partnership evolves.
6. Although there is no single set of principles, some of the core principles that have emerged through the courts and Tribunal reports are:

³ At page 10.

⁴ CAB-24-MIN-0346.

⁵ Cabinet Office Cabinet Manual 2023 at [1].

⁶ *New Zealand Māori Council v Attorney General* [2013] NZSC 6.

- *Partnership* - under which the Crown and Māori both have a positive duty to act fairly, honourably, and in good faith towards one another.
- *Active Protection* - which places upon the Crown a positive duty to protect Māori interests and taonga.
- *Redress* - which requires the Crown to redress the wrongs it has perpetrated against its Treaty partner.

Application by the Courts

7. The Treaty itself is not directly justiciable in the courts unless given force of law by an Act of the New Zealand Parliament. However, the Courts have indicated that when interpreting ambiguous legislation, they would not ascribe to Parliament an intention to permit conduct inconsistent with the principles of the Treaty. The Courts may consider relevant legal or moral obligations arising from the Treaty which the Crown as a Treaty partner should comply with as far as it is reasonable and practicable to do so.⁷
8. In some contexts, the Treaty principles have been found to be a mandatory consideration for decision makers even where there is no statutory reference.⁸

Treaty provisions in legislation

History

9. Following the Treaty of Waitangi Act in 1975, Parliament next referred to the Treaty principles in the State-Owned Enterprises Act 1986. Section 9 of that Act states that nothing in the Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi. This was significant because it was the first time an Act restricted actions of the Crown to measures that are consistent with the principles of the Treaty. This provided the courts with a specific basis on which to assess Crown actions against the principles.
10. Since then, the incorporation of the Treaty and its principles into legislation has become a common method by which Parliament has given legal effect to the responsibilities of the Crown under the Treaty.
11. Since the late 1980s, Treaty provisions have appeared in a wide range of legislation touching on matters from environmental planning and climate change to public finance, education, health, and housing. These provisions have been incorporated either when Acts are originally passed or when they are amended.
12. From the late 1980s until 2000, Treaty provisions tended to refer to the principles of the Treaty rather than the texts of the Treaty. However, from 2001 onwards, both the principles of the Treaty and the Treaty texts have been referred to in legislation. There are a small number of Acts that refer to both.
13. Differences in the standards of Treaty obligations in these provisions have also emerged over time. Treaty “standards” are the words used in a provision that indicate the strength or the nature of the Treaty obligation. For example, some provisions might require

⁷ *Huakina Development Trust v Waikato Valley Authority* (1987).

⁸ *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board* [2021] NZSC 127.

someone to “give effect to” the Treaty principles. This standard is considered stronger than one that requires someone to “have regard to” or “take into account” the Treaty principles.

Current state

14. There are now approximately 40 statutes that refer specifically to the Treaty principles (excluding settlement legislation and secondary legislation). There are also approximately 22 statutes that refer to the Treaty more broadly.
15. Treaty provisions generally come under one of the following categories:
 - **Operative Treaty provisions** create obligations on decision makers or persons performing functions under an Act to do certain things with respect to the Treaty or the principles of the Treaty. They may be either *general* (relating to anyone making decisions or performing functions under an Act) or more *specific* (applying only to a specific person or group, a particular type of decision or the performance of a particular function). There are several long-standing operative Treaty provisions with well-established jurisprudence.
 - **Descriptive Treaty provisions** describe how the Crown’s Treaty responsibilities are given effect to in the Act. They are intended to provide clarity by setting out the actions or considerations Parliament has determined are required in order for the Crown to comply with its Treaty obligations in the particular context.

Despite a generally higher degree of specificity compared to operative provisions, descriptive provisions are unlikely to codify or exhaust the relevance of the Treaty, as the courts generally resist constraining the relevance of the Treaty in statutory interpretation.⁹

- **Purpose and long title provisions** may also refer to the Treaty and its principles. Purpose provisions have a legal effect on the nature of powers and duties under legislation. Long titles act similarly to purpose provisions in that they explain the reasons or background to the legislation. These provision types do not require anything specific of decision-makers or actors in the legislative regime but do bear on the interpretation of substantive provisions that require things of legislative actors.
- **Capability provisions** (sometimes known as appointment provisions) requiring an individual (such as a commissioner), or one or more members of a group (generally agencies or boards), to have capability in relation to the Treaty have also become common.

Design

16. The Legislation Design and Advisory Committee (LDAC) suggests that where legislation has the potential to come into conflict with the rights or interests of Māori under the Treaty, additional measures should be considered to ensure recognition of the principles of the Treaty or the particular rights concerned.¹⁰
17. What is required to achieve consistency with the Treaty and its principles or prevent inconsistency is a fact-specific exercise based on the specific context of each legislative

⁹ *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board* (2021) NZSC 127.

¹⁰ *Legislation Guidelines*, Legislation Design and Advisory Committee, 2021, 31.

regime. LDAC advises that well-designed legislation can provide certainty as to Treaty rights and obligations but also build in sufficient flexibility to enable them to adapt over time.

18. Cabinet established the Treaty Provisions Oversight Group (TPOG) in 2022 to support more considered and coherent approaches to providing for the Treaty in legislation and to help address concern that there was unexplained variation between provisions.¹¹ Cabinet guidance states that if proposals include legislation that specifically refers to, or proposes a clause relating to, the Treaty of Waitangi, then TPOG must also be consulted.¹²
19. TPOG helps agencies apply its guidelines. A central principle guiding TPOG's advice is that there is no "one-size-fits-all" approach to Treaty provisions and which measures are required is a matter to be worked out in the context of each Bill.

Application

20. The development of Treaty provisions draws from and contributes to the broader Māori—Crown relationship and inherently touches on legal and constitutional matters.¹³ Treaty provisions are significant because they impact understanding of the Treaty and its place in the legal system.¹⁴
21. How Treaty provisions are subsequently operationalised or implemented comes down, in the first instance, to those responsible under a given Act. This covers a range of different actors, including chief executives, statutory boards, independent commissions, commissioners, and Crown entities.
22. Many Crown agencies and other bodies with relevant responsibilities have developed operational guidance to support their implementation of these provisions, especially those which provide for greater discretion. The approach taken may also be influenced by emerging jurisprudence from the Waitangi Tribunal or the Courts, or as the result of feedback from Treaty partners.
23. The courts play an important role in interpreting Treaty provisions. Where Treaty provisions are considered by the courts in the context of judicial review of decision-making under an act, the courts will not attempt to dictate a particular solution, rather they will review the proposed or actual Crown action to assess its consistency with the provision. Where the decision challenged is judged reasonable, the challenge tends to fail.¹⁵
24. The courts will generally resist constraining the relevance of Treaty principles in statutory interpretation. For instance, descriptive provisions are unlikely to codify or exhaust the relevance of Treaty principles to decision-making.¹⁶

Nonetheless, the choice of words used in a Treaty clause

¹¹ CAB-22-MIN-0064.

¹² See CabGuide, at www.dpmc.govt.nz.

¹³ *Providing for the Treaty of Waitangi in Legislation and Supporting Policy Design*, Te Arawhiti, 2022, 4.

¹⁴ *Providing for the Treaty of Waitangi in Legislation and Supporting Policy Design*, Te Arawhiti, 2022, 18.

¹⁵ Matthew SR Palmer, *Indigenous Rights, Judges and Judicial Review in New Zealand*, published in *The Frontiers of Public Law* (2019).

¹⁶ *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board* (2021) NZSC 127.

remains significant, and tailored drafting is an important means of communicating parliamentary intent.

What is the policy problem or opportunity?

The Government has provided its view on the policy problem

25. The Government is concerned that some existing Treaty provisions do not appear to be based on robust and detailed Treaty and policy analysis, resulting in indeliberate variability between provisions and uncertainty as to their legal application.¹⁷ The Government considers that this uncertainty may increase the risk of litigation and non-compliance, and may discourage economic investment.
26. The Government considers there is an opportunity to ensure that, where it is appropriate to encapsulate the Treaty or Treaty relationship in legislation, these provisions are clear about how the Treaty applies in the context of each legislative regime, to reduce uncertainty and support better compliance.¹⁸
27. The Cabinet paper states that, in most cases, requirements to “give effect” to the Treaty principles do not promote the balanced consideration of all relevant factors in decision-making. It proposes that where a Treaty standard is needed, no higher standard than “take into account” should be used.

There has been limited opportunity to test the assumptions underpinning these views

28. As indicated in the Limitations and Constraints section at page 5 above, timing of the Advisory Group’s advice has limited the extent to which officials have been able to further investigate the problem as defined by the Government, including through consultation with hapū and iwi (as Treaty partners), and the general public.
29. Understanding the views of Māori and the general public is particularly pertinent in this context given the constitutional relevance of Treaty provisions, which impact our collective understanding of the Treaty and its place in the legal system.
30. The purpose and process of the review that is the subject of this RIS was recently considered by the Waitangi Tribunal. The Tribunal’s report, *Ngā Mātāpono*, highlights that Māori claimants consider Treaty provisions to provide some protection for Treaty interests, and there is concern over any change that would seek to limit or remove Treaty provisions from legislation.
31. The 2013 report of the Constitutional Advisory Panel highlights that there is some tension between members of the public who are apprehensive about the perceived uncertainty of the Treaty principles, and those who see benefit in allowing flexibility for the Māori-Crown relationship to continue to develop and to address issues as they arise.¹⁹ This report reflects a range of public views gathered by the Panel at over 100 meetings, on its Facebook page, and from 5,259 written submissions.

Fundamental constitutional principles are a well-established feature of New Zealand law

¹⁷ CAB-24-MIN-0346.

¹⁸ Ibid.

¹⁹ Constitutional Advisory Panel New Zealand’s Constitution: *A Report on a Conversation* | *He Kōtuinga Kōrero mō Te Kaupapa Ture o Aotearoa* (November 2013) at 31.

32. The Treaty principles are one aide to statutory interpretation and are not too dissimilar to the range of constitutional principles in New Zealand law (such as the rule of law and rights now affirmed in the Bill of Rights Act 1990). As with the Treaty, many of these principles exist in the common law and are reflected in legislation to varying levels of abstraction.²⁰

In many cases, variability of Treaty provisions is by design

33. The variability between Treaty provisions can be understood in part as a reflection of the broad and flexible nature of the Treaty and Treaty principles, and the ongoing constitutional dialogue about how they should be given effect.
34. A particular formulation of a Treaty provision may reflect how much was understood about what a Treaty-consistent approach in a particular context looked like at the time the provision was designed, and the particular Treaty-related issues Parliament was seeking to address. New Treaty-related issues, and ways of addressing them through legislation, continually emerge.
35. For more recent provisions, flexibility can be deliberate. Current best practice guidance for legislative design recommends bespoke provisions that seek to provide certainty as to rights and obligations but also build in sufficient flexibility so that they are enduring.²¹
36. That said, not all variability across recent provisions appears to be by design. This is related to the problem TPOG was set up to address. However, while TPOG deals with any new legislation or amendments on a case-by-case basis, it is not tasked with undertaking a comprehensive review of all existing references to the Treaty in legislation.

