Ministry for Regulation
Te Manatū Waeture

Regulatory Impact Statement: proposed Regulatory Standards Bill

Decision sought	This analysis is produced for the purpose of informing final Cabinet decisions on a proposed Regulatory Standards Bill.
Agency responsible	Ministry for Regulation
Proposing Ministers	Minister for Regulation
Date finalised	26 March 2025

The Regulatory Standards Bill (the proposed Bill) aims to:

- promote the accountability of the Executive to Parliament for the development of high-quality legislation and regulatory stewardship
- support Parliament to scrutinise bills and oversee the power to make delegated legislation.

The proposed Bill will seek to achieve this by:

- providing a benchmark for good regulation through a set of principles of responsible regulation that all legislation should comply with
- establishing a requirement for agencies to assess consistency of legislation with the principles to give them effect
- requiring disclosure of the reasons for any identified inconsistencies
- establishing a statutory Board to carry out inquiries in relation to the consistency of proposed and existing legislation
- strengthening regulatory system stewardship requirements
- supporting the Ministry for Regulation in its work to improve the quality of regulation[1]

Summary: Problem definition and options

What is the policy problem?

The quality of regulation is important, but there are competing drivers and insufficient incentives to deliver consistently good regulation. Competing drivers include strong pressures to act fast. There are insufficient incentives for careful scrutiny, monitoring and review. These factors are exacerbated by some systematic human biases and sometimes

[1] With the exception of the information-gathering powers addressed in Section 2A of this RIS, the other powers and expectations for the Ministry for Regulation and regulatory stewardship expectations for agencies were exempted from the regulatory impact analysis requirements (per Cabinet Office circular (24) 7), under the criteria minor or limited economic, social, or environmental impacts.

insufficient understanding of what is required to deliver quality. Views also differ on what 'quality' means.

Over time, governments have introduced expectations, tools and processes that make up the current Regulatory Management System (RMS) that build on or complement scrutiny processes developed by the House. However, these have had limited effectiveness to date.

We do not expect that there will be major changes in Parliament's own scrutiny arrangements or scrutiny capacity. There appears, however, to be scope for some further development and strengthening of the RMS, particularly relating to the monitoring, review and maintenance of existing legislation and regulatory systems, where few RMS tools are currently in place. The OECD iREG survey results for New Zealand tend to support that assessment.

During public consultation on a proposal for a Regulatory Standards Bill, submitters were asked for their views on whether there are issues with regulatory quality in New Zealand. Most submitters who commented on this considered there were no, or only minor, issues with regulatory quality and that the current mechanisms, such as Regulatory Impact Analysis (RIA) requirements, would be a better way to address any issues.

A small number of submitters did consider there is a significant issue with regulatory quality in New Zealand, raising specific examples of what they perceived as poorly designed and/or overlapping regulations. Views raised by these submitters included that the current incentives around lawmaking did not result in lawmakers or regulators appropriately considering the costs of making bad or poorly designed regulations.

What are the policy objectives?

The policy problem is broad, multi-faceted and difficult to address. Other countries also struggle with the same issues. As such, the options assessed in this RIS do not attempt to solve the entirety of the policy problem. Rather, the options seek to identify feasible steps forward in relation to this broad policy problem through changes or enhancements to current RMS tools and processes, including new legislative provisions.
In particular, the options assessed in this RIS aim to increase the quality of regulation by:

- increasing the attention of the government on the monitoring, review and maintenance of existing legislation and regulatory systems
- improving the quality of new and amended legislation through strengthening expectations, tools and processes, and increasing the level of compliance with current expectations, tools and processes.

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

Preferred policy packages include:

- setting standards for regulatory quality by establishing legislative design and good law-making principles in primary legislation; requiring assessments of proposed and existing legislation for consistency with these principles, unless exempted; providing for a regulatory oversight role for the Ministry in legislation; and establishing a statutory Board to independently consider the consistency of proposed and existing legislation (**Minister's preferred package**)
    - In this package, the majority of proposed primary and secondary legislation, as well as existing primary legislation, would be in scope of the consistency assessment requirements. There are some specific exclusions (e.g, for Statute Amendment Bills, and Budget-related legislation), as well as the ability to exempt

additional classes of legislation in the future. Whereas, existing secondary legislation is initially not in scope by default, with the expectation that some classes of secondary legislation will be brought in (via a Notice) at a later date.

- setting standards for regulatory quality in secondary legislation by building on the disclosure statement regime (through Part 4 of the Legislation Act 2019 coming into force); requiring disclosure against those standards for proposed primary legislation and selected secondary legislation; providing for a regulatory oversight role for the Ministry in legislation; and EITHER establishing a statutory Board to independently consider the consistency of proposed and existing legislation OR having the Ministry fulfil this role. (**Ministry's preferred package**)

Other options considered – standards for regulatory quality:

- setting standards through administrative mechanisms, such as Ministerial guidance, rather than in primary legislation
- establishing a narrower set of principles in primary legislation focused solely on good lawmaking
- establishing a few very broad principles in primary legislation that cover the full range of standards set out in the *Legislation Guidelines*, with more detail set out in administrative guidance
- establishing a few very broad principles in primary legislation that cover the full range of standards set out in the *Legislation Guidelines,* along with examples of the application of these principles, with more detail set out in administrative guidance

Other options considered – assurance function:

- establishing a new Officer of Parliament
- expanding the scope of the Regulatory Reviews Committee or establishing a new select committee
- establishing a new Crown Entity

What consultation has been undertaken?

Public consultation

A discussion document was released on 19 November 2024 (CAB-24-MIN-0437 refers), with public consultation open for just over 8 weeks.

Most public submissions (around 88%) opposed the proposal for a Regulatory Standards Bill, with key reasons being the perceived narrow focus of the proposal in strengthening individual rights and liberties at the expense of other objectives, the lack of provision for the Treaty/te Tiriti and broader Māori rights and interests and the likely costs relative to effectiveness. 0.33% of submissions supported or partially supported the proposal for a Regulatory Standards Bill. Submitters identified as generally supporting the proposal thought the proposed Bill would improve regulatory quality, reduce costs on business, promote economic growth or investment, or help protect institutions and property rights. Almost 12% of submissions did not have a clear position.

Of those that expressed a clear position, submissions analysed tended to prefer existing arrangements that support transparency and accountability in the law-making process, including RISs and disclosure statements, with feedback noting these could be strengthened. Submissions included suggestions for additional or alternative principles.

Submissions also suggested improving the proposed assurance function, identifying specific desirable features and processes. A summary of submissions has been provided with the Cabinet paper.

Feedback regarding the public consultation process was that it was inadequate in terms of length and timing, noting that there needs to be a broader public discussion of appropriate principles if they are to be set in legislation.

Agency consultation

Drafts of the Cabinet paper, RIS, and Treaty Impact Analysis were circulated to government agencies[2] for consultation. The main themes from the departmental feedback included some broad support for the objectives of the proposal, but a general preference for these to be achieved in other ways, such as strengthening regulatory impact analysis requirements or Parliamentary mechanisms. Agencies also raised concerns about the proposed principles and their application to specific regulatory systems; costs and resourcing implications; the role and makeup of the proposed Regulatory Standards Board (Board); the exclusion of provision for Treaty principles and Māori rights and interests; and the process and timing of consultation.

In particular:

- the components of the proposed Bill would duplicate, or add complexity, to existing RMS tools that support regulatory quality and transparency – for example, the proposed Regulatory Standards Board could duplicate elements of the role of the Regulations Review Committee and cut across individual Ministerial responsibility where the Board has a role in reviewing legislation before the House
- the proposed regulatory responsibility principles deviate from similar concepts in existing guidance, or conflict with objectives within existing legislation and regulatory systems
- the lack of recognition of the rights and interests of iwi, hapū and Māori due to there being no specific reference to the Treaty/te Tiriti, or its constitutional importance
- if all secondary legislation (in addition to new or amended primary legislation) was included in the requirement to assess consistency with the principles there would be significant cost and resourcing implications for agencies (and currently uncosted costs on local government, should bylaws be in scope of consistency assessments).Nearly all agencies indicated it would be challenging or unworkable to undertake the work involved within existing baselines without impacting on future government priorities and legislative programmes
    - several agencies provided feedback around classes of secondary legislation that should be excluded from the requirements for consistency assessment on the basis that it would be costly and add little value.
    - some agencies further noted that the proposed requirements would detract from resources available to undertake stewardship of the regulatory systems they administer, given that consistency assessments have a considerably narrower focus on legislation.

We note that agencies provided feedback at a point where the proposal included a requirement that all existing primary and secondary legislation be reviewed for consistency

[2] Consultation on the draft Cabinet paper was primarily undertaken with government agencies within the core Crown.

with the principles within 10 years (unless exempted). This requirement no longer forms part of the proposal to be considered by Cabinet.

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

Whilst the Minister's preferred option in the Cabinet paper is different to the Ministry's preferred option in the RIS there are elements that are consistent in both. The Ministry supports the overall objectives that the Cabinet paper proposal is seeking to achieve, but its preferred option would include a different variation of both legislative and non-legislative mechanisms to achieve those objectives. The key differences are as follows:

- The Cabinet paper proposal is to establish standards by establishing a set of legislative design and good law-making principles in primary legislation. The Ministry's preferred option is that there should be provisions for the making of standards in primary legislation, but that those standards themselves should be set in secondary legislation (that is, bringing Part 4 of the Legislation Act 2019 into force).
- The principles that would be established under the Cabinet paper proposal are selective (i.e. they do not cover all aspects of good legislative design and lawmaking that are currently covered in the *Legislation Guidelines*) and some of them are novel (in that they do not align with, or go further than, generally accepted legal values and concepts in New Zealand and relevant overseas jurisdictions). If principles are to be set in primary legislation, the Ministry's preferred option is to instead establish very high-level principles that more comprehensively cover all aspects of regulatory quality (e.g., all matters covered in the *Legislation Guidelines*), with further detail about their application set through non-legislative mechanisms.
- The Cabinet paper proposal includes a requirement that existing primary legislation within scope of the new requirements is reviewed for consistency with the principles, with the ability to include classes of existing secondary legislation by notices issued by the Minister, after approval by resolution of the House. In the Ministry's preferred option, these reviews would focus more broadly on the stewardship of regulatory systems in line with a broader set of regulatory quality standards, rather than assessing individual pieces of legislation for consistency with principles.
- The Cabinet paper proposes that new secondary legislation is included by default in the requirements to assess legislation for consistency with the principles, with provision for notices to be issued excluding classes of secondary legislation (as well as classes of primary legislation). The Ministry's preferred option would be to exclude all proposed and existing secondary legislation by default, and allow selected classes of secondary legislation to be brought into scope over time, to enable a smoother transition and ensure that agencies can focus on reviewing legislation where there is the potential for most benefit.
- The Cabinet paper proposal includes the establishment of a statutory Board (the Regulatory Standards Board) to independently review the consistency of proposed and existing legislation, acting as an incentive for Ministers and agencies to undertake robust assessments. The Ministry considers that the same objective could be achieved by the Ministry for Regulation playing an assurance role in relation to assessments of consistency (which could have the benefit of less cost, more flexibility and potentially greater stakeholder trust/buy-in), but acknowledges that there are also advantages to a statutory Board playing this role (which could have the benefit of being more effective as an incentive for Ministers/agencies to ensure robust assessments have been completed). The Ministry's preference is that the assurance function should be limited to reviewing existing legislation rather than proposed legislation, regardless of who is carrying it out –

however we have not been able to fully reflect the rationale of this view in the options analysis in the time available (see the *Limitations and constraints on analysis* section below).

Both packages include strengthening regulatory stewardship requirements for agencies and providing for the Ministry's regulatory oversight role in legislation.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

The Minister's preferred option will incur costs to the Ministry for Regulation and agencies.

The primary costs are:

Agencies with responsibility for administering legislation:

- Reviewing all proposed primary and secondary legislation against the principles in the proposed Bill and producing consistency statements.
- Reviewing all existing primary legislation and selected secondary legislation within scope of the new requirements against the principles, after classes of secondary legislation that warrant these assessments are set by notice.[3]
- Strengthened regulatory stewardship expectations for all agencies responsible for administering legislation.

The net cost to agencies is very difficult to assess and may change over time. We have estimated the minimum level of resource required to undertake high quality analysis and used data available on the known number of pieces of primary and secondary legislation to determine an indicative cost for the public service to meet the requirements set out in the proposed bill.

However, we note this data does not directly translate to the assessed difficulty of review because legislation differs significantly in scale and complexity and we have very few precedents to look to for evidence of how much effort will be necessary.

This approach to calculating costs does not account for several potential factors that could reduce costs:

- The proposed Bill provides an avenue for some classes of legislation being excluded from requirements. It is expected that there will be additional proposed legislation that may be excluded via this mechanism.
- There may be savings from the ability to use technology to support analysis.
- We also have not determined current resourcing levels dedicated to reviewing the stock of legislation (separately to other stewardship activities), which we would expect to partially offset this figure.

Without discounting for these various factors, we estimate that it would cost around $18 million per year across the Public Service – based on the following assumptions:

[3] Future impact analysis should be undertaken to support Cabinet's decision-making on the content of the notice, as this is secondary legislation. Therefore, the types and classes of existing secondary legislation to be included in the scope of the Bill are not covered in this RIS.

- approximately 1 FTE is required for each review of existing primary legislation and agencies review approximately half of existing primary legislation (500 Acts) within the first ten years of the Bill coming into effect; and
- 60 hours of work is involved for producing a CAS for new legislation.

The costs would not be distributed evenly across the Public Service. For example, we understand 15 agencies are responsible for 90% of all secondary legislation.

If additional funding is not provided for reviewing legislation, any costs would need to be managed by agencies within existing baselines and choices and trade-offs will need to occur. This is likely to result in opportunity costs through a reduction in the scope of other policy work being undertaken, or agencies planning to undertake review work on longer timeframes if that is the trade-off chosen.

There are also likely to be costs associated with [LEGALLY PRIVILEGED: s 9(2)(h)

Ministry for Regulation

- Resourcing to develop guidance material and support agencies to implement the principles and associated mechanisms and support the Ministry's reporting requirements as part of the proposed oversight role. The resourcing required is likely to cost between $1.1 million and $1.4 million per annum.
- Establishment and ongoing operation of a Regulatory Standards Board including secretariat and analytical support. Depending on the size of the Board and associated support, this is likely to incur costs between $1.04 million and $1.17 million per annum.

There are no direct costs to the wider public and any indirect costs (e.g., time and cost of engagement with government agencies to inform reviews of consistency for proposed or existing legislation) are variable. Regulatory reviews or stewardship activity carried out by agencies may impact on the level of costs borne by the public under that regime, either positively or negatively. Notably, the principles as contained in Annex One would require costs to the public from the regulation under review to be actively considered and justified as a part of that review.

Benefits (Core information)

The Minister's preferred option is expected to result in greater transparency of whether legislation meets the specific standards expressed as principles of responsible regulation and of justifications for inconsistencies. This transparency, along with the incentive effect potentially added by the proposed Regulatory Standards Board, could influence decisions made during the development, implementation and stewardship of legislation, and ultimately increase the amount of legislation that is consistent with the principles over time. However, as with the Ministry's preferred option, delivery of these benefits will depend heavily on the impact of competing incentives and the effectiveness of implementation (including allocation of appropriate funding/resourcing).

If the proposed Bill were to have the impact described, this would be in relation to the principles as currently proposed (see **Annex One**). Given the selective nature of the

principles and the fact that they do not include many of the aspects of regulatory quality covered in the Legislation Guidelines (as noted by a number of submitters to the public consultation process), it is difficult to assess the impact on overall regulatory quality even if there are high degrees of compliance with new requirements under the Bill.

The strengthened regulatory stewardship requirement in the proposed Bill could also reduce the incidence, or severity, of regulatory failure – through greater monitoring and evaluation activity.

Balance of benefits and costs (Core information)

The size of the benefits of all options presented in the RIS are challenging to assess, given the focus of the proposal on influencing the decision-making of agencies and Ministers – rather than directly changing a piece of legislation or regulatory system.

For the Minister's preferred option, the size of the benefits largely depends on a) the quantity and nature of decisions on regulation that are impacted by the need to undertake consistency assessments; and b) the difference between any such decision with the proposed Bill in force, compared with the same decision in the absence of the Bill.

Similarly, given the Board's role is to report its non-binding findings and recommendations following inquiries into whether legislation is consistent with the principles, it is not possible to identify policy outcomes amounting to specific benefits at this stage.

Implementation

The proposed Regulatory Standards Bill is intended to be introduced in May 2025 and passed before the end of 2025, in line with the National-ACT Coalition Agreement to pass the Regulatory Standards Act as soon as practicable. Transitional arrangements have been allowed for in the proposal.

The Ministry for Regulation will be responsible for supporting the Minister to prepare guidance and developing additional material to inform and support agencies to discharge their obligations under the Act.

The Minister will need to appoint Board members (in consultation with Cabinet). The Board will be established with support from the Ministry for Regulation, which will also provide ongoing operational support. The establishment process is likely to take a minimum of three months. The Ministry's support role could be provided through new resourcing or reprioritising existing resources and work.

Government agencies and other entities with responsibility for primary or secondary legislation will be required to comply with consistency requirements for new legislation, develop plans to periodically review existing primary legislation and included existing secondary legislation against the principles, and undertake those reviews. The impact of implementing this will vary depending on agencies' current capacity and capability and the volume of legislation each is responsible for. Consistency assessments are proposed to align where possible with existing processes, to minimise this impact.

Limitations and Constraints on Analysis

As indicated above, the inherent characteristics of this proposal mean that it is challenging to assess the size of the benefits and compare them to costs.

The challenges associated with assessing the benefits of options include the following:

- It is difficult to estimate shifts in decision-making across government, noting that there is no mechanism being proposed that would prevent legislation being passed (or legislation

continuing in place) that is inconsistent with the principles, and that these requirements would be introduced within a context of strong, competing, and likely ongoing incentives (e.g., pressures to quickly progress regulatory proposals) and agency capacity constraints.

- The standards set for regulation inevitably reflect value judgements about what good regulation looks like and about the value of regulation itself. This will be exacerbated to the extent that the standards are selective (rather than more comprehensive) in nature.
- The extent to which the proposed Bill improves regulatory quality in specific regulatory systems depends on the existing regulatory and operational settings within those systems.
- Any benefits from the options are generally intangible, less able to be monetised, and often only able to be realised in the long term.

Although some costs of implementing the proposed Bill are more immediate, tangible and quantifiable, there are also limitations on assessing costs more broadly, including:

- The difficulty with assessing the opportunity costs and where they fall – e.g., the crowding out of other activity, or the fact that some good regulation principles may receive less attention if they are not specifically provided for in legislation.
- [LEGALLY PRIVILEGED]s 9(2)(h)]

[LEGALLY PRIVILEGED]s 9(2)(h)

Ministerial decisions taken after public consultation resulted in the following changes or clarifications to the proposal:

- Proposed secondary legislation is included by default, with the ability to exempt classes via a notice.
- Extension of the assurance mechanism to consider proposed primary legislation (i.e, bills before the House), in addition to existing primary and new secondary legislation.