There is limited evidence available about the scale of impact of this problem

37. Legal claims can and do arise as a result of these provisions, which involve legal costs for the Crown and claimants. However, while historically the courts undertook significant work to interpret the meaning of these provisions (particularly general operative provisions) the jurisprudence is now relatively well settled. Cases of judicial review invoking the Treaty are most often unsuccessful.²²
38. Consultation with public service agencies indicates that most agencies are broadly comfortable operationalising the Treaty provisions in the legislation they administer. While in some instances there is built in flexibility or discretion in the legislation, such as with general operative provisions, many agencies noted specific contexts where flexibility to apply the principles is necessary and practical to achieve the intended policy outcome.
39. Where there is uncertainty in how a provision should be given effect, it follows that there is a risk it will not be well implemented, with potential flow on effects for the Māori-Crown relationship and Māori communities. The scale of this impact has not been investigated due to the timing and process constraints already identified.
40. The Government's view that variability or uncertainty in Treaty provisions can impact economic investment has also not been tested in the time available. However, legislation most likely to interface with economic investment (including the Resource Management

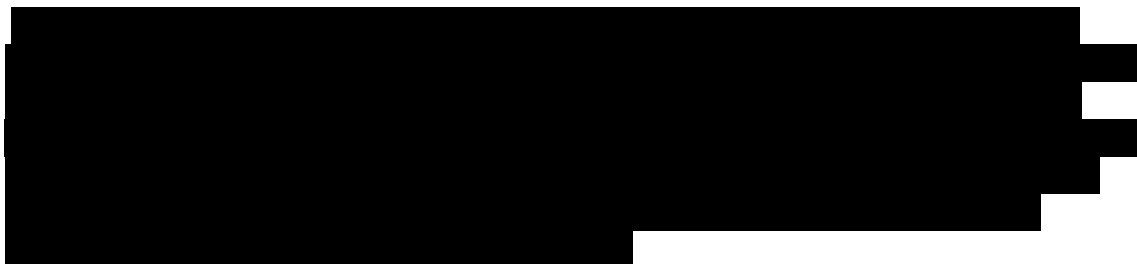
²⁰ See the Legislation Design and Advisory Committee Guidelines (2021), page 22.

²¹ *Providing for the Treaty of Waitangi in Legislation and Supporting Policy Design*, Te Arawhiti, 2022, 17.

²² Matthew Palmer, *Indigenous Rights, Judges and Judicial Review in New Zealand* (2019).

Act 1991, the Crown Minerals Act 1991, and the Conservation Act 1987) is being reviewed separately to this Review and is not in scope of this RIS.

41.



What objectives are sought in relation to the policy problem?

42. The objective is to give effect to Cabinet's decision to ensure that where it is appropriate to encapsulate the Treaty or the Treaty relationship in legislation, the provisions are clear as to how the Treaty applies in the context of each legislative regime, to reduce uncertainty and support better compliance.

What consultation has been undertaken?

43. As indicated above, the Minister of Justice directed a process that has not included engagement with iwi and hapū (as Treaty partners), the general public or other external stakeholders.
44. Consultation with iwi and hapū is one of the principal mechanisms through which the Government discharges its responsibility to make informed decisions and act in good faith towards Māori. There is a strong argument that the Treaty and Treaty relationship gives rise to an obligation to consult Māori early on this review, including as part of the policy development process.
45. In its report, *Ngā Mātāpono*, the Waitangi Tribunal made the following findings relating to consultation with Māori on the review²³:
- a. a lack of Māori engagement in the process and involvement in decision-making on clauses would be inconsistent with the principle of partnership.
 - b. the timeframe proposed for the review, and lack of adequate time for engagement with Māori, would be inconsistent with the principle of partnership.
46. The Tribunal recommended expanding the timeframe of the review to enable extensive engagement with Māori and the involvement of Māori in decision-making, either through a co-design process or full reflection of Māori views in any amendments to Treaty clauses of high importance to Māori. The Tribunal also recommended that Māori be provided the resources necessary to participate fully.

²³ These findings are based on a May 2025 Cabinet paper which had proposed Māori engagement prior to Cabinet policy decisions (CAB-25-MIN-0144).

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

- *Upholds Treaty obligations*: the approach upholds the rights and obligations of Māori and the Crown as Treaty partners.
- *Certainty*: the approach provides clarity and certainty on how the Treaty applies in the context of the specific legislative regime, including for Treaty partners, regulated parties, and regulators. There is a degree of trade-off between the benefits of certainty and the benefits of flexibility included in the ‘durability’ criterion.
- *Feasibility*: the approach can be implemented effectively and efficiently.
- *Durability*: the approach should have broad buy-in and acceptability while having sufficient flexibility to evolve with changes in the Māori Crown relationship to enable an enduring impact over time. There is a degree of trade-off between the benefits of flexibility and the benefits of certainty included in the ‘certainty’ criterion.

What scope will options be considered within?

47. Previous Cabinet policy decisions have narrowed the scope of the Review in the following ways:

- To only include provisions that reference “the principles of the Treaty” (as opposed to just “the Treaty”).
- To exclude provisions related to, or substantive to, existing full and final Treaty settlements.
- To exclude the following Acts: the Treaty of Waitangi Act 1975; section 9 of the State-Owned Enterprise Act 1986; section 45Q of the Public Finance Act 1989; section 4 of Te Rūnanga o Ngāi Tahu Act 1996; section 24 of the Royal Society of New Zealand Act 1997; and the Resource Management Act 1991; the Crown Research Institutes Act 1992.
- To exclude the Conservation Act 1987 and the Crown Minerals Act 1991 at this time as they are undergoing separate review processes led by their respective agencies.

48. Further Cabinet policy decisions are currently being sought to also:

- Exclude the Harbour Boards Dry Land Endowment Revesting Act 1991; the Hauraki Gulf Marine Park Act 2000; the Urban Development Act 2020; and the Kāinga Ora Homes and Communities Act 2019.
- Include all provisions in the Education and Training Act that reference “the Treaty”, except ss 127 and 281.

49. Some provisions (set out at **Appendix A**) have also been removed from the scope of this RIS because:

- proposals would have a minor or limited impact and are therefore exempt from RIA requirements This includes provisions where Ministers’ preferred option is to standardise terminology while retaining their existing policy intent and legal effect; or
- they provide a cross-reference to substantive provisions, and therefore would only require consequential amendments.

50. This RIS provides analysis of the following operative provisions against all options identified in this RIS:

- Section 14(a), Data and Statistics Act 2022.
- Section 536A(1) of the Education and Training Act 2020.
- Section 6(d), Energy Efficiency and Conservation Act 2000.
- Section 8, Hazardous Substances and New Organisms Act 1996.

51. It also provides analysis of the following descriptive provisions collectively against all options identified in this RIS:

- Section 4, Land Transport Management Act 2003.
- Section 4, Organic Products and Production Act 2022.
- Section 3AB, Smokefree Environments and Regulated Products Act 1990.

52. Cabinet agreement is being sought to amend all provisions (except purpose provisions, long titles, and appointment provisions) so that the standard is no higher than “take into account”. Option Five below has been drafted to reflect that proposal. A table of provisions proposed to be amended in line with this option is provided on page 49.

Option considered and discounted

53. The Ministerial Oversight Group requested advice on the option to amend provisions to remove the words “the principles of” and instead refer to just “the Treaty”. The legal effect of this option is unclear, so it is unlikely to meet the objective of this review. The courts might continue to use principles (or similar concepts) to interpret and apply the Treaty or take a more literal interpretation of the text of the Treaty. The Treaty principles have been designed to help settle the differences between the Māori and English texts of the Treaty, and to operationalise the Treaty for contemporary decision making.

What options are being considered?

54. For each of the provisions in scope of the review, the following options have been considered:

Option One – Retain (Status Quo)

55. The existing provision is retained as currently drafted. Provisions would be reviewed over time as legislation is updated or replaced. TPOG would continue to undertake its function of supporting more considered and coherent approaches to providing for the Treaty in new legislation.

Option Two – Non-legislative change

56. The existing provision is retained and non-legislative measures are implemented to improve clarity on the purpose and effect of the provision.

Option Three – Amend to be more prescriptive

57. The provision is amended (or replaced) to prescribe how the Treaty is relevant to the Act e.g. by:
- being more prescriptive about what actions are required to meet the Crown's Treaty obligations. This could include providing more detail about how the Treaty is provided for under the Act already, or introducing additional operative measures; and/or
 - specifying which Treaty specific Māori rights and interests are considered relevant.
58. For this option there is a range of choices about what could be prescribed and in what level of detail. Further policy work will be required to identify specific measures and, depending on the extent of additional work required in each case, it is possible these amendments will need to be progressed through future legislative change processes.

Option Four – Repeal

59. The existing provision is repealed in its entirety.

Option Five – Amend all Treaty standards to be no higher than “take into account”

60. The provision is amended so that the standard of Treaty obligation is no higher than to “take into account” the Treaty. This option is relevant to provisions where the current standard is higher than “take into account”, namely those with the Treaty standard “give effect to” or “honour”. It does not apply to purpose provisions, long titles, and appointment provisions as those provisions do not typically impose standards or obligations.
61. Option Five was added recently and has increased the number of provisions in scope of the RIS by 13. Given the limited time available, analysis of these additional provisions in this RIS has been limited to Options One and Five. Analysis of this option has also been dealt with collectively.

How do the Options Compare to the Status Quo?

Section 14(a), Data and Statistics Act 2022

Overview of provision:

62. Section 14(a) is a specific operative provision that requires the Government Statistician to recognise and respect the Crown’s responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi by recognising the interests of Māori in—
- (i) the collection of data, the production of statistics, and access to, and use of, data for research as tools for furthering the economic, social, cultural, and environmental well-being of Māori (including iwi and hapū); and
 - (ii) the way in which data is collected, managed, and used for the production of official statistics and for research.

Relevant Treaty interest:

63. Māori have consistently advised government agencies that they do not have the data they need to achieve their own aspirations, and in some cases do not have the data they need to effectively design and deliver services. Sometimes the data Māori need for planning and delivery is available but inaccessible. This is relevant to the Crown’s Treaty obligations to ensure Māori interests—particularly the aspirations and needs of iwi, hapū, and wider Māori communities for access to and control over data about themselves—are actively considered, respected, and provided for in government decisions and operations. This upholds Māori social, cultural, economic, and environmental well-being and reflects principles of partnership, participation, and protection.

How do the options compare to the status quo/counterfactual?

	Option One – Retain (Status Quo)	Option Two – Non-legislative change	Option Three – Amend to be more prescriptive	Option Four – Repeal
Upholds Treaty obligations	0	Statistics New Zealand (Stats NZ) could update its operational guidance on this provision. This includes Ngā Tikanga Paihere – a framework guiding ethical and culturally appropriate data use. However, this may not significantly improve how Treaty obligations in the context are being met as Stats NZ considers its internal guidance already explains the Treaty duties in the Act and how they should be implemented. 0	Parliament could amend s 14 to further specify the relevant Treaty interests in the collection and use of data – i.e., what the Treaty requires in relation to data and/or what sorts of data might be captured. Stats NZ has advised that iwi and Māori interests in data are broad, varied, and evolve over time, and that amendments to make the provision more prescriptive risk limiting flexibility in a way that excludes emerging needs, impacting Māori access to data. This is consistent with comments from the Waitangi Tribunal as part of the Wai 262 inquiry that Māori interests in taonga are context-specific, evolving, and require balance of Māori and other interests on a case-by-case basis. -	If the provision is repealed, the section 3(e) purpose provision would also need to be amended as the Act would no longer recognise and respect the Crown’s responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi by providing for the interests of Māori. The courts may still find that the Treaty is broadly relevant to decision-making in the absence of this provision. However, repealing the provision would remove the ability to hold the Statistician to account in any instances where its procedures are inconsistent with the principles of the Treaty. Repeal may also be seen to signal a shift in the Crown’s position on the status and importance of the Treaty in this context, which could have a cooling effect on the importance the Statistician places on Treaty considerations. The Waitangi Tribunal found that any repeals resulting from a process with constrained timing that reduces the scope for robust policy analysis and engagement with Māori would be inconsistent with the principles of partnership and active protection. --
Certainty	0	This option may not have any impact on certainty as Stats NZ has not provided any evidence to suggest current operational guidance is causing uncertainty.	Section 14(a)(i) is already quite specific – It sets out specific Stats NZ activities that Māori may have an interest in while recognising there may be greater or	Repealing the provision would have uncertain legal effect as the Treaty may still be a relevant consideration in this context.

		0	lesser interests in particular areas, and that there are different mechanisms for recognising these interests. Stats NZ has advised that Māori interests in data are broad, varied and evolve over time and that any static definition could misrepresent this reality, creating uncertainty. The provision is referenced in engagement requirements under ss 19 (multi-year data and statistical programme), 35 (census), and 91 (data standards). Stats NZ has advised that Māori interests in each of these areas will be different, and that the current flexibility of s 14(a) enables recognition of those different interests with discretion as to how they are acknowledged and supported in practice. Stats NZ has also advised that, in practice, greater certainty is currently provided through formal engagement processes, settlement commitments, and reporting obligations.	-
Feasibility	0	It is not clear how this option could be implemented given the evidence available suggests that the existing guidance is sufficient.	Stats NZ has advised that given the case-by-case contextual application of this provision and fast-paced developments in data governance and technology, it may be challenging to design amendments that provide greater specificity about what data is intended to be captured or what the Treaty interests in that data might require in each instance.	Repeal of this provision may be challenging to implement as it is not clear if this would require a change in approach.
Durability	0	This option would be substantially the same as the status quo, so would have no impact on durability.	A more prescriptive provision may be quick to become outdated as Māori interests in data evolve over time, including in response to developments in data governance and technology, which are evolving at pace.	Repeal could increase the risk of regulatory churn by creating legal uncertainty and a risk of lower protection for Māori interests in breach of the Treaty principles.
Overall assessment	0	-1	-4	-5

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

- 64. Retaining the status quo is the preferred option. Stats NZ has established approaches to implementing the provision supported by operational guidance and does not consider the current provision to be uncertain. In practice, greater certainty is currently provided through formal engagement processes, settlement commitments, and reporting obligations.
- 65. Based on the evidence available, Option Three would be worse than the status quo. Stats NZ has advised that iwi and Māori interests in data are broad, varied, and evolve over time, and that amendments to make the provision more prescriptive risk limiting flexibility in a way that excludes emerging needs, impacting Māori access to data. Any static definition could misrepresent this reality and limit flexibility in a way that is impractical in the context and therefore creates uncertainty.
- 66. Option Three would benefit from closer consideration, including through engagement with Treaty partners. More thought could be given to whether it would be possible to design amendments under Option Three that will improve certainty on the relevance of the Treaty, while enabling sufficient flexibility to maintain a responsive system.
- 67. Fiscal costs related to administration and compliance for Option Three will depend on the exact changes proposed. If amendments codify existing practice approaches then there may be no or minimal additional fiscal costs.
- 68. Progressing any options for change without undertaking good faith consultation with Māori is not recommended as it risks damage to the Māori-Crown relationships that could outweigh any benefits of improved certainty.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

- 69. The preferred option in the Cabinet paper is in line with Option Three. The Minister of Justice proposes to amend section 14(a) to provide further specificity as to the specific Māori interests in this context. However, if amendment is not practical, or may have unintended consequences (perhaps by being unduly limiting), the Minister of Justice proposes that the provision should be retained in line with Option One.
- 70. The Cabinet paper notes that subsequent policy decisions will be required to determine what the specific measure should be and seeks Cabinet authorisation for the Minister to make further decisions.
- 71. The Minister of Justice is also proposing to replace the words "give effect" in this provision with "take into account". Analysis of this change is provided below.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Stats NZ	Possible fiscal costs related to implementation and administration. If amendments codify the existing practice approach, then there may be no additional costs.	Unknown	Low Will depend on exact amendments which will be worked through following Cabinet policy decisions.
Crown	Damage to the Māori-Crown relationship (as Māori have not been involved in developing policy proposals, and risk that amendments result in legislation that is unable to respond flexibly to emerging Māori data interests).	Medium/High	Medium Lack of engagement is contrary to Treaty principles and Waitangi Tribunal recommendations. ²⁴ Extent of damage will depend in part on exact amendments.
	Expected increase in litigation costs as Māori may file new claims with the Waitangi Tribunal.	Not available	Medium This has not been quantified in the time available.
Māori	Resources necessary to fully understand how the change will affect their interests.	Unknown	Low There has been no consultation with Māori.
	A static and rigid definition may negatively impact Māori access to data where there are emerging interests.	Medium	Low There has been no consultation with Māori.
	Damage to the Māori-Crown relationship (for reasons set out above).	Medium/High	Medium Lack of engagement is contrary to Treaty principles and Waitangi Tribunal

²⁴ Ngā Mātāpono, 2024.

	Costs for Māori associated with participating in Waitangi Tribunal inquiries, including time, energy, legal and financial costs	High	recommendations. Extent of damage will depend in part on exact amendments. Medium It is uncertain if Māori will file further claims.
Wider public	Expected minimal monetary costs.	Low	Low
Total monetised costs	Possible costs for Stats NZ associated with implementation and administration. Possible costs for Māori to understand how the change will affect their interests. Possible costs for the Crown and Māori associated with participating in Waitangi Tribunal proceedings.	Not available	Low Our understanding of the costs associated with this change is limited due to the lack of consultation with Māori, and because the exact amendments will be worked through following Cabinet policy decisions.
Non-monetised costs	Potential for damage to the Māori-Crown relationship as Māori have not been involved in developing policy proposals and risk that amendments result in legislation that is unable to respond flexibly to emerging Māori data interests.	Medium/High	Medium Lack of engagement is contrary to Treaty principles and Waitangi Tribunal recommendations. Extent of damage will depend in part on exact amendments.
Additional benefits of the preferred option compared to taking no action			
Stats NZ	Possibility for improved certainty on how the Treaty is to apply if amendments can be designed that will improve certainty, while enabling sufficient flexibility to maintain a responsive system.	Low	Medium Impact will depend in part on exact amendments which will be worked through following Cabinet policy decisions.
Crown	Possibility for improved certainty on how the Treaty is to apply which may reduce likelihood of future litigation costs.	Low	Low Will depend in part on exact amendments which will be worked through following Cabinet policy decisions. To date there has been no litigation in relation to this provision.
Māori	Possibility for improved certainty on how the Treaty is to apply if amendments can be designed that will improve	Low	Low There has been no consultation with Māori.

	certainty, while enabling sufficient flexibility to maintain a responsive system.		
Wider public	Possibility for improved certainty on how the Treaty is to apply if amendments can be designed that will improve certainty, while enabling sufficient flexibility to maintain a responsive system.	Low	Low There has been no public consultation.
Total monetised benefits	--	--	--
Non-monetised benefits	Possibility for improved certainty on how the Treaty is to apply if amendments can be designed that will improve certainty, while enabling sufficient flexibility to maintain a responsive system.	Low	Low Our understanding of the benefits associated with this change is limited due to the lack of consultation with Māori, and because the exact amendments will be worked through following Cabinet policy decisions.

Section 536A(1), Education and Training Act

Overview of provision:

72. Section 536 is a specific operative provision that establishes a student contract dispute resolution scheme (DRS) to resolve disputes between tertiary and international students and providers on:
- contractual or financial matters, and
 - claims for redress for any loss or harm suffered by a student as a result of a breach by a provider or signatory provider of a wellbeing and safety code of practice issued under the Act.
73. Section 536A(1) requires that a DRS operator must perform and exercise its functions, powers, and duties in a manner that contributes to an education system that honours Te Tiriti o Waitangi and supports Māori-Crown relationships by:
- resolving disputes in a way that has regard to tikanga Māori and is consistent with the principles of Te Tiriti o Waitangi; and
 - responding to the concerns and interests of Māori in the administration and operation of the scheme.

Relevant Treaty interest:

74. Section 536A is intended to ensure that DRS operator processes are aligned with the section 4 purpose of the Act. Section 4 provides that one of the purposes of the Act is to establish and regulate an education system that honours Te Tiriti o Waitangi/the Treaty of Waitangi and supports Māori-Crown relationships. Section 536A(1) was intended to address the concern that a DRS operator, which is appointed by the responsible Minister, is a private entity and is therefore not automatically bound by the Crown’s Te Tiriti obligations. MoE has advised that it considers DRS operators should provide services in a manner that recognises the Treaty as they provide services to tamariki and rangatahi Māori.

How do the options compare to the status quo/counterfactual?