These policy design aspects were not explicitly publicly consulted on. Ministry staff were not able in the time available to conduct detailed analysis on the full range of impacts of those proposals, such as unintended consequences, whether they deliver the policy objective, alternative options, and how they might be implemented.

Summary: Ministry for Regulation's preferred option

Costs (Core information)

The Ministry's preferred option would also incur costs for the Ministry for Regulation and agencies compared with the status quo. However, it is expected to be less costly than the Cabinet paper proposal, primarily because:

- It would build on existing elements of the Regulatory Management System (e.g Part 4 of the Legislation Act 2019);
- [LEGALLY PRIVILEGED: s 9(2)(h)]

Benefits (Core information)

The Ministry's preferred option would have a similar aim as the Minister's preferred option in terms of desired benefits. However, using a government notice as a vehicle for setting standards provides flexibility for the principles to evolve over time, while providing for some House input and [LEGALLY PRIVILEGED s 9(2)(h)] This mechanism also provides for a broader range of standards to be set if desired (for instance, all the matters set out in the *Legislation Guidelines*), likely enhancing buy-in and therefore durability.

The Ministry's preferred option may enable a higher focus on regulatory system stewardship, which is where the biggest gaps in the RMS currently exist. Although the provisions relating to regulatory stewardship are similar across both options, the Ministry's preferred option:

- would not include requirements for existing legislation to be explicitly assessed against standards, and
- would include exploring non-legislative means of achieving a targeted programme of agency-led reviews into broader regulatory systems.
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As broader context, several initiatives aimed at improving the quality of regulation are still in their early stages (such as the new functions of the Ministry for Regulation – e.g., early engagement on regulatory proposals, and Ministry-led regulatory reviews). In time, the Ministry expects to be able to evaluate the benefits of these initiatives and reassess them relative to the problem definition.

Balance of benefits and costs (Core information)

As for the Minister's preferred option, the size of the benefits of the Ministry's preferred option are difficult to assess.

An approach blending existing legislation (Part 4 of the Legislation Act 2019) with Ministerial guidance issued via notices and established policy processes (such as the RIA requirements) is comparatively low-cost with similar potential benefits compared with other options. However, there is a risk that this option would not provide sufficient incentives to compete with other drivers impacting regulatory quality.

In relation to the assurance function, the proposed statutory Board could prove an effective way to support implementation of the changes in the RMS provided for in the proposed Bill. However, a function within the Ministry would cost less than establishing a new mechanism and would allow for more flexibility to adapt in changing circumstances.

Implementation

Under the Ministry's preferred option, implementation would occur by the bringing into force of Part 4 of the Legislation Act 2019 (by April 2026) and through the development of new legislation to support the Ministry's regulatory oversight role and strengthen regulatory stewardship requirements

As for the Minister's preferred option, the Ministry would support the Minister for Regulation and the Attorney-General to issue notices and guidance, as well as create and promote supporting material on reporting against the set standards. The Ministry would also support agency compliance with the new stewardship duty for the monitoring, review and maintenance of regulatory systems.

For a Ministry-led assurance function the implementation steps are mostly the same as for a statutory Board. The main difference is that for a Ministry-led assurance function the Ministry's Chief Executive could appoint an internal manager, whereas a Regulatory Standards Board would be appointed by the Minister and set up with support from Ministry staff.

Limitations and Constraints on Analysis

Limitations and constraints on analysis are the same as under the Minister's preferred option above.

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: s 9(2)(a)

Pip van der Scheer

Manager, Regulatory Management System

22 April 2025

Quality Assurance Statement

Reviewing Agency:	**QA rating:**
Joint quality assurance panel with members from the Ministry for Regulation, Ministry of Justice, Ministry of Business, Innovation and Employment and the Treasury.	Partially meets

Panel Comment:

A quality assurance panel with members from the Ministry for Regulation, Ministry of Justice, Ministry for Business, Innovation and Employment and the Treasury has reviewed the Regulatory Impact Statement (RIS): Proposed Regulatory Standards Bill produced by the Ministry for Regulation. The QA panel considers that it "partially meets" the Quality Assurance criteria.

The RIS notes that the scope of the options has been limited by the Coalition agreement and Ministerial direction and as a result, alternative approaches to the proposal have not been explored in detail. However, the RIS clearly outlines the assumptions, limitations, and Ministerial objectives in a way that enables transparency and clarity about the differing views and considerations.

The information in the RIS suggests that the specific legislative changes sought in this Cabinet paper are unlikely to be the most efficient approach to pursuing the stated objectives. It highlights that, if the recommendations are agreed, regulating in the public interest may be more costly, with an uncertain impact on the underlying behavioural incentives and on the information problems that drive poor regulatory outcomes. The panel notes that the scope of consistency reviews was included after public consultation, and the RIS has limited analysis of impacts, including on local government. This additional requirement has significant estimated costs and potential for crowding out other regulatory maintenance and stewardship activity.

The Ministry for Regulation has expressed a preference for an alternative approach based on disclosure requirements coming into force through Part 4 of the Legislation Act 2019, supplemented by Ministerial commitments to good regulation and stewardship. The RIS indicates that this would encourage better information and sharpened incentives across regulatory regimes.

The QA panel's view is that, should this Bill proceed to enactment, more consideration will need to be given to implementation issues, funding, and addressing the risks identified in the RIS.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem?

The nature of regulation

1. The New Zealand government holds the primary responsibility for the initiation, design, implementation, operation, monitoring, review and ongoing care and maintenance of an extensive range of regulation.

2. Regulation as a concept and practice is about seeking to order or influence how people behave or interact in support of a desired policy goal. It is more than just legislation. A piece of legislation by itself does not change behaviour. It also requires one or more actors to take actions (such as information provision, approvals, investigations, or prosecutions) to give effect to that legislation, often utilising dedicated powers and resourcing.

3. All these elements – rules, actors, resources and activities - are required for regulation to influence behaviour. And when these elements have a common focus or policy goal, we call that combination a regulatory system.

Regulatory quality is important…

4. Regulation affects significant parts of the lives of all New Zealanders, and sometimes in quite significant ways. In some cases, it can tell us what we must or cannot do and punish us severely if we fail to comply.

5. The quality of our regulatory systems therefore matters. Well-designed and implemented regulation can reduce disputes, minimise harms, uphold freedoms, support investment and innovation, protect the environment, and enhance personal and community wellbeing. On the other hand, poor regulation can fail to achieve its objectives, impose unnecessary costs, create uncertainty or unfairness, limit freedoms, stifle innovation and produce other unexpected or unintended consequences.

… but quality has many dimensions and can be difficult to assess

6. We can't judge the quality of a piece of legislation or a regulatory system just on whether its objectives have been met. People can reasonably have different views on the merits of the objectives. Other unrelated factors, including chance, can also affect the outcomes.

7. We also want regulation to meet other criteria, such as good process, public awareness, clarity, predictability, simplicity, fairness, proportionality, flexibility, resilience, cost, consistency with related regulatory arrangements and constitutional norms, and minimising unintended consequences. None of these is simple to assess, and assessment is even harder at the design stage. As a consequence, we often use various rules of thumb as rough proxies to judge regulatory quality – e.g., whether proposed legislation is consistent with the *Legislation Guidelines* published by the Legislation Design and Advisory Committee, or whether the public have had meaningful opportunities to provide input on proposed regulatory changes or reviews of existing regulatory systems.

New Zealand regulation rates reasonably well in international comparison…

8. Despite the measurement difficulties, a few international organisations attempt to assess the quality of regulation across countries. Understanding the methodology and data is important to properly interpreting the results, but New Zealand consistently ranks well for different aspects of regulatory quality, even among advanced countries.

    - Before it was discontinued, New Zealand was one of the top-rated countries in the World Bank's Ease of Doing Business survey, and remained one of the top-rated

countries for regulatory quality in the World Bank's Worldwide Governance Indicators for 2023[4]

- New Zealand ranked 6th in the World Justice Project's Rule of Law Index for 2024, including for the regulatory enforcement component[5]
- New Zealand scored better than the average in the OECD's Product Market Regulation survey for 2024[6], though our ranking has been falling as other countries have improved faster in recent years. Ironically, more regulation in areas such as digital markets and political lobbying would much improve our Product Market Regulation ranking.

... but New Zealand could still do much better...

9. Some of these international measures just assess the existence and nature of relevant rules, and do not consider levels of compliance and how well they work in practice. Poorly designed or implemented regulation has been implicated in a number of major New Zealand disasters resulting in huge costs or lives lost – e.g., failed finance companies, leaky buildings, the Pike River mine explosion.

10. Survey work done by the NZ Productivity Commission in 2014[7] found that "two-thirds of regulator chief executives reported they had to work with legislation that is outdated or not fit-for-purpose" and also that "only 23% of the 1,526 businesses surveyed agreed or strongly agreed that regulatory staff are skilled and knowledgeable".

11. The Rules Reduction Taskforce in 2015[8] reported that they were "struck by the number of instances where the good intentions of the rule-makers are somehow lost in the translation to the real world".

12. We have no reason to think that matters have improved in the interim. We still know very little about the state and performance of our major regulatory systems, as there is no systematic approach to the monitoring and review of most systems. If we don't know how well they are working, it's unlikely we are managing them well.