	Option One – Retain (Status Quo)	Option Two – Non-legislative change	Option Three – Amend to be more prescriptive	Option Four – Repeal
Upholds Treaty obligations	0	It is challenging to identify an effective non-legislative option to provide more certainty on the purpose and effect of the provision as the Education (Domestic Tertiary Student and International Student Contract Dispute Resolution Scheme) Rules 2023 (DRS rules) already exist as secondary legislation made under s 539 of the Act. The DRS rules effectively operationalise the intent of s 536A(1) of the Act and provide specific functions that an operator must follow in relation to Māori. This option is therefore unlikely to have any impact on the Crown’s ability to meet its Treaty obligations in this context. 0	The provision could be amended to replace the broad operative obligations with specific measures that DRS operators must comply with for the Crown to meet its Treaty obligations. The existing DRS rules could be used as a starting point. The approach of DRS operators under this option may be substantially similar to the status quo so it may not have a discernible impact on the Crown’s ability to uphold its Treaty obligations. 0	Repealing the provision would reduce the ability to legally challenge decisions made by the Crown that do not appear to meet its Treaty obligations in the way it provides for the operation of a dispute resolution service. If the provision is repealed, the DRS rules would also need to be amended for consistency The Waitangi Tribunal found that any repeals resulting from a process with constrained timing that reduces the scope for robust policy analysis and engagement with Māori would be inconsistent with the principles of partnership and active protection. -
Certainty	0	Any non-legislative option would likely duplicate what is already provided in the DRS rules. This would create some uncertainty as to how any new guidance or direction and DRS rules should interact. -	DRS operators are private entities and not bound by the Crown’s Treaty obligations. Replacing broad operative obligations on DRS operators with specific measures would increase certainty on what Parliament considers is required for the Crown to meet its Treaty obligations. +	If the provision is repealed, there may be some uncertainty about whether/how the section 4 purpose provision relates to the functions of DRS operators. As a purpose provision, section 4 provides an aid to interpretation of other provisions in the Act. -
Feasibility	0	It is difficult to identify what meaningful guidance could be provided under this option as guidance is already provided in the DRS rules. -	This option would likely be as feasible to implement as the status quo as it may not require a significant change in approach compared to what is already required under the DRS rules. 0	Repeal of this provision may be challenging to implement as it may not be clear if it would require a change in approach. The section 4 Treaty provision may still be considered relevant to the duties and functions of DRS operators. -

Durability	0	This option would be as durable as the status quo. As DRS rules already exist under the Act, it is likely that new operational guidance or direction would be disregarded or abandoned over time. As with the status quo, the provision and rules would continue to endure. 0	The durability of this option would be similar to the status quo. Primary legislation is marginally more durable than secondary legislation as amendments are subject to more rigorous scrutiny. 0	Repeal could increase the risk of regulatory churn by creating legal uncertainty and a risk of lower protection for Māori interests. -
Overall assessment	0	-2	+1	-4

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

75. Option Three is the preferred option. Option Three enables Parliament to provide certainty on how it considers DRS operators should assist the Crown in meeting its Treaty obligations. This would provide certainty for all relevant parties and enable scrutiny of the specific requirements for DRS operators. Fiscal costs for this option may be minimal as it may not require a significant change in approach compared to the status quo.
76. Repealing the provision would result in uncertainty about whether/how the section 4 purpose provision “to establish and regulate an education system that honours Te Tiriti o Waitangi/the Treaty of Waitangi and supports Māori-Crown relationships” relates to the functions of DRS operators. As a purpose provision, section 4 provides an aid to interpretation of other provisions in the Act. Repealing the provision would also reduce the ability to legally challenge decisions made by the Crown that do not appear to meet its Treaty obligations in the way it provides for the operation of a dispute resolution service.
77. Progressing any options for change without undertaking good faith engagement with Māori is not recommended as it risks damage to the Māori-Crown relationships that could outweigh any benefits of improved certainty.

Is the Minister’s preferred option in the Cabinet paper the same as the agency’s preferred option in the RIS?

78. The preferred option in the Cabinet paper is broadly aligned with Option Four, repeal. Cabinet agreement is sought to amend or repeal the provision so that DRS operators, as private entities, do not have Treaty requirements. The Minister of Justice and Minister for Education consider that, as private entities, it is not appropriate for DRS operators to have the Treaty requirements set out in this provision.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
MoE	One-off fiscal costs related to ensuring DRS operators understand how the changes will affect their current approach (e.g. updating the DRS rules, information sessions, legal fees to help mitigate legal uncertainty of repeal).	Not available	Low Will depend on exact amendments which will be worked through following Cabinet policy decisions.

DRS operators	One-off costs associated with changing current practice approaches (e.g. any for any re-training).	Not available	Low There has been no consultation with DRS operators.
Crown	Damage to the Māori-Crown relationship as Māori have not been involved in developing policy proposals and repealing the provision may negatively impact the Crown's ability to ensure DRS operators are supporting the Crown's Treaty obligations in this context.	Medium/High	Medium Lack of engagement is contrary to Treaty principles and Waitangi Tribunal recommendations. The Waitangi Tribunal found that repeals through this process would be inconsistent with the principles of partnership and active protection.
	Expected increase in litigation costs as Māori may file new claims with the Waitangi Tribunal.	Not available	Low This has not been quantified in the time available.
Māori	Resources necessary to fully understand how the change will affect their interests.	Not available	Low There has been no consultation with Māori.
	Damage to the Māori-Crown relationship (as set out above).	Medium/High	Medium As above.
	Costs for Māori associated with participating in Waitangi Tribunal inquiries, including time, energy, legal and financial costs.	High	Medium It is uncertain if Māori will file further claims.
Wider public	Expected minimal monetary costs.	Low	Low There has been no public consultation.
Total monetised costs	Possible one-off costs for MoE, and DRS operators associated with implementing the changes. Costs for Māori to understand how the change will affect their interests. Possible costs for the Crown and Māori associated with participating in Waitangi Tribunal proceedings.	Not available	Low Our understanding of the costs associated with this change is limited due to the lack of consultation with Māori, and DRS operators.
Non-monetised costs	Potential for damage to the Māori-Crown relationship as Māori have not been involved in developing policy proposals.	Medium/High	Medium Lack of engagement is contrary to Treaty principles and Waitangi Tribunal recommendations. The Waitangi Tribunal found that

			repeals through this process would be inconsistent with the principles of partnership and active protection.
Additional benefits of the preferred option compared to taking no action			
MoE	--	--	--
DRS Operators	Possibility of greater administrative simplicity if requirements are removed. However, the legal effect of repeal is uncertain which negates this to some extent.	Low	Low There has been no consultation with DRS operators and the legal effect of repeal is unclear.
Crown	--	--	--
Māori	--	--	--
Wider public	--	--	--
Total monetised benefits	--	--	--
Non-monetised benefits	Possibility of greater administrative simplicity if requirements are removed. However, the legal effect of repeal is uncertain which negates this to some extent.	Low	Low There has been no consultation with DRS operators and the legal effect of repeal is unclear.

Section 6(d), Energy Efficiency and Conservation Act 2000

Overview of provision:

79. The purpose of the Act is to promote, in New Zealand, energy efficiency, energy conservation, and the use of renewable sources of energy (s 5).
80. In achieving the purpose of the Act, section 6 establishes the principles of the Treaty of Waitangi as one of four sustainability principles that all persons exercising responsibilities, powers, or functions under the Act must take into account. The other three sustainability principles are:
- the health and safety of people and communities, and their social, economic, and cultural well-being;
 - the need to maintain and enhance the quality of the environment;
 - the reasonably foreseeable needs of future generations.

Relevant Treaty interest:

81. In the Waitangi Tribunal’s Wai 262 report the Tribunal stated that through the guarantee of tino rangatiratanga, “the Treaty obliges the Crown to actively protect the continuing obligations of kaitiaki towards the environment, as one of the key components of te ao Māori”. As this Act relates to the need to maintain and enhance the quality of the environment there appears to be an identifiable Treaty interest in this context.

How do the options compare to the status quo/counterfactual?

	Option One – Retain (Status Quo)	Option Two – Non-legislative change	Option Three – Amend to be more prescriptive	Option Four – Repeal
Upholds Treaty obligations	0	The government could develop operational guidance to provide more information for decision-makers on the purpose of s 6(d) and how it should be implemented. This could better support the Crown to comply with its Treaty obligations by addressing current uncertainty about the purpose and effect of this provision. As operational guidance is not legally enforceable, there is limited recourse to hold decision-makers accountable to it. This means this option may be less effective than a legislative change option at ensuring Treaty obligations are upheld. +	Parliament could amend the provision to be more descriptive of the relevance of the Treaty to the Act and/or convert the provision into more specific measures (e.g. consultation requirements during specific process steps). This could help address current uncertainty about the purpose and effect of s 6(d) and support better compliance by the Crown with its Treaty obligations. MBIE considers further detail about how the Treaty principles should be given effect is already provided in the existing s 13, which provides that the Minister or Energy Efficiency and Conservation Authority (the Authority) must seek comments from representatives of Māori organisations in developing national strategies. +	If the provision is repealed, Māori interests would still be considered to some extent as: - section 6(a) requires decision-makers to consider communities’ social, economic and cultural wellbeing; - section 13 requires the Minister or Authority in preparing a draft Energy Efficiency and Conservation Strategy to seek comments from Māori organisations; - the Authority would still have mandate under individual programmes to deliver for relevant Māori groups; and - the courts may still find that the Treaty is broadly relevant to decision-making in the absence of this provision. Given current uncertainty about the purpose and effect of s 6(d), this option may not have a discernible impact on how MBIE ensures Treaty obligations are upheld compared to the status quo. Repealing the provision would reduce one of the mechanisms available to ensure the Treaty is taken into account as part of operations under the Act. The Waitangi Tribunal found that any repeals resulting from a process with constrained timing that reduces the scope for robust policy analysis and engagement with Māori would be inconsistent

				with the principles of partnership and active protection. -
Certainty	0	Operational guidance could improve certainty for decision makers and Treaty partners about the purpose and effect of s 6(d). Operational guidance would provide parties with a lower level of certainty than legally binding requirements. It would also be less publicly accessible than legislation. +	This option would likely improve certainty for decision makers, Treaty partners, and the general public about the purpose and effect of s 6(d). Legislative change would provide a higher level of certainty than operational change as it is legally binding and more publicly accessible. ++	Repealing the provision would have uncertain legal effect as the Treaty may still be a relevant consideration in this context. -
Feasibility	0	Current uncertainty on the purpose and effect of s 6(d) indicates that it may be challenging for MBIE to develop effective operational guidelines on this provision. This is similar to the status quo, where uncertainty on the purpose and effect of s 6(d) creates implementation challenges. 0	This option would be more feasible to implement than the status quo as it would provide greater certainty on what is required to take the Treaty into account in this context. MBIE is concerned that introducing specific requirements may result in overly prescriptive legislation that could be difficult to implement, although this has not been further tested. +	Repeal of this provision may be challenging to implement as it is not clear if this would require a change in approach. -
Durability	0	This option would be equally as durable as the status quo, as operational guidance can be easily changed, disregarded, or abandoned over time. As with the status quo, the provision itself would endure. 0	If specific obligations have broad buy in and acceptability to Treaty partners, this option could have an enduring impact over time, which may be similar to the status quo. However, if new specific obligations do not have the support of Māori, this could increase the risk of regulatory churn. 0	This option is likely to be less durable than the status quo as it is broadly accepted that Treaty rights and obligations are engaged in the context of environmental protection. Given this, it is likely that over time a new Treaty provision may be introduced, increasing the risk of regulatory churn. This risk is lessened to some extent as the Act would still include s13, which provides specific consultation requirements with Māori organisations on national strategies. -
Overall assessment	0	+2	+4	-4