... and the scope and complexity of New Zealand regulation continues to grow...

13. Recent Parliamentary Counsel Office (PCO) data[9] indicates that NZ has around 1000 Public Acts. While that number has been relatively stable for a few years, PCO reports that the number of words in those Public Acts has grown at an average net rate of 2.4% per year over the last 15 years and currently stands at around 23 million words.

14. PCO also publishes around 2500 pieces of secondary legislation, whose collective word count has also grown at an average net rate of 2.3% per year and currently stands at around 9.7 million words. PCO estimates there are a further 7200 pieces of agency secondary legislation published elsewhere within the State sector, for which we lack data on word count or growth rate.

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[4] Accessed at https://www.worldbank.org/en/publication/worldwide-governance-indicators
[5] Accessed at https://worldjusticeproject.org/rule-of-law-index/
[6] Accessed at https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/product-market-regulation/New%20Zealand_PMR%20country%20note.pdf
[7] New Zealand Productivity Commission, Regulatory institutions and practices - Final report, June 2014
[8] Rules Reduction Taskforce, The loopy rules report, Aug 2015
[9] Parliamentary Counsel Office, Annual Report on Legislative Practices 2023-2024, January 2025, accessed at https://www.pco.govt.nz/corporate-publications/annual-report-on-legislative-practices/annual-report-on-legislative-practices-2024

15. As of October 2023, there were also approximately 900 bylaws referred to on council websites across New Zealand.

16. In this issue of scope and complexity New Zealand is not alone – the same pressures exist in all developed countries. Australian federal legislation shows a similar growth rate[10].

… often for good reasons, but with flow-on consequences for quality

17. There are many reasons for this growth, and not all support a conclusion that more words mean greater regulatory burden. For example, plain language drafting is intended to improve the readability and understanding of legislation but tends to increase the number of words used. And there is increased demand for smarter, more tailored and more flexible regulation, but this also tends to require more words.

18. There are other contributing factors. For example, new scientific knowledge about harms from human activities, ongoing technological developments, increased international connections, new disruptive business models etc, all naturally lead to the expanding and deepening of regulatory systems, with consequently more words. Changing attitudes to risk may also increase the demand for regulation, but may be a natural consequence of increasing wealth (people have more to lose) and increased beliefs that risks can be anticipated and managed and not just accepted.

19. However good the reasons, this increased scope and complexity does have consequences. As PCO has noted, it represents an "increased challenge for citizens and businesses to understand the sum total of legislation in the areas that impact on them".[11] And while New Zealand tends to want to regulate the same range of issues as other developed countries, we lack the economies of scale of larger countries when it comes to public resources available to invest in the development, communication, and ongoing care and maintenance of those regulatory systems.

Good regulatory design and implementation is demanding…

20. Independent of the question of scope, designing, developing and maintaining effective regulatory systems is demanding work:

    - Information about the nature and extent of the problem we are seeking to address may be limited or unreliable.
    - The motivations and reasons for behaviour that the government is trying to influence may be complex and tend to vary between people depending on context, capability, personality and attitude. Consequently, how people initially respond to regulatory efforts and then adapt over time is inherently hard to predict and can lead to unexpected outcomes.
    - Any chosen regulatory intervention will have costs as well as benefits, and these will fall differently on different groups. Their identification and appropriate weighting depend on decision-makers' values and may be politically contested.
    - Any assessment of costs and benefits must be relative to a counterfactual (what would happen in the absence of the regulatory intervention), but the world is complex and dynamic and so future counterfactuals are difficult to assess.

[10] See Gill, Shipman & Simpson (2025) The Growth in the Size of the New Zealand Statute Book, VUW Policy Quarterly, accessed at https://ojs.victoria.ac.nz/pq/article/view/9710/8575

[11] Parliamentary Counsel Office, Annual Report on Legislative Practices 2023-2024, January 2025 (see 6)

- Design and operational details matter for effectiveness and getting the details right demands expert input and collaboration across a range of disciplines.

… and regulatory decision-makers, advisers and implementers are human.

21. Further complicating matters, we all have cognitive limitations and systematic biases. For example, we are prone to jump to conclusions about the nature of the problem or a preferred solution because we systematically overestimate our understanding of how things actually work, and we are prone to limit our scrutiny of those conclusions because of confirmation bias and optimism bias.

22. We also have incentives that can conflict with the demands of good regulation. As noted in the RIS for the 2011 Regulatory Standards Bill[12], Ministers face strong pressures to:

    - respond quickly and decisively to the latest risk, accident or misdeed
    - commit to concrete action, even without evidence that the action will address the problem or that the benefits are likely to exceed the costs
    - stick to a political commitment once made and
    - deliver on the commitment as soon as possible.

23. It's not just Ministers. There are limited incentives for Members of Parliament to carefully scrutinise and improve proposed legislation as it does not usually bring them media attention - and may not align with party political positions. It can be challenging for public servants to meet their statutory obligation to provide free and frank advice, while navigating Ministerial relationships, particularly where the agency view differs from that of a Minister and is likely to become public. Agencies can be working in silos and find it challenging to allocate scarce resources to invest in a whole-of-government perspective. And nobody who promoted a particular regulatory change has great incentives to look for and disclose evidence that it isn't working as intended.

The RMS is the response of successive governments to some of these enduring challenges

24. Given the challenges discussed above, governments interested in the quality of regulation have, over time, approved a range of expectations, tools and processes to try to support good regulatory decisions and more effective regulation. We call this the Regulatory Management System (RMS).

25. These measures are in addition to the legislative scrutiny arrangements of the House of Representatives set out in Standing Orders (select committee consideration, public submissions, specialist Regulations Review Committee, provision for disallowance, provision for petitions).

Current RMS tools and processes are mostly focussed on the development of legislation

26. The most long-standing and successful of these is the requirement to use the expert legislative drafting resource located in the Parliamentary Counsel Office. This is the intervention with the most concrete impact on the legislative development process. Another long-standing requirement is for the Attorney-General to advise the House on identified inconsistencies with rights and freedoms contained in the Bill of Rights Act 1990. Both these requirements are enshrined in legislation passed by Parliament.

27. Other than some commitments to good regulatory practices in recent comprehensive free trade agreements (such as the NZ-EU FTA), most of the remaining RMS expectations, tools

[12] Regulating for Better Regulation - What is the Potential of a Regulatory Responsibility Act? - 15 March 2011 - Regulatory Impact Statement - The Treasury

and processes are administrative arrangements set by Cabinet for Ministers and the public service. They are essentially voluntary self-regulation that Ministers can ignore if they wish. They include:

- the expected provision of impact analysis for proposed legislative changes, produced by the lead policy agency and independently quality assured, to accompany a Minister's Cabinet paper and to be published when the relevant government Bill or Order in Council is introduced or made[13]
- an expert Legislative Design and Advisory Committee (LDAC)[14] that provides advice to government agencies on legislative design questions and publishes the Legislation Guidelines, which Cabinet has adopted as the government's key reference point for assessing whether legislative proposals are consistent with accepted legal and constitutional principles
- the expected provision of a disclosure statement to accompany government Bills on introduction that brings together information intended to support Parliamentary and public scrutiny of key aspects of the proposed legislation[15]
- a set of formal Government Expectations for Good Regulatory Practice,[16] which cover both expectations for the design of regulatory systems and for regulatory stewardship (the ongoing care of regulatory systems) by government agencies
- stewardship responsibilities for Chief Executives under the Public Service Act 2020.[17]

28. More recently the government has established the Ministry for Regulation to lift support for the operation of the RMS, including conducting regulatory reviews and providing regulators with resources and support to build their regulatory capability.

How is the status quo expected to develop?

Current trends and pressures are expected to continue

29. While we can expect cycles of deregulatory efforts, the most likely long-term trajectory is continued growth in the scope and complexity of New Zealand regulation. The growth could be at a slower rate, but unless there is a significant shift in public attitudes and expectations the same regulatory pressures will remain. Good regulatory design and implementation will continue to be demanding and the growth in the scope and complexity of regulation with further stretch the capacity of the New Zealand government to monitor its performance and keep it current and fit-for-purpose.

30. Short of increased resources and capacity, we do not expect to see major changes in Parliament's own scrutiny arrangements. Any efforts to further tackle the limited incentives and capability issues that currently exist will likely require action through the government's RMS.

RMS improvements are also expected but will be constrained by fiscal pressures on agencies

31. The RMS is expected to continue to evolve in the absence of further reforms. The disclosure requirements in Part 4 of the Legislation Act 2019 will eventually come into force and

[13] Regulatory Impact Analysis (RIA) | Ministry for Regulation
[14] The Legislation Design and Advisory Committee
[15] Disclosure statements for government legislation | Ministry for Regulation
[16] https://www.regulation.govt.nz/assets/Uploads/Government-Expectations-for-Good-Regulatory-Practice.pdf
[17] Public Service Act 2020, section 12 Public service principles

provide a statutory replacement for the current Cabinet-mandated disclosure statement, allowing for expanded coverage and enhanced disclosures, along with more Parliamentary input on what matters should be disclosed.

32. Good regulatory practice commitments in recent free trade agreements will also increase the pressure for more systematic reporting of plans for changes to secondary legislation, for periodic reviews of existing legislation, and for a more systematic commitment and approach to public consultation.

33. We also think PCO's work to improve the accessibility of secondary legislation they do not already publish will eventually allow quicker and better analysis of the full scope and characteristics of our existing regulatory systems. The additional resources now going into the Ministry for Regulation, if sustained, should also modestly increase the pressure and support for better practice, at least within government agencies.