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

- 82. The Ministry of Justice considers Option Three to be the best option. Under this option, Parliament could amend the provision to be more descriptive of the relevance of the Treaty to the Act and/or introduce specific requirements for decision makers, e.g. consultation during specific process steps and/or a new capability requirement for the EECA. This option would help address current uncertainty about the intended purpose and effect of s 6(d) and could better support the Crown to comply with its Treaty obligations.
- 83. The benefits of Option Three may be limited without also addressing other barriers to engagement for Māori. We have been advised by MBIE that in its experience, Māori organisations have shown limited interest in engaging under the existing s 13 requirement which provides that the Minister or the Authority must seek comments from representatives of Māori organisations in developing national strategies. While reasons for this are untested, government agencies have consistently heard that engagement fatigue and limited resourcing are common limiting factors for Māori when it comes to engagement.
- 84. Repealing the provision is not recommended as it would have uncertain legal effect. The courts may still find that the Treaty is broadly relevant to decision-making under the Act. This uncertainty would impact the effective implementation of the Act as well as the likely durability of this option.
- 85. Progressing any options for change without undertaking good faith engagement with Māori is not recommended as it risks damage to the Māori-Crown relationships that could outweigh any benefits of improved certainty.

MBIE position

- 86. MBIE considers it may be a better option to either remove the clause entirely (Option Four) or as a second best to retain the status quo (Option One).
- 87. With regards to Option Four, MBIE considers repeal would have minimal operational impacts. The Act has other requirements: section 6(a) requires decision-makers to consider communities' social, economic and cultural wellbeing; and section 13 requires the Minister or Authority in preparing a draft Energy Efficiency and Conservation Strategy to seek comments from Māori organisation and have regard to relevant community interests.
- 88. With regards to Option One, MBIE considers that further detail about how Treaty principles should be given effect in the context of this Act is already provided in section 13, which provides specific consultation requirements with Māori organisations on national strategies. Section 6 ensures that EECA takes a broad view of energy efficiency, rather than solely focussing on the energy system and includes communities, health and safety, and future needs as well as Treaty principles.
- 89. MBIE does not support Option Three. MBIE's view is that there is not a specific, clear policy objective for this Treaty clause and therefore it is unclear what the scope of Option 3 would prescribe. MBIE considers it unlikely an amendment could meaningfully add clarity to the intended application of the Treaty to this Act, and so are unclear on what the intended effect of an amendment would be. MBIE also considers amendments may risk unintended

consequences, such as adding operational complexity or creating new grounds for decisions to be challenged (within EECA, or potentially across energy more broadly).

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

90. The preferred option in the Cabinet paper is in line with Option Four, repeal. The Ministerial Oversight Group is seeking Cabinet agreement to repeal the provision, subject to agreement by the Minister for Energy.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
MBIE	One-off fiscal costs related to understanding the impact of repeal (e.g. legal fees to help mitigate legal uncertainty of repeal).	Not available	Low Agencies have not been consulted on the specific costs of this proposal.
EECA	One-off fiscal costs related to understanding the impact of repeal (e.g. legal fees to help mitigate legal uncertainty of repeal).	Not available	Low The EECA has not been consulted.
Crown	Damage to the Māori-Crown relationship as Māori have not been involved in developing policy proposals and repealing the provision may be seen as removing Treaty protections in legislation and/or intended to reduce the status and importance of the Treaty.	Medium/High	Medium Lack of engagement is contrary to Treaty principles and Waitangi Tribunal recommendations. The Waitangi Tribunal found that repeals through this process would be inconsistent with the principles of partnership and active protection.
	Expected increase in litigation costs as Māori may file new claims with the Waitangi Tribunal.	Not available	Low This has not been quantified in the time available.
Māori	Resources necessary to fully understand how the change will affect their interests.	Not available	Low There has been no consultation with Māori, and

	Damage to the Māori-Crown relationship (as set out above). Costs for Māori associated with participating in Waitangi Tribunal inquiries, including time, energy, legal and financial costs .	Medium/High High	the legal effect of repeal is uncertain. Medium As above. Medium It is uncertain if Māori will file further claims.
Wider public	Expected minimal monetary costs.	Low	Low There has been no public consultation.
Total monetised costs	Possible one-off costs for MBIE and EECA to understand how/whether repeal will affect operations. Possible costs for Māori to understand how the change will affect their interests. Possible costs for the Crown and Māori associated with participating in Waitangi Tribunal proceedings.	Not available	Low Our understanding of the costs associated with this change is limited due to the lack of consultation with Māori, and the legal effect of repeal is uncertain.
Non-monetised costs	Potential for damage to the Māori-Crown relationship as Māori have not been involved in developing policy proposals and repealing the provision may be seen as removing Treaty protections in legislation and/or intended to reduce the status and importance of the Treaty.	Medium/High	Medium Lack of engagement is contrary to Treaty principles and Waitangi Tribunal recommendations. The Waitangi Tribunal found that repeals through this process would be inconsistent with the principles of partnership and active protection.
Additional benefits of the preferred option compared to taking no action			
MBIE	--	--	--
EECA	--	--	--
Crown	--	--	--
Māori	--	--	--
Wider public	--	--	--
Total monetised benefits	--	--	--

Non-monetised benefits	--	--	--
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Section 8, Hazardous Substances and New Organisms Act 1996

Overview of provision:

91. Section 8 is a general operative provision which states that all persons exercising powers and functions under the Act shall take into account the principles of the Treaty. The purpose of the Act is to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms. Anyone intending to import or manufacture hazardous substances must apply for approval from the Environmental Protection Authority (the EPA). The EPA conducts a risk assessment to evaluate potential impacts on human health and the environment. Based on this assessment, the EPA sets specific controls for the safe use, storage, and disposal of the substance.

Relevant Treaty interest:

92. Māori have a recognised cultural and spiritual relationship with the environment that is within the ambit of the protections afforded by Article 2 of the Treaty. This is supported by the Waitangi Tribunal’s Wai 262 report which stated that through the guarantee of tino rangatiratanga, “the Treaty obliges the Crown to actively protect the continuing obligations of kaitiaki towards the environment, as one of the key components of te ao Māori”.

How do the options compare to the status quo/counterfactual?

	Option One – Retain (Status Quo)	Option Two – Non-legislative change	Option Three – Amend to be more prescriptive	Option Four – Repeal
Upholds Treaty obligations	0	The government could develop operational guidance to provide more information for decision-makers on the purpose of s 8 and how it should be implemented. This has the potential to support the Crown to uphold its Treaty obligations by providing certainty on what is required, which could support better compliance. MfE has advised that after nearly 30 years of application, s 8 is well understood and implementation approaches are well-established. 0	Parliament could amend the provision to be more descriptive of the relevance of the Treaty to the Act and/or define the specific obligations intended to apply to the EPA to fulfil the Crown’s Treaty obligations. This has the potential to better support the Crown to uphold its Treaty obligations by providing more certainty on what is required, which could support better compliance with Treaty obligations. Any positive impact of this on the Crown’s ability to uphold its Treaty obligations may be limited as MfE has advised that: - After nearly 30 years of application, s 8 is already well understood and implementation approaches are well-established. - The flexibility provided by the general operative provision is crucial because it allows the EPA to consider the unique circumstances of each application and the specific policy context, ensuring that decisions are made with a comprehensive understanding of the potential impacts on Māori communities. If the provision is made too prescriptive, this benefit may be lost. -	If the provision is repealed, Māori interests would still be considered to some extent as: - section 5 requires decision makers to recognise and provide for the maintenance and enhancement of people and their communities; - section 6(d) requires decision makers take into account the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, valued flora and fauna, and other taonga; - The courts may still find that the Treaty is broadly relevant to decision making in the absence of this provision. However, repealing the provision may be seen to signal a shift in the Crown’s position on the status and importance of the Treaty in this context, which could have a cooling effect on the importance the EPA places on Treaty considerations. The Waitangi Tribunal found that any repeals resulting from a process with constrained timing that reduces the scope for robust policy analysis and engagement with Māori would be inconsistent with the principles of partnership and active protection. -
Certainty	0	Operational guidance has the potential to improve certainty for decision-makers and Treaty partners about the purpose and effect of section 8. However, MfE has advised that after nearly 30 years of application, s 8 is well understood, implementation approaches are well-established, and decision-makers are not experiencing uncertainty. 0	This option has the potential to improve certainty for decision-makers and Treaty partners about the purpose and effect of s 8. However, MfE has advised that after nearly 30 years of application, s 8 is well understood, implementation approaches are well-established, and decision-makers under the Act are not experiencing uncertainty. Further, MfE has advised that the flexibility provided by the general operative	Repealing the provision would have uncertain legal effect as the Treaty may still be a relevant consideration in this context. -

			provision is crucial to allow the EPA to consider the unique circumstances of each application. This suggests that an attempt to be more prescriptive could limit flexibility in a way that is impractical in the context and therefore creates uncertainty. 0	
Feasibility	0	This option would be as feasible as the status quo. MfE could develop operational guidance based on the current practice approach to implementing this provision. 0	Given the range of rights and interests involved, and the case-by-case contextual nature of decisions made under the Act, it may be difficult to determine and describe all situations Treaty interests should be considered. -	Repeal of this provision may be challenging to implement as it is not clear if this would require a change in approach. -
Durability	0	This option would be equally as durable as the status quo, as operational guidance can be easily changed, disregarded, or abandoned over time. As with the status quo, the provision would continue to endure. 0	If specific obligations have broad buy in and acceptability to Treaty partners and enable a practical level of flexibility, this option could have an enduring impact over time. This would be similar to the current provision, which has been in place for nearly 30 years. However, if new specific obligations do not have the support of Treaty partners and are overly prescriptive, this could increase the risk of regulatory churn. 0	This option is likely to be less durable than the status quo as it is broadly accepted that Treaty rights and obligations are engaged in the context of environmental protection. Given this, it is likely that over time a new Treaty provision may be introduced, increasing the risk of regulatory churn. This risk is lessened to some extent as the Act would still include ss 5 and 6(d), which provide for Māori interests to some extent. -
Overall assessment	0	0	-2	-4