34. However, the tight fiscal situation in the next few years will likely affect the ability of government agencies to improve their regulatory practices. It may also increase the level of regulatory failures and under-performance, and delay work to identify and act on legislation that is no longer fit-for-purpose unless it is a Ministerial priority of the day.

What is the policy problem or opportunity?

Incentives and knowledge deficits undermine regulatory quality

35. In our view, the key policy problem is the competing drivers and insufficient incentives on government decision-makers and advisers, and sometimes limited awareness of what it takes, to develop and maintain good quality legislation and regulatory systems. The nature of some of the key incentives and the demanding nature of good regulatory design and implementation are briefly outlined above.

36. The political priority for speed, in particular, conflicts with the amount of work desirably undertaken to design and deliver good quality legislation and regulatory systems. Pressure on resources, organisational silos and an inadequate assignment of responsibilities for different elements of regulatory systems also encourage a "set and forget" approach to regulatory change – until any problems can no longer be ignored. Frequent turnover in Ministerial positions and government agencies and a longstanding lack of investment in monitoring and evaluation undermines available system knowledge and regulatory expertise to inform proposals for change.

37. The problem does not seem to be confined to or focussed in particular areas of regulation, and therefore is likely to affect all New Zealanders. Well-resourced and connected people and organisations may be able to better manage any adverse impacts, but where the costs, including opportunity costs, of poorer regulation likely fall is difficult to judge.

Current RMS tools and processes have provided only limited mitigation

38. The government's regulatory management system (RMS) tries to lean against some of those incentives and deficits. For example, requirements for impact analysis are an attempt:

    - to reduce the potential for solution-jumping and analytical biases by introducing a systematic framework for presenting agency policy advice on proposed regulatory changes that prompts for advice that is evidence-informed, is clear about assumptions and limitations, has tested the nature and scope of the problem, has identified and carefully considered the relative merits of a range of options and has benefited from the views of subject matter experts and interested parties

- to make the results of that analysis available to Ministers to better inform their decisions on recommendations for regulatory change
- to subsequently make the results of that analysis available to Parliament and the public to better inform their scrutiny of the proposed regulatory change.

39. Unfortunately, the political imperative for speedy policy decisions, exacerbated by deficits in agency system knowledge and analytical expertise, significantly undermines the first two objectives. Cabinet can choose to waive or ignore its own requirements and policy decisions are generally not delayed due to the absence or poor quality of available impact analysis. In particular, the quality of analysis is frequently compromised by Ministerial timeframes, is usually produced too late (and perhaps not in an easily digestible form) to inform Ministerial recommendations and potentially complicates their decision-making if taken seriously, so is often not valued by them.
40. Impact analysis does seem to be valued by opposition MPs for House debates (in the absence of better information), but this transparency function potentially further undermines Ministerial support for its production when analysis does not fully support the proposal. Regardless, the political and reputational costs of publishing poor impact analysis seem to be low, given how frequently it is tolerated by Ministers and agencies.
41. Bill of Rights Act 1990 vetting and disclosure statements also serve a transparency function, intended to support Parliamentary scrutiny of government legislative proposals. Website statistics suggest that MPs and interested members of the public find this information useful to inform debates and submissions, but the government so dominates Parliament that the information's direct impact on legislative quality seems to be limited. For example, experience shows that Governments are willing to promote legislation, and Parliaments are willing to pass that legislation unchanged, even when clearly informed of incompatibilities with the rights and freedoms in the Bill of Rights Act 1990.

There is scope for the RMS to do more to support the development of better regulation

42. For example, current tools and processes give only limited attention to implementation issues. There is also no public reporting on impact analysis quality and compliance at a system level. Expectations and advice on analysing different types of impacts (e.g., effects on competition or business compliance costs) are very limited. The accuracy of information in disclosure statements and about consistency with the Legislation Guidelines is not independently checked. Commitments to public consultation, including providing advance notice of proposed reviews and regulatory proposals, could be usefully strengthened.
43. This is supported by the results of the OECD's indicators of regulatory policy and governance (iREG) survey. New Zealand rates above the OECD average for its regulatory impact assessment practices and stakeholder engagement but is not among the OECD leaders and is well below the maximum score, indicating room to improve.

There is more scope for the RMS to support the review and maintenance of existing regulation

44. As already noted, New Zealand currently has few expectations, tools and processes for the review and maintenance of existing legislation and regulatory systems. New regulatory proposals get most of the public and political attention, but the state of our significant and growing stock of existing regulation gets very little.
45. This would seem to present considerable opportunities for improvement, in response to a growing need. At present we only have the regulatory system stewardship expectations in

the government's expectations for good regulatory practice, and stewardship obligations for Chief Executives under the Public Service Act 2020. The stewardship expectations are unsupported by more specific tools and processes (aside from some historical reporting requirements for a few major regulatory agencies, currently suspended) and consequently receive practical attention from only a limited number of government agencies.

46. The potential to do more in this area is supported again by the results of the OECD's iREG survey. OECD country scores for governance practices supporting the review of existing legislation are much lower on average than for regulatory impact assessment or stakeholder engagement, but New Zealand scores well below that average, and considerably lower than countries we normally compare ourselves against.

47. Unlike for the development of regulatory proposals, the political demand for speed is likely to be less of a problem for the effectiveness of any specific stewardship tools and processes. The level of agency resources and Ministerial support for the use of agency resources for that purpose are likely to be the main challenges to overcome.

What objectives are sought in relation to the policy problem?

48. The policy problem described above is broad, multi-faceted and difficult to address. Other countries also struggle with the same issues. As such, the options assessed in the remainder of this RIS do not attempt to solve the entirety of the policy problem. Rather, the options seek to identify feasible steps forward in relation to this broad policy problem through changes or enhancements to current RMS tools and processes, but without upsetting existing constitutional arrangements or relationships between the three branches of government.

49. In particular, the options assessed in this RIS aim to increase the quality of regulation, by:

    - increasing the attention of the government on the monitoring, review and maintenance of existing legislation and regulatory systems
    - improving the quality of new and amended legislation through strengthening current expectations, tools and processes, and increasing the level of compliance with current expectations, tools and processes.

50. However, as noted above, there are difficulties to defining the 'quality of regulation' in this context, given the subjective nature of the judgements required (including even whether regulation has met its intended purpose), the wide variety of dimensions involved (ranging from the process by which regulation was developed, to the design of any legislation and the quality of its implementation) and the complexity of assessment across these dimensions.

What consultation has been undertaken?

Public consultation

51. The consultation process on the *Have your say on a proposed Regulatory Standards Bill* discussion document opened on 19 November 2024 and closed on 13 January 2025, with approximately 23,000 submissions received. The submission process asked for feedback on what a Bill should aim to do and what it should include, rather than the specific provisions or wording of a Bill. The public consultation process was supported by an accompanying interim Regulatory Impact Statement, and interim Treaty Impact Analysis.[18]

[18] The Regulatory Standards Bill | Ministry for Regulation

52. Most public submissions (around 88%) opposed the proposal for a Regulatory Standards Bill, with key reasons being the perceived narrow focus of the proposal in strengthening individual rights and liberties at the expense of other objectives, the lack of provision for the Treaty/te Tiriti and broader Māori rights and interests and the likely costs relative to effectiveness. 0.33% of submissions supported or partially supported the proposal for a Regulatory Standards Bill. Submitters identified as generally supporting the proposal think the proposed Bill would improve regulatory quality, reduce costs on business, promote economic growth or investment, or help protect institutions and property rights. Almost 12% of submissions did not have a clear position.

53. Feedback from consultation on specific proposals is in subsequent sections.

Agency consultation

54. Drafts of the Cabinet paper, RIS, and Treaty Impact Analysis were circulated to government agencies[19] for consultation. The main themes from the departmental feedback included some broad support for the objectives of the proposal, but a general preference for these to be achieved in other ways, such as strengthening regulatory impact analysis requirements or Parliamentary mechanisms. Agencies also raised concerns about the proposed principles and their application to specific regulatory systems; costs and resourcing implications; the extension of the proposal to secondary legislation; the role and makeup of the proposed Regulatory Standards Board (Board); the exclusion of provision for Treaty principles and Māori rights and interests; and the process and timing of consultation.

55. In particular:

- the components of the proposed Bill would duplicate, or add complexity, to existing RMS tools that support regulatory quality and transparency – e.g., the proposed Regulatory Standards Board could duplicate the role of the Regulations Review Committee and cut across individual Ministerial responsibility where the Board has a role in reviewing legislation before the House
- the proposed regulatory responsibility principles deviate from similar concepts in existing guidance, or conflict with objectives within existing legislation and regulatory systems
- the lack of recognition of the rights and interests of iwi, hapū and Māori due to there being no specific reference to the Treaty/te Tiriti, or its constitutional importance
- if all secondary legislation (in addition to new or amended primary legislation) was included in the requirement to assess consistency with the principles there would be significant cost and resourcing implications for agencies (and currently uncosted costs on local government, should bylaws be in scope of consistency assessments).Nearly all agencies indicated it would be challenging or unworkable to undertake the work involved within existing baselines without impacting on future government priorities and legislative programmes
    - several agencies provided feedback around classes of secondary legislation that should be excluded from the requirements for consistency assessment on the basis that it would be costly and add little value.
    - some agencies further noted that the proposed requirements would detract from resources available to undertake stewardship of the regulatory systems

[19] Consultation on the draft Cabinet paper was primarily undertaken with government agencies within the core Crown.

they administer, given that consistency assessments have a considerably narrower focus on legislation.

56. We note that agencies provided feedback at a point where the proposal included a requirement that all existing primary and secondary legislation be reviewed for consistency with the principles within 10 years (unless exempted). This requirement no longer forms part of the proposal to be considered by Cabinet. Future impact analysis should be undertaken to support Cabinet decision-making on the inclusion of secondary legislation.

Section 2A: Assessing options to address the policy problem – regulatory principles and accompanying measures

What scope will options be considered within?

57. This section is in two parts. **Subpart One** analyses options for setting standards for responsible regulation and mechanisms for encouraging and assessing compliance with standards. **Subpart Two** analyses options for establishing standards as principles in primary legislation.

58. The option sets in Subpart One also include some accompanying measures to further support regulatory quality.

59. This RIS will use the status quo (Option One) as a baseline for assessing the set of options, given that Part 4 of the Legislation Act 2019 has not yet come into force and comparative assessments would require several assumptions around its impacts at a future point in time.

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

60. The following criteria will be used to compare options to the status quo:

- **Effectiveness:** whether the option is likely to improve the quality of legislation and regulatory systems. This criterion also includes risks of unintended consequences and whether these risks undermine the option.
- **Durability:** whether the option would have broad buy-in while having sufficient flexibility to evolve to respond to new information and changing circumstances.
- **Cost:** estimated fiscal costs, including set-up and ongoing costs, who bears these costs, comparable affordability, and whether the ongoing costs have a reliable source of funding.
- **Feasibility and efficiency:** whether the option can be easily implemented, including whether it can be implemented using features and/or processes in the existing machinery of government, and whether it would be efficient in delivering the intended outcomes.

Subpart One: What options are being considered – overarching approach

Option One – Status Quo

61. Option One is the status quo at the time of writing and reflects what will happen in the absence of any further intervention. However, it should be noted that it will likely deliver a degree of improvement over time, due to measures already underway, such as the full effect of the new Ministry for Regulation, the increased ability to analyse secondary legislation due to better accessibility, and prompt for more regulatory system stewardship work arising out of our recent international commitments on good regulatory practices.

Standards for regulatory quality

62. The status quo includes a mix of statutory and non-statutory measures intended to set standards for regulatory quality. These standards relate to processes for good lawmaking, legislative design and regulatory stewardship and include:

    - the regulatory impact analysis (RIA) requirements, set out in Cabinet circular CO (24) 7, and accompanying by guidance issued by the Ministry for Regulation, which set out requirements and considerations to encourage a systematic and evidence-informed approach to policy development
    - the Legislative Design and Advisory Committee (LDAC), which advises departments on legislative design issues and consistency with fundamental legal and constitutional principles. It also publishes the Legislative Guidelines, which have been endorsed by Cabinet in CO (21) 2 which are the government's key reference point for assessing whether legislative proposals are consistent with accepted legal and constitutional principles
    - the Government Expectations for Good Regulatory Practice, which establish expectations for the design of regulatory systems and regulatory stewardship. Some government agencies also publish resources to support aspects of regulatory stewardship, such as improving regulatory system capability
    - section 12(e) of the Public Service Act 2020, supported by non-legislative guidance issued by the Public Service Commission, which establishes considerations for stewardship of legislation administered by agencies.

Mechanisms for encouraging and assessing compliance with standards

63. A range of existing mechanisms focus on encouraging agencies to comply with the standards above and assessing whether they are being met.

64. Cabinet's RIA requirements, set out in CO (24) 7, set out a non-legislative expectation for RISs to be independently quality assured and for QA panel assessments to be included in Cabinet Papers. However this relates to the quality of the analysis, not the proposal itself.

65. Non-legislative requirements for disclosure statements for Government-initiated legislation are set out in Cabinet Office Circular CO (13) 3. This establishes a process for agencies to provide information to support Parliamentary scrutiny of proposed legislation, with a focus on existing government expectations for the development of legislation and significant or unusual features that should be used with care.

66. The Ministry of Justice and/or Crown Law vet Bills against the Bill of Rights Act 1990 and provide advice to the Attorney-General on consistency. Where inconsistency with the Bill of Rights Act 1990 is identified and not resolved prior to the introduction of a Bill, the Attorney-General must notify the House.

67. In Cabinet papers seeking approval to introduce a government Bill, departments are expected to identify whether any aspect of the Bill departs from the default approach in LDAC's Legislation Guidelines and to justify any departures. LDAC also examines some government Bills after introduction, assessing for inconsistency with the Legislation Guidelines. LDAC may make submissions to Parliamentary select committees if substantial inconsistency is identified.

Accompanying measures

68. The Ministry for Regulation has several internal functions that are intended to provide oversight of and support the functioning of the RMS. This includes providing early

engagement, established by CO (24) 7, reviewing bids for the 2025 Legislation Programme, as per CO (24) 6, and providing second opinion advice on regulatory proposals for agencies.

69. Under Option One, there would not be a statutory power that enables the Ministry for Regulation to gather information for the purpose of initiating and conducting regulatory reviews. Information required for reviews would continue to be obtained through co-operation between agencies and the use of engagement and consultation processes.

Option Two – Principles set out in primary legislation (Minister's preferred option)

Standards for regulatory quality

70. Under this option, standards would be set via 'principles for responsible regulation' established in primary legislation. **Subpart Two** of this section contains options analysis for different approaches to establishing principles in primary legislation.

Mechanisms for encouraging and assessing compliance with standards

71. This option would establish new requirements for responsible Ministers in relation to proposed legislation that is subject to consistency requirements to ensure that:

    - the explanatory note to a Government Bill or to proposed secondary legislation not excluded from the proposed Bill includes an independent Consistency Accountability Statement (CAS) - that is, a statement from the responsible Chief Executive stating that the Bill has been assessed for consistency with all the principles, and providing the results of that assessment - and a statement from the responsible Minister explaining the reasons for any inconsistency identified
    - the explanatory note to a Government amendment includes a CAS unless the Minister for Regulation has given an exemption on the grounds that the amendment would not materially change the Bill.

72. Where a Minister is not the maker of secondary legislation, the responsible agency would be required to ensure the explanatory note includes a CAS along with a statement setting out any reasons for inconsistency identified, provided by the maker.

73. In relation to existing legislation, agencies would be required to develop and periodically report against plans to review existing legislation that is subject to consistency requirements for consistency with the principles. On completion of such a review:

    - in the case of an Act, the responsible Minister would be required to present a CAS to the House, along with a statement made by that Minister setting out reasons for any identified inconsistency or any actions that will be taken to address that inconsistency
    - in the case of new secondary legislation and existing secondary legislation included by notice, the responsible agency would be required to ensure the publication of a CAS along with a statement made by the responsible Minister or other maker setting out reasons for any identified inconsistency or any actions that will be taken to address that inconsistency.

74. To support the production of these statements, the Minister for Regulation and the Attorney-General could issue guidance on:

    - how the principles should be applied
    - how to review legislation for consistency with the principles
    - the content and presentation of the statements and plans required.

75. Under this option, these requirements would apply to new primary and secondary legislation by default. The proposed Bill would exclude some classes of primary legislation from consistency assessments (largely for technical types of legislation), with an ability for the Minister for Regulation to issue notices exempting further classes of primary or secondary legislation with the assent of the House.

76. The requirements for assessing existing legislation are proposed to apply to primary legislation by default (as above), with select secondary legislation to be **included** in the scope of the Bill by Ministerial notice (rather than being included by default).

Accompanying measures

77. Option Two also contains additional components to give effect to the Ministry for Regulation's regulatory oversight role.

78. Under this option, the proposed Bill would also include a statutory power that enabled the Ministry for Regulation to require information to be provided on request, to support the effective and efficient conduct of regulatory reviews. Information could be gathered from:

    - Public Service agencies (as defined in section 10(a) of the Public Service Act 2020)
    - Statutory Crown entities (as defined in section 7(1)(a) of the Crown Entities Act 2004)
    - any entities that make or administer secondary legislation, including local government
    - any entity authorised by an Act to undertake a regulatory function, for example the Reserve Bank and statutory occupational licensing bodies; and
    - any entity contracted by the government to support the delivery of a regulatory function (also known as third-party service providers), if the information were not available from the relevant public service agency that holds the contract. If the request were made directly to the third party, it would be made in conjunction with the responsible agency.

79. The power to gather information from entities that make or administer secondary legislation and entities authorised to undertake a regulatory function would only be used if the information were not already available through a responsible government agency.

80. Information could be gathered directly by the Secretary for Regulation from any entity that falls within the above categories. Approval would not be required from the Prime Minister or responsible Minister (for statutory entities), nor would there be an expectation that information would be sought from the relevant central government agency (for example the agency holding the contractual relationship with a third party service provider) in the first instance.

81. Information gathering powers would not override prohibitions or restrictions on the sharing of information already set down in legislation. Including this restriction on the scope of the information-gathering power aligns with the restriction on the Public Service Commissioner's power to obtain information as provided for in schedule 3, 3 of the Public Service Act 2020.

82. Other provisions to give effect to the Ministry for Regulation's oversight role under this option would include[20]:

[20] These elements of the proposal were exempted from the regulatory impact analysis requirements (per Cabinet Office circular (24) 7), under the criteria minor or limited economic, social, or environmental impacts.

- a requirement for public service chief executives to uphold a principle to proactively steward the regulatory systems associated with the legislation they administer
- a requirement for the Ministry for Regulation to produce a regular report for the Minister for Regulation to present to Parliament assessing the overall performance of the Regulatory Management System
- a power for the Ministry for Regulation to require provision of information from public service departments to support this regular reporting
- a requirement for the Ministry for Regulation's regulatory review reports to be presented to the House together with the government's response.