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

93. Retaining the status quo is the preferred option. MfE has advised that the flexibility of the current provision is crucial because it allows the EPA to consider the unique circumstances of each application and the specific policy context, ensuring that decisions are made with a comprehensive understanding of the potential impacts on Māori communities. There is currently no evidence to suggest that there is uncertainty on how the provision should be implemented, nor any issues with compliance. After nearly 30 years of application, s 8 is well understood by decision-makers, and implementation approaches are well-established.
94. Based on the evidence available, Option Three is not recommended. This option risks introducing uncertainty by restricting flexibility in a way that is impractical and undermines the ability of the EPA to consider the unique circumstances of each application. This option would benefit from further analysis and consultation with the EPA and Māori to determine whether it would be feasible to design changes that balance the need for flexibility with the Review's objective of clarity and specificity.
95. Repealing the provision is not recommended as it would have uncertain legal effect. The courts may still find that the Treaty is broadly relevant to the exercise of functions and powers under the Act. This option could also have a cooling effect on the importance bodies established under the Act under the Act place on Treaty considerations.
96. Progressing any options for change without undertaking good faith consultation with Māori is not recommended as it risks damage to the Māori-Crown relationships that could outweigh the potential benefits.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

97. The preferred option in the Cabinet paper is aligned with Option Three. The Minister of Justice proposes to replace section 8 with a descriptive provision identifying specific measures to be complied with.
98. The Cabinet paper notes that subsequent policy decisions will be required to determine what the specific measures should be and seeks Cabinet authorisation for the Minister of Justice to make further decisions.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			

MfE	Possible costs related to implementation and administration, e.g. supporting the EPA to implement any changes to its approach. If amendments codify the existing practice approach, then there may be no additional costs.	Unavailable	Low Will depend on exact amendments which will be worked through following Cabinet policy decisions.
EPA	Possible costs related to implementation and administration (eg. staff training to implement any changes to its approach). If amendments codify the existing practice approach, then there may be no additional costs.	Unavailable	Low There has been no consultation with the EPA.
Crown	Damage to the Māori-Crown relationship (as Māori have not been involved in developing policy proposals, and risk that amendments result in legislation that is unable to respond flexibly to emerging Māori interests).	Medium/High	Medium Lack of engagement is contrary to Treaty principles and Waitangi Tribunal recommendations. Extent of damage will depend in part on specific amendments.
	Expected increase in litigation costs as Māori may file new claims with the Waitangi Tribunal.	Not available	Medium This has not been quantified in the time available.
Māori	Resources necessary to fully understand how the change will affect their interests.	Unknown	Low There has been no consultation with Māori.
	Damage to the Māori-Crown relationship (for reasons set out above).	Medium/High	Medium Lack of engagement is contrary to Treaty principles and Waitangi Tribunal recommendations. Extent of damage will depend in part on exact amendments.
	Costs for Māori associated with participating in Waitangi Tribunal inquiries, including time, energy, legal and financial costs	High	Medium It is uncertain if Māori will file further claims.

Wider public	Expected minimal monetary costs.	Low	Low There has been no public consultation.
Total monetised costs	Possible costs for MfE and the EPA associated with implementation and administration. Possible costs for Māori to understand how the change will affect their interests. Possible costs for the Crown and Māori associated with participating in Waitangi Tribunal proceedings.	Unknown	Low Our understanding of the costs associated with this change is limited due to the lack of consultation, and because the exact amendments will be worked through following Cabinet policy decisions.
Non-monetised costs	Potential for damage to the Māori-Crown relationship as Māori have not been involved in developing policy proposals and risk that amendments result in legislation that is unduly limiting in providing for Māori interests.	Medium/High	Medium Lack of engagement is contrary to Treaty principles and Waitangi Tribunal recommendations. Extent of damage will depend in part on exact amendments.
Additional benefits of the preferred option compared to taking no action			
MfE	Possibility for improved certainty on how the Treaty is to apply if amendments can be designed that will improve certainty, while enabling sufficient flexibility to maintain a responsive system.	Low	Medium Impact will depend in part on exact amendments which will be worked through following Cabinet policy decisions.
EPA	Possibility for improved certainty on how the Treaty is to apply if amendments can be designed that will improve certainty, while enabling sufficient flexibility to maintain a responsive system.	Low	Medium Impact will depend in part on exact amendments which will be worked through following Cabinet policy decisions.
Crown	Possibility for improved certainty on how the Treaty is to apply which may reduce likelihood of future litigation costs.	Low	Low Will depend in part on exact amendments which will be worked through following Cabinet policy decisions. To date there has been no litigation in relation to this provision.
Māori	Possibility for improved certainty on how the Treaty is to apply if amendments can be	Low	Low There has been no consultation with Māori.

	designed that will improve certainty, while enabling sufficient flexibility to maintain a responsive system.		
Wider public	Possibility for improved certainty on how the Treaty is to apply if amendments can be designed that will improve certainty, while enabling sufficient flexibility to maintain a responsive system.	Low	Low There has been no public consultation.
Non-monetised benefits	Possibility for improved certainty on how the Treaty is to apply if amendments can be designed that will improve certainty, while enabling sufficient flexibility to maintain a responsive system.	Low	Low Our understanding of the benefits associated with this change is limited due to the lack of consultation with Māori, and because the exact amendments will be worked through following Cabinet policy decisions.

Descriptive provisions

The following three descriptive provisions have been analysed collectively below in the interests of time and because the analysis is substantially the same for each provision:

No.	ACT	PROVISION	OVERVIEW	TREATY INTEREST
1.	Land Transport Management Act 2003	Section 4	Section 4 is a descriptive provision which provides that, in order to recognise and respect the Crown’s responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to land transport decision-making processes, listed sections of the Act provide principles and requirements that are intended to facilitate participation by Māori in land transport decision-making processes.	Decisions under the Act have the potential to impact on Māori Treaty interests in land, including interests recognised in Treaty settlement legislation.
2.	Organic Products and Production Act 2022	Section 4	Section 4 describes the relevant sections in the Act that recognise and respect the Crown’s responsibility to give effect to the principles of the Treaty of Waitangi. The requirements are that the relevant Minister (or Chief Executive) must be satisfied: - Māori substantially affected by 3-yearly reviews of cost-recovery, or proposed regulations or notices (listed), have been consulted, and - that any advisory councils include appropriate and suitably representative Māori membership.	Māori have recognised interests in relation to mātauranga and food production methods. Some Māori customary food production methods may fall within scope of the legislation, and as such may become subject to new rules and requirements which may be inconsistent with those practices. The policy objective of section 4 is to recognise the Crown’s obligation to protect Māori rights and interests in relation to mātauranga and food production methods, which are considered taonga, recognising obligations of partnership and active protection under the Treaty.
3.	Smokefree Environments and Regulated Products Act 1990	Section 3AB	The provision states that, in order to provide for the Crown’s intention to give effect to the principles of the Treaty, the Minister, before preparing regulations relating to requirements for smoked tobacco products, is required to consider the risks and benefits to Māori of regulating a constituent (including both users and non-users of smoked tobacco products). The provision is a reference to section 82B(2)(b), which is the substantive provision imposing this requirement. The substantive provision is accompanied by another provision requiring the Minister to also consider the risks and benefits to the population (including both users and non-users of smoked tobacco products) of regulating the constituent. Note: The term “constituent” is defined as anything that makes up, is present in, or is emitted from a regulated product.	The substantive provision (section 82B(2)(b)) is aimed at addressing the disproportionate impacts of tobacco-related harm on Māori communities. The Waitangi Tribunal in the WAI 2575 Health Services and Outcomes Kaupapa Inquiry outlined the key Treaty principles in the context of health, emphasising the need for partnership, active protection and equity when considering Māori rights and interests.

How do the options compare to the status quo/counterfactual?

	Option One – Retain (Status Quo)	Option Two – Non-legislative change	Option Three – Amend to be more prescriptive	Option Four – Repeal
Upholds Treaty obligations	0	The government could develop guidance on the role and purpose of each descriptive provision. Descriptive provisions typically operate as a list of substantive provisions in an Act which provide for Treaty interests (such as Māori participation in particular processes) and are not the source of those specific obligations. Given this, operational guidance is unlikely to have any impact on the Crown’s ability to uphold its Treaty obligations. 0	Section 4 of the Organic Products and Production Act and section 3AB of the Smokefree Environments and Regulated Products Act could be amended to be made more prescriptive by including a description of the relevance of the Treaty to those acts. Section 4 of the Land Transport Management Act already does this, so it is difficult to identify how it could be made more prescriptive. It is unlikely this option would have a discernible impact on the Crown’s ability to uphold its Treaty obligations because descriptive provisions do not directly impose obligations on decision-makers and there is no evidence that they are causing uncertainty. 0	If the descriptive provisions are repealed the operative provisions they reference which provide for the Crown’s Treaty obligations would continue to be in effect. However, repeal may be seen to signal a shift in the Crown’s position on the status and importance of the Treaty in each context, which could have a cooling effect on the importance decision-makers place on Treaty considerations. The Waitangi Tribunal found that any repeals resulting from a process with constrained timing that reduces the scope for robust policy analysis and engagement with Māori would be inconsistent with the principles of partnership and active protection.