83. Option Two is the Minister's preferred option.

Option Three – Build on the disclosure statement regime and create new legislative provisions for regulatory stewardship and regulatory oversight (Ministry's preferred option)

84. Option Three builds on the current disclosure statement regime, by bringing Part 4 of the Legislation Act 2019 into force. Under this option, standards are not set out in primary legislation, but the ability to set standards is provided for in primary legislation (via the issuing of notices).

85. Option Three would provide for similar new legislative provisions as Option Two in order to:

- strengthen regulatory stewardship requirements; and
- give effect to the Ministry for Regulation's regulatory oversight role.

Standards for regulatory quality

86. There is an existing statutory power under section 107 of the Legislation Act 2019 for the responsible Minister and the Attorney-General to jointly issue notices setting standards that proposed primary legislation (as well as specified classes of secondary legislation) must be assessed against. The House of Representatives would pass a resolution approving each notice before it was issued.

87. Standards relating to regulatory design and good law-making could be set out in a government notice issued under section 107 of the Legislation Act 2019, supported by the Legislation Design and Advisory Committee (LDAC) Legislation Guidelines and Cabinet's impact analysis requirements.

88. Similarly, standards relating to regulatory stewardship could be set out in legislation, supported by further elaboration such as through the Government's Expectations for Good Regulatory Practice, or a Ministerial direction.

89. Option Three would not include requirements for existing legislation to be explicitly assessed against the standards. Rather, agencies' review of their legislation as part of their stewardship responsibilities would have a broader focus that also included operational practices and regulator capability and performance within the regulatory systems to which that legislation relates.

Mechanisms for encouraging and assessing compliance with standards

90. Under this option, standards would be given effect through a mixture of statutory and non-statutory mechanisms.

91. The main mechanism to encourage consistency with the standards would be through the requirement for Chief Executives to independently prepare and publish disclosure

statements for Government-initiated legislation, as currently provided for in section 103 of the Legislation Act 2019. This could be further supported by periodic reviews by the Ministry for Regulation of what disclosures reveal and the accuracy of those disclosures.

92. Section 110 of that Act also provides that the Minister may issue directions to support consistency of disclosures – for example, in relation to how disclosure statements are set out, or providing for other elements that disclosure statements must include, with directions being published and presented to the House of Representatives.

93. As with Option Two, this option includes a separate duty on agencies for regular review, maintenance and improvement of the legislation they administer, and requires responsible agencies to develop and publicly report against plans to review their stock of legislation. However, under Option Three, reviews would focus more broadly on the stewardship of regulatory systems rather than assessing individual pieces of legislation against selected principles.

Accompanying measures

94. As with Option Two, this option establishes a regulatory oversight role for the Ministry for Regulation, enabling the Ministry to produce regular reporting for Parliament assessing overall performance of the wider Regulatory Management System, including the disclosure requirements. It is also includes strengthened regulatory system stewardship requirements for public service chief executives.

95. Under this option, the proposed Bill would also include a statutory power that enables the Ministry for Regulation to gather information, for the purpose of initiating and conducting regulatory reviews, from public service agencies, and from statutory Crown entities with the written approval or direction from the Prime Minister or Minister responsible for the Crown entity. Where information is required outside of central government (i.e. from local government or third-party service providers), information requests would be directed to the relevant agency responsible for the regulatory system.

96. As with Option Two, information gathering powers would not override prohibitions or restrictions on the sharing of information already set down in legislation. Including this restriction on the scope of the information-gathering power aligns with the restriction on the Public Service Commissioner's power to obtain information as provided for in schedule 3, 3 of the Public Service Act 2020.

97. Accompanying non-legislative measures could be introduced or continued to complement the strengthened disclosure regime and certification mechanisms. More specifically, they could include:

    - Updating Cabinet Circular (24) 7 on the RIA requirements, to reflect the regulatory principles set out in notices under Part 4 of the Legislation Act 2019, as well as further system improvements that enhance the quality of analysis and supporting quality assurance arrangements for Regulatory Impact Statements.
    - Refreshing the *Government Expectations for Good Regulatory Practice* to reflect the requirements under the disclosure statement regime and regulatory principles (particularly those pertaining to good law-making practices).
    - Embedding regulatory standards in the policy development process, such as reflecting good law-making practices into the RIA requirements or Legislation Guidelines, which support the development of regulatory policy.

98. Option Three is the Ministry's preferred option.

How do the options for the overall approach compare to the status quo?

Note: For simplicity, this table does not address the accompanying measures discussed above due to the broad similarity of those measures between Options Two and Three and their relatively lower impact.

	Option One – *Status Quo*	**Option Two – *Principles set out in primary legislation, with requirements for consistency assessments (Minister's preferred option)***	**Option Three – *Build on the disclosure statement regime and create new legislative provisions for regulatory stewardship and regulatory oversight (Ministry's preferred option)***
Effectiveness	0	+ This option has the potential to improve overall regulatory quality compared with the status quo through increasing the attention given to specific standards and departures from those standards. Setting the principles in primary legislation will require the House to assent to these principles, which could make it more likely (at least initially) to pay attention to CASs and Ministers' reasons for inconsistencies and develop enduring processes to consider the information provided, increasing the effectiveness of this approach. However, the effectiveness of this option could be lessened because: • setting specific standards via principles in primary legislation requires choices to be made about what aspects of regulatory quality they can cover, and how they are articulated, if they are to comply with standards of good legislative design. To cover the full range of aspects of regulatory quality (as set out in the current *Legislation Guidelines*), principles in primary legislation would need to be very broad and high level, which could lessen their effectiveness as clear standards for regulatory quality. Alternatively, if they were more definitive, they would need to be more selective, which could mean that some aspects of good regulatory quality would not be covered, resulting in those aspects being deprioritised relative to the ones selected for inclusion in legislation – potentially resulting in a decline in some aspects of regulatory quality • assessment of an increasing portion of primary and secondary legislation over time means the value of some of those assessments will be questionable • the choice to require agencies to complete consistency assessments for all proposed secondary legislation unless exempted, and selected existing secondary legislation makes it more likely that agencies will treat assessments of consistency as tick-box exercises (unless significantly more resource is available), lessening their effectiveness • the comprehensive nature of this approach could crowd out more broadly-based and better targeted regulatory stewardship or ex post review work.	++ This option has the potential to improve overall regulatory quality compared with the status quo through increasing the attention given to specific standards and departures from those standards. Since the House will have a say in the setting of those standards, the House is more likely to pay attention to disclosures against the standards and develop enduring processes to consider the information provided, increasing the effectiveness of this approach. Ministerial explanations could be included in disclosures under this option, but this would be at the government's discretion. The default exclusion of secondary legislation from the disclosure requirements in Part 4 provides flexibility and time to decide what types of secondary legislation warrant a disclosure and what sort of information it will be useful to disclose. Again, with the House having a say in what secondary legislation is included and what information must be disclosed, the chances of the chosen disclosures being used and useful in supporting legislative quality are increased. Notices under this clause would need to be made consistently with the purpose of the Legislation Act 2019, which may decrease the chances the standards set novel or unorthodox descriptions of law-making processes. Agencies will be able to better target their resources towards regulatory systems that are most at risk or would experience greater benefit from review. This could, in turn, increase the effectiveness and value-add of stewardship activity undertaken by agencies.
Durability	0	-- A statutory obligation is a more credible and enduring commitment than the current administrative requirement. However, establishing standards via principles in primary legislation also reduces flexibility over time as the principles would be more difficult to amend to respond to unforeseen scenarios, changes in priorities and/or unintended consequences. This could result in the legislation becoming less fit for purpose over time, lessening its durability in the longer term. In particular, given the need to be more selective when establishing principles in primary legislation, the principles will likely reflect political judgements about values and priorities at a particular point in time. Where subsequent governments make different judgements,	+ A statutory obligation is a more credible and enduring commitment than the current administrative requirement. The use of secondary legislation to determine the relevant standards provides more flexibility to adapt and amend disclosures to reflect changing views on best practice or what issues matter most, as well as lessons learned about how the standards are best expressed.

		the legislation would have to be amended, with an increased chance the legislation as a whole would be repealed	
Costs	0	- This option would be potentially significantly more costly than the status quo. Government agencies would incur additional costs associated with certifying new legislation for compliance with the principles and associated with regulatory stewardship obligations contained in the proposed Bill (e.g., developing plans and undertaking periodic reviews of existing legislation), including higher costs for assessment and justifying where inconsistency is identified. [LEGALLY PRIVILEGED]s 9(2)(h)	- Disclosures of consistency against standards set in secondary legislation would be more formal than under the status quo, resulting in the potential for higher costs of compliance. However, these costs would be less than under Option Two due to fewer pieces of legislation being in scope for assessment from the outset (proposals for new secondary legislation would only be brought in by notice under this option, as opposed to being excluded by notice).
Feasibility/efficiency	0	- The application of consistency assessments to all new legislation (primary and secondary) unless excluded by the Bill or Ministerial notice may impose a greater burden on agencies and entities with responsibility for legislation, and this could be significant for local government - particularly if bylaws are not excluded. The impact of this is variable, and depends on the volume of proposals for new primary and legislation. There are also likely to be inefficiencies created as agencies will be less able to focus attention on legislation where reviews would be most impactful.	0 Having a more flexible approach to the review of legislation is likely to make the proposal easier to implement for agencies, and reduce inefficiencies associated with assessment of legislation where there is limited benefit in doing so.
Overall assessment	0	-	+

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

99. As noted above, any additional measures to strengthen the RMS and incentives on Ministers and agencies will incur a cost compared with the status quo. In addition, the overall effectiveness of any option is uncertain and likely has limits given the strong competing incentives on Ministers and agencies.