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Certainty	0	Operational guidance is unlikely to have any discernible impact on certainty. All descriptive provisions in scope of the review already support certainty by clearly setting out how Parliament has provided for the Treaty in the context of each act. 0	This option is unlikely to have any discernible impact on certainty. All descriptive provisions in scope of the review clearly set out how Parliament has provided for the Treaty in the context of each Act. There is no indication that these provisions are causing any uncertainty. 0	Descriptive provisions provide clarity on how Parliament has provided for the Treaty in each Act. If they are repealed, it will be less clear how the Treaty has been provided for. This could increase the scope for the courts to interpret the Treaty as being more broadly relevant, creating uncertainty. -
Feasibility	0	It is challenging to identify any substantial and useful guidance that could be provided on the purpose and effect of these provisions. That is because they typically operate as a list of substantive provisions in an Act which provide for Treaty interests and are not the source of those specific obligations. 0	Where it is possible to identify ways in which a descriptive provision could be made more prescriptive, this option may be easy to implement as it may not require a significant operational change. That is because descriptive provisions have an interpretive impact, and do not directly impose obligations. This option does not appear be feasible for Section 4 of the Land Transport Management Act as it is not possible to identify how it could be made more prescriptive. 0	Overall, this option may be straightforward to implement, as it may not require a significant operational change. However, the uncertainty described above may create some challenges. 0
Durability	0	This option would be equally as durable as the status quo, as operational guidance can be easily changed, disregarded, or abandoned over time. As with the status quo, the provisions themselves would continue to be in effect. 0	This option would likely be equally as durable as the status quo as it would only involve relatively minor changes that may have a limited impact on the operative effect of each Act. 0	TPOG and LDAC guidance supports the inclusion of descriptive Treaty provisions to ensure clarity on how the Treaty has been provided for in legislation. Descriptive provisions may therefore be reintroduced over time to improve clarity and certainty, increasing the risk of regulatory churn. -
Overall assessment	0	0	0	-3

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

99. Option One, retaining the status quo is the best option. All three descriptive provisions clearly set out how Parliament has provided for the Treaty in the context of each act. There is currently no evidence to indicate that these provisions are creating uncertainty. While section 4 of the Organic Products and Production Act and section 3AB of the Smokefree Environments and Regulated Products Act could be amended to be made marginally more prescriptive, this would be of minimal benefit.
100. Repealing descriptive provisions is not recommended as it is unlikely to meet the objective of ensuring Treaty provisions are clear as to how the Treaty applies in the context of each legislative regime, to reduce uncertainty and support better compliance. Descriptive provisions provide clarity on how Parliament has provided for the Treaty in each Act. If they are repealed, this will become less clear. This could increase the scope for the courts to interpret the Treaty as being more broadly relevant, creating uncertainty.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

101. The preferred option in the Cabinet paper is to repeal all three descriptive provisions, subject to the agreement of each responsible Minister.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
MoT/MfE/ MoH	One-off fiscal costs related to understanding how repeal will affect operations (e.g. legal fees to help mitigate legal uncertainty of repeal).	Not available	Low Agencies have not been consulted on the specific costs of this proposal.
Regulated parties (e.g. the regional transport committee).	One-off fiscal costs related to understanding how the changes will affect operations (e.g. legal fees to help mitigate legal uncertainty of repeal).	Not available	Low There has been no consultation with regulated parties.
Crown	Damage to the Māori-Crown relationship as Māori have not been involved in developing policy proposals and repealing	Medium/High	Medium Lack of engagement is contrary to Treaty principles and Waitangi Tribunal recommendations. The

	these provisions may be seen as removing Treaty protections in legislation and/or intended to reduce the status and importance of the Treaty. Expected increase in litigation costs as Māori may file new claims with the Waitangi Tribunal and repeal may increase the scope for judicial involvement.	Not available	Waitangi Tribunal found that repeals through this process would be inconsistent with the principles of partnership and active protection. Low This has not been quantified in the time available.
Māori	Resources necessary to fully understand how the change will affect their interests. Damage to the Māori-Crown relationship (as set out above). Costs for Māori associated with participating in Waitangi Tribunal inquiries, including time, energy, legal and financial costs	Not available Medium/High High	Low There has been no consultation with Māori. Medium As above. Medium It is uncertain if Māori will file further claims.
Wider public	Expected minimal monetary costs.	Low	Low There has been no public consultation.
Total monetised costs	Possible one-off costs for government agencies and regulated parties to understand how repeal will affect operations. Costs for Māori to understand how the change will affect their interests. Possible increase in litigation costs for the Crown and Māori.	Not available	Low Our understanding of the costs associated with this change is limited due to the lack of consultation.
Non-monetised costs	Potential for damage to the Māori-Crown relationship as Māori have not been involved in developing policy proposals.	Medium/High	Medium Lack of engagement is contrary to Treaty principles and Waitangi Tribunal recommendations. The Waitangi Tribunal found that repeals through this process would be inconsistent with the principles of partnership and active protection.
Additional benefits of the preferred option compared to taking no action			

MoT/MfE/ MoH	--	--	--
Regulated parties (e.g. the regional transport committee).	--	--	--
Crown	--	--	--
Māori	--	--	--
Wider public	--	--	--
Total monetised benefits	--	--	--
Non- monetised benefits	--	--	--

How does Option Five compare to the status quo/counterfactual?

102. There has been insufficient time to understand the potential impacts of Option 5 on each provision to which it applies. Instead, high-level analysis is provided below. This is applicable to all in scope descriptive and operative provisions where the current direction is stronger than “take into account”. In the interests of time, for provisions where no additional substantive policy change is being proposed in the Cabinet paper only Options One and Five have been analysed for the purposes of this RIS. Based on this, the below analysis is relevant to the following provisions:

No.	ACT	PROVISION	CURRENT WORDING	PROVISION TYPE
1	Climate Change Response Act 2022	Section 3A	Give effect	Descriptive with some specific operative elements
2	Criminal Cases Review Commission Act 2019	Section 4(d)	Must be consistent with	Specific operative
3	Crown Pastoral Land Act 1998	Section 5(1)	Give effect	Descriptive with some specific operative elements
4	Digital Identity Services Trust Framework Act 2023	Section 9	Give effect	Descriptive
5	Data and Statistics Act 2022	Section 4	Give effect	Descriptive
6	Data and Statistics Act 2022	Section 14(a)	Give effect	Specific operative
7	Education and Training Act 2020	Section 9	Give effect	Descriptive
8	Education and Training Act 2020	535B(a)	Honours	Specific operative
9	Education and Training Act 2020	Schedule 13, clause 4(d)(i) ²⁵	Give effect	Specific operative
10	Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012	Section 12	Give effect	Descriptive
11	Pae Ora (Healthy Futures) Act 2022	Section 6	Give effect	Descriptive
12	Mental Health and Wellbeing Commission Act 2020	Section 9(1)(a)	Uphold	Specific operative
13	Water Services Authority – Taumata Arowai Act 2020	Section 19(1)(b)(i)	Uphold	Specific operative

	Option One – Retain (Status Quo)	Option Five – Amend all Treaty standards to be no higher than “take into account”
Upholds Treaty obligations	0	Under this option, the Treaty standard of the listed provisions would be amended to a standard no higher than “take into account”. [REDACTED] [REDACTED] [REDACTED] [REDACTED] The impact of this change on the interpretation of these provisions and the Crown’s ability to uphold its Treaty obligations is uncertain. It would be context specific and depend on the nature of the Treaty interest(s) and the provision type. [REDACTED] [REDACTED] [REDACTED] [REDACTED]

²⁵ Note, the Minister of Education is proposing to replace Schedule 13 as part of the Education and Training (Vocational Education and Training System) Amendment Bill.

²⁶ Ngāi Tai Ki Tāmaki Tribal Trust v Minister of Conservation & Ors [2018] NZSC 122.

²⁷ GE Free NZ in Food and Environment Inc v Environmental Risk Management Authority [2011] NZRMA 45 (HC) at [78].

		While the impact of this change on the Crown’s ability to uphold its Treaty obligations in the context of each affected legislative regime is unclear, it is likely to at least be seen to signal a shift in the Crown’s position on the status and importance of the Treaty. This could reduce the importance decision-makers place on Treaty considerations. -
Certainty	0	Agency engagement has highlighted that those who make decisions under or administer Acts broadly understand how to implement existing provisions and that in most instances the weightings of different Treaty standards are supported by well-established practice approaches and a significant body of case law. Having some Treaty directions impose more onerous obligations than others can also helpfully indicate where Parliament considers Treaty obligations to be most strongly engaged. Changing the weighting of the direction of existing provisions risks increasing uncertainty and litigation, at least in the short- to medium-term while new practice approaches are established and some new provisions may be tested by the Courts. [REDACTED] [REDACTED] As stated above, the impact of this change would be context specific and depend on the nature of the Treaty interest(s) and the provision type. --
Feasibility	0	The feasibility of this option would vary depending on the specific provision and requires closer consideration. This change could impact the interpretation and/or operative effect of a broad range of provisions in an Act. Establishing how this change could be implemented may therefore not be straightforward for some provisions, particularly long-standing provisions that are supported by well-established practice approaches and operational guidance. -
Durability	0	The Waitangi Tribunal’s report, <i>Ngā Mātāpono</i>, indicates that Māori claimants are particularly concerned over any changes that would seek to reduce or remove existing Treaty protections in legislation. This suggests that this option is unlikely to be well-received by Māori, particularly given the lack of engagement to date. This indicates that this option may be less durable than the status quo. This option may also be less durable in situations where the Crown’s Treaty duty is found to be higher than the direction provided in legislation, e.g. by the Waitangi Tribunal. -
Overall assessment	0	-5

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

103. Retaining the status quo is the preferred option. The weighting of existing provisions is generally well-understood and often supported by well-established practice approaches and significant case-law. Having some Treaty directions impose more onerous obligations than others can helpfully indicate where Parliament considers Treaty obligations to be most strongly engaged.

104. Option Five is unlikely to meet the objective of ensuring Treaty provisions are clear as to how the Treaty applies in the context of each legislative regime, to reduce uncertainty and support better compliance. [REDACTED]

105. The effect of Option Five on the Crown's ability to uphold its Treaty obligations is unclear. Impacts would be context specific and depend on the nature of the Treaty interest(s) and the provision type. At a high-level, this change is likely to be seen to signal a shift in the Crown's position on the status and importance of the Treaty, which could have a cooling effect on the importance decision-makers place on Treaty considerations.

106. Option Five has no apparent benefits and risks significant damage to the Māori-Crown relationship as it is likely to be seen as reducing existing Treaty protections in legislation. This negative impact is likely to be exacerbated by the lack of consultation with Treaty partners.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

107. The preferred option in the Cabinet paper is in line with Option Five. The Minister of Justice proposes that in all situations where a standard is needed, no higher standard than "take into account" should be used. The Minister considers that, in most cases, requirements to "give effect" to the Treaty principles do not promote the balanced consideration of all relevant factors in decision-making.

108. The Minister also considers that the "take into account" standard will not work in all instances and should primarily apply to descriptive and operative provisions. It does not apply to purpose provisions, long titles, and appointment provisions as those provisions do not typically impose standards of obligations.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			

Government agencies	One-off legal costs to better understand the impact of the change on operations under each affected Act.	Unknown	Low Impacted agencies have not been consulted on this proposal. Costs are likely to vary depending on the specific Act.
	One-off costs associated with updating/redesigning existing practice approaches and operational guidance.	Unknown	Low As above.
	Costs associated with providing information and/or training to those impacted by the change.	Unknown	Low As above.
Crown entities and other statutory bodies	Likely similar costs to those for Government agencies.	Unknown	Low Impacted parties have not been consulted on this proposal.
Crown	Risk of damage to the Māori-Crown relationship as the proposal is likely to be seen as reducing existing Treaty protections in legislation and because Treaty partners have not been consulted.	High	Medium Ngā Mātāpono, highlights that claimants are concerned over any change that would seek to limit or remove Treaty provisions from legislation. Lack of engagement to date is contrary to Treaty principles and Waitangi Tribunal recommendations. ²⁸
	Expected increase in litigation costs as Māori may file new claims with the Waitangi Tribunal and because updated provisions may be re-litigated in the Courts.	Not available	Low This has not been quantified in the time available.
Māori	Possibility for wide ranging impacts on Māori social, cultural, economic, and environmental interests.	Unknown	Low Analysis of the impact of this change is incomplete and will be context-specific. In some cases where there is a significant Māori interest, the particular formulation may make little practical difference to the Court's interpretation.

²⁸ Ngā Mātāpono, 2024.

	Resources necessary to fully understand how the change will affect Māori interests.	Unknown	Low There has been no consultation with Māori on this proposal.
	Damage to the Māori-Crown relationship (for reasons set out above).	High	Medium See above.
	Costs for Māori associated with participating in Waitangi Tribunal inquiries, including time, energy, legal and financial costs	High	Medium It is uncertain if Māori will file further claims.
	Any litigation costs as updated provisions are tested by the courts.	Low	Low There has been no consultation with Māori on this proposal.
Wider public	Expected minimal monetary costs.	Low	Low There has been no public consultation.
	Any litigation costs as updated provisions are tested by the courts.	Low	Low As above.
Total monetised costs	A range of implementation costs for government agencies and statutory bodies. Possible costs for Māori to understand how the change will affect their interests. Possible costs for the Crown and Māori associated with participating in Waitangi Tribunal proceedings and potential litigation in the Courts.	Not available	Low Our understanding of the costs associated with this change is limited due to the lack of consultation and the limited time available.
Non-monetised costs	Potential for damage to the Māori-Crown relationship. Possibility for wide ranging impacts on Māori social, cultural, economic, and environmental interests. Potential for disruption of social cohesion.	Medium/High	Medium Ngā Mātāpono highlights that claimants are concerned over any change that would seek to limit or remove Treaty provisions from legislation. Lack of engagement to date is contrary to Treaty principles and Waitangi Tribunal recommendations. Recent

			nation-wide protests in response to the Treaty Principles Bill suggests the Māori-Crown relationship is currently in a fragile state.
Additional benefits of the preferred option compared to taking no action			
Government agencies	--	--	--
Crown Entities and other statutory bodies	--	--	--
Crown	--	--	--
Māori	--	--	--
Wider public	--	--	--
Total monetised benefits	--	--	--
Non-monetised benefits	--	--	--

Section 3: Delivering an option

How will the proposal be implemented?

109. If Cabinet approves the proposed measures, a Bill or Bills will likely be enacted in mid-2026. Following commencement, any changes would need to be implemented by those responsible under each Act.
110. Decisions on how to effectively implement these amendments would benefit from consultation with key stakeholders, including Māori as Treaty partners and other statutory bodies that will be directly responsible for the ongoing operation and/or enforcement of any changes.
111. The table below provides high-level comments on arrangements for the implementation of each proposal, if agreed to:

Proposal	Comment
Repeal section 536A(1) of the Education and Training Act 2020.	The Cabinet paper leaves it open as to whether the provision would be repealed in its entirety, or just the references to the Treaty and Treaty principles would be removed. The Minister of Justice, in consultation with the Ministerial Oversight Group and the Minister responsible for each Act is seeking Cabinet authorisation to make further decisions on such matters. If the provision is amended or repealed, the DRS rules may also need to be amended. DRS operators would then be required to adjust their practice approaches. MoE will provide implementation support as appropriate and will be responsible for communicating any changes and their implications to relevant Māori groups.
Repeal section 6(d) of the Energy Efficiency and Conservation Act 2000	The Ministerial Oversight Group proposes, subject to agreement of the Minister of Energy, to repeal this provision. If the provision is repealed, MBIE considers this would have minimal operational impacts. MBIE would consult with the EECA to understand any impacts of this change. MBIE would also be responsible for communicating the change to relevant Māori groups.
Repeal section 4 of the Land Transport Management Act 2003	The Ministerial Oversight Group proposes, subject to the agreement of the Minister of Transport, to repeal this provision. If the provision is repealed, MoT will need to consider how/whether this impacts current operations under the Act. As identified in the analysis, repeal would have an uncertain legal effect meaning it would be unclear if it would require a change to current operations. MoT will be responsible for communicating any changes and their implications to relevant Māori groups .

Repeal section 4 of the Organic Products and Production Act 2022	The Ministerial Oversight Group proposes, subject to the agreement of the Minister of Agriculture, to repeal this provision. If the provision is repealed, MPI will need to consider how/whether this impacts current operations under the Act. As identified in the analysis, repeal would have an uncertain legal effect meaning it would be unclear if and how it would require a change to current operations. MPI will be responsible for communicating any changes and their implications to relevant Māori groups.
Repeal section 3AB of the Smokefree Environments and Regulated Products Act 1990	The Ministerial Oversight Group proposes, subject to the agreement of the Associate Minister of Health, to repeal this provision. If the provision is repealed, MoH will need to consider how/whether this impacts current operations under the Act. As identified in the analysis, repeal would have an uncertain legal effect meaning it would be unclear if and how it would require a change to current operations. MoH will be responsible for communicating any changes and their implications to relevant Māori groups.
Amend section 14(a) of the Data and Statistics Act 2022 to be more prescriptive	The Minister of Justice proposes to amend section 14(a) to provide further specificity as to the specific Māori interests in this context. However, if amendment is not practical, or may have unintended consequences (perhaps by being unduly limiting), the Minister of Justice proposes that the provision should be retained in line with Option One (requiring no change to current operations). The Ministerial Oversight Group is seeking Cabinet authorisation to make further policy decisions on such matters. The Cabinet paper notes that identifying specific measures will require subsequent policy decisions, and that depending on the extent of additional work required, it is possible amendments may need to be progressed through an alternative legislative change process. If amendments are made, the Government Statistician and Stats NZ will be responsible for the ongoing operation and enforcement of the new arrangements. Stats NZ will be responsible for communicating any changes and their implications to relevant Māori groups.
Amend section 8 of the Hazardous Substances and New Organisms Act 1996 to make it more prescriptive	The Ministerial Oversight Group proposes to amend section 8 to make it a descriptive provision that lists the specific measures through which the Act provides for the Treaty. The Minister is seeking Cabinet authorisation to make further policy decisions on this matter. The Cabinet paper notes that identifying specific measures will require subsequent policy decisions, and that depending on the extent of additional work required, amendments may need to

	be progressed through an alternative legislative change process. If amendments are made, the EPA and MfE will be responsible for the ongoing operation and enforcement of the new arrangements. The EPA has existing operational guidance issued by MfE which may require updating to reflect any changes to their practice approach. MfE will be responsible for communicating any changes and their implications to relevant Māori groups.
Amend all Treaty standards to be no higher than “take into account”	If amendments are progressed in line with this proposal, each responsible agency will be responsible for considering how these changes impact current operations under their Act(s). The Ministry of Justice can support this process as steward of the constitutional system. Where appropriate, operational guidance would need to be either issued or updated and key stakeholders (including Treaty partners) would need to be notified of the changes and their implications. Educational materials and communications strategies may also be effective for minimising implementation risks.

How will the proposal be monitored, evaluated, and reviewed?

112. As part of its regulatory stewardship function, the Ministry of Justice will be responsible for monitoring the impact of these changes on legal certainty. This can be achieved within baseline funding and will involve monitoring emerging case law.
113. The agencies responsible for each of the relevant Acts will primarily be responsible for overseeing the effectiveness of any changes. This may involve seeking the views of relevant statutory bodies and Māori stakeholders, which can likely be achieved through existing channels.
114. More detailed information on monitoring and evaluation would require further consultation with relevant agencies and statutory bodies. The Minister for Justice has directed a process that has not enabled this consultation to occur to date.

Appendix A – Proposals exempt from Regulatory Impact Statement requirements

The Ministry for Regulation has determined that the following proposals are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor economic, social, or environmental impacts:

	PROPOSAL	RELEVANT ACT(S)	COMMENT
1.	Amend the Crown Pastoral Land Act 1998 to note specifically the matters covered in section 84(a) and 84(b), and repeal s84(b).	Crown Pastoral Land Act 1998	This essentially just consolidates the two provisions.
2.	Amend the Climate Change Response Act 2002 to move the additional operative measures provided for in section 3A to the relevant sections of the Act.	Climate Change Response Act 2002	Moving the additional operative measures from section 3A to the relevant sections of the Act does not materially impact the existing obligations nor does it introduce new obligations.
3.	Amend the Plant Variety Rights Act 2022 to merge sections 4 and 54 into a single descriptive Treaty provision at s 4 and repeal s 54.	Plant Variety Rights Act 2022	This essentially just consolidates the two provisions.
4.	Amend the Pae Ora (Healthy Futures) Act 2022 to replace the phrase “the Crown’s intention” with the standard formulation “the Crown’s obligation” when referring to the Treaty duty.	Smokefree Environments and Regulated Products Act 1990, and Pae Ora (Healthy Futures) Act 2022	The intention of this proposal is to standardise the drafting of Treaty provisions to address unexplained variation, while retaining the policy intent of the provisions.
5.	Amend several acts to standardise the language used to describe the Treaty itself (ie ‘the Treaty’/’te Tiriti’), in a policy-neutral fashion.	Amendments of this nature are an option for all in scope Acts.	The intention of this proposal is to standardise the drafting of Treaty provisions to address unexplained variation, while retaining the policy intent of the provisions. The Parliamentary Counsel Office would develop

			appropriate wording to meet this object through drafting.
6.	Amend several acts to clarify the extent and nature of Treaty responsibilities imposed on Crown Entities or non-Crown actors.	Amendments of this nature are an option for: • Criminal Cases Review Commission Act 2019 • Education and Training Act 2020 • Local Government Act 2002 • Mental Health and Wellbeing Commission Act 2020 • Water Services Authority – Taumata Arowai Act 2020.	The intention of this proposal is to clarify the status quo. It is not intended to be a policy change.
7.	Standardise the formulation for appointment provisions.	Digital Services Trust Framework Act 2023 (section 47(2)(b)(i)) and the Education and Training Act 2020 (section 476(4)(b)(v)).	The intention is to standardise the language used. For the Education Act this may involve amending the requirement for “understanding of the partnership principles” to be in line with other capability requirements that do not single out one specific Treaty principle. We do not consider this would have more than a minor impact as all Treaty principles are interrelated and the Treaty as a whole is based on a promise of partnership between Māori and the Crown.