100. In this context, both Options Two and Three would use legislative mechanisms to set standards for regulatory quality and to establish processes for agencies and Ministers to assess and report on whether legislation is consistent with those standards. In both cases, the involvement and approval of Parliament provides a more credible and enduring commitment to supporting scrutiny of legislation than the current administrative disclosure requirements. Both options could, to a degree, strengthen incentives for Ministers and agencies to ensure legislation is consistent with the selected standards.

101. However, the Ministry considers that Option Three is more likely to advance the policy objectives at lower cost and with fewer unintended consequences. The disclosure statement regime under Part 4 of the Legislation Act 2019 would achieve many of the same benefits for increasing regulatory quality without generating the same costs and risks as including principles in primary legislation. Specifically, existing provisions under Part 4 provide for the setting of standards and mechanisms for assessing and reporting on consistency with those standards. Those standards can draw on the full range of default principles currently set out in the Legislation Guidelines or elsewhere, at a greater level of detail and with more scope for tailoring the selection of standards to different types of legislation than if the standards were set out as principles in primary legislation.

102. In addition, the use of secondary legislation to determine the relevant standards provides more flexibility to adapt and amend disclosures to reflect changing views on best practice or what issues matters most, as well as lessons learned about how the standards are best expressed to elicit useful assessments. That flexibility also means that compliance costs can be more easily managed, which can support durability.

103. [LEGALLY PRIVILEGED] s 9(2)(h)

104. A drawback with Option Three is that it may not be as effective in increasing the incentives on agencies and Ministers to ensure legislation complies with standards, relative to Option Two where principles set out in primary legislation could be seen as holding more weight compared with standards set out in secondary legislation. However, our view is that the relative effectiveness of other components in Option Three (such as enhanced measures relating to regulatory stewardship) would, on balance, outweigh this.

105. Option Two includes a requirement that existing primary and included secondary legislation within scope of the new requirements is reviewed for consistency with the principles. Option Three would also require agencies to review their existing stock of legislation, but these reviews would be wider in scope and consider the stewardship of the overall regulatory system (e.g. operational practices, and regulator capability and performance). Option Three would also provide agencies with greater flexibility in exercising stewardship of their regulatory systems, meaning that they can prioritise systems most at risk or target their stewardship activity more effectively.

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

106. The Ministry for Regulation's preferred option (Option Three) differs from the Minister for Regulation's preferred option (Option Two), which is the option being recommended in the Cabinet paper.

107. We have developed **Subpart Two** of this section to analyse in more detail the specific options for setting out principles in primary legislation in accordance with the Minister's preferred option. As the principles are a significant component of the proposed Bill, which received a high volume of feedback during public consultation, decoupling the choice of the approach to establishing the principles in primary legislation from the overarching decision to set them in primary legislation allows for more detailed options analysis.

Subpart Two: What options for a specific set of principles set out in primary legislation are being considered?

108. **Subpart Two** of this section is based on the option being taken forward in the accompanying Cabinet paper, which is to set principles in primary legislation. **Subpart Two** sets out options for establishing principles in primary legislation and includes the substance and level of detail the principles could cover.

109. **Annex One** to this RIS provides further analysis of the specific principles that form part of the Minister's preferred option.

110. The options in this RIS for specific principles set out two groups of principles:

- Principles relating to legislative design: these principles refer to the content of legislation being developed.
- Principles relating to good law-making: these principles refer to the process of developing legislation.

Option One – Status quo, principles are not set out in the Regulatory Standards Bill

111. Option One is the status quo, where neither principles nor accompanying mechanisms are established in legislation. Options for this are more fully described under **Subpart One** of this section, and used in this part to provide a baseline for comparison only.

Option Two – Selected legislative design and good lawmaking principles are set out in the Regulatory Standards Bill (Minister's preferred option)

112. Under Option Two, the principles for inclusion in primary legislation comprise principles relating to legislative design and good law-making.

113. The principles are selective rather than broad-based – they focus particularly on the effect of legislation on existing rights and liberties and on the processes that should be followed in making that legislation. They do not reflect the wide scope of the expectations or principles set out in the *Government Expectations for Good Regulatory Practice* or the *Legislation Guidelines*, including in relation to showing appropriate respect for the spirit and principles of the Treaty/te Tiriti. In addition, the wording of some of the principles depart significantly from established expressions of those principles in the *Legislation Guidelines* or elsewhere (e.g., the Bill of Rights Act 1990).

114. For the specific proposed wording of the principles, refer to **Annex One**.

115. Option Two is the Minister's preferred option.

Option Three – Comprehensive high-level principles are set out in the Regulatory Standards Bill, with detail set through non-legislative mechanisms (Ministry's preferred option)

116. Option Three involves setting out very broad principles for responsible regulation in primary legislation, with specific detail situated in non-legislative guidance.

117. Under this option, it is proposed to enact only a core set of generally accepted principles in primary legislation, without providing as much detail as under Option Two. The proposed Bill would state a broad purpose (such as to encourage the development and maintenance of legislation and regulatory systems that are well-designed and fit-for purpose) and set a few enduring, high-level principles to give effect to that purpose derived from some well-understood and widely accepted ideas (e.g., in the Legislation Guidelines and/or Queensland's Legislative Standards Act 1992).

118. These high-level principles could include:

- that the legislation has sufficient regard to fundamental constitutional principles and values of New Zealand law (this includes that the legislation has sufficient regard to rights and liberties of individuals)
- that the development of the legislation has had sufficient regard to good lawmaking processes.

119. These principles would allow fuller coverage of some of the fundamental constitutional principles and values not covered in Option Two – in particular, provision for the principles of the Treaty/te Tiriti, as well as other aspects of rights and liberties (e.g., provision for collective rights) and good lawmaking (e.g., specific obligations in relation to engagement with iwi and hapū).

120. Additional principles that might not have universal support but are important to a particular government could be added by way of secondary legislation, to be confirmed by a House vote. Such a mechanism is already provided for in Part 4 of the Legislation Act 2019.

121. Option Three is the Ministry's preferred option for setting principles in primary legislation.

Option Four - High level principles and a non-exhaustive list of examples are set out in the Regulatory Standards Bill

122. Option Four is modelled on Queensland's Legislative Standards Act[21], which has been in place since 1992. The Act identified two overarching "fundamental legislative principles" (FLPs) that are said to underlie a parliamentary democracy based on the rule of law, which are that "legislation has sufficient regard to:

- rights and liberties of individuals, and
- the institution of Parliament".

123. The Legislative Standards Act then sets out examples of issues that relate to the rights and liberties of individuals, and others that relate to the institution of Parliament. As these issues are presented as examples, additional issues relating to the two FLPs can also be considered when developing primary legislation, and additional examples can be added while the list remains non-exhaustive. Non-legislative guidance from the Office of

[21] Accessed at Legislative Standards Act 1992.

Queensland Parliamentary Counsel identifies a range of further issues that also apply – with a broadly similar function to LDAC's Legislation Guidelines in New Zealand.

124. Option Four would follow a similar model, in which the proposed Bill would:

- set out broad principles (as previously proposed), establishing them as fundamental legislative principles, or something similar, for the purposes of the proposed Bill
- include a principle related to the Treaty of Waitangi
- set out more detailed considerations as examples of things to be applied when assessing the consistency of legislation with the principles
- provide for the ability for further considerations to be added via notices approved by the House
- set out how the principles and considerations should be applied – for instance to clarify that these principles are provided to support Parliamentary scrutiny of legislation, have no interpretative effect, and do not affect the validity of any legislation and that there is a non-exhaustive list of examples and supporting guidance.

Option Five – Good lawmaking principles only are set out in the Regulatory Standards Bill

125. Option Five would establish only the good lawmaking principles (see **Annex One**) in primary legislation.

126. Under this option, the principles would focus more narrowly on standards for regulatory policy development. This would aim to increase the robustness of processes for regulatory policy development and implementation, including focus on the problem definition, cost-benefit analysis and consultation with affected parties.

127. The Government would be required by the Act to pursue its regulatory programme in a way that upholds the principles by setting and giving effect to requirements, processes and expectations.

128. This narrower set of principles in primary legislation would allow alignment with established policy processes, such as the RIA requirements and disclosure regime.

How do the options for specific sets of principles set out in primary legislation compare?

	Option One – *Status Quo*	Option Two – *Selective legislative design and good lawmaking principles set out in the Regulatory Standards Bill (Minister's preferred option)*	Option Three - *High level principles set out in the Regulatory Standards Bill, with detail set through non-legislative mechanisms (Ministry's preferred option)*	Option Four – *High level principles and non-exhaustive list of examples set out in the Regulatory Standards Bill*	Option Five – *Good lawmaking principles only set out in Regulatory Standards Bill*
Effectiveness	0	0 Establishing high-level principles in primary legislation, clarifying requirements and making them more prominent may result in a higher level of legislative consistency with these principles than under the status quo. However, legislation is more likely to be found to be inconsistent with the principles (particularly existing legislation) because of the unconventional nature of some of the proposed legislative design principles, and because some of the proposed good lawmaking principles set standards that would be very difficult to achieve (e.g., that a legislation should be *the most* effective, efficient and proportionate response available). If this were the case, this would reduce the intended incentive effect of an assessment of 'inconsistency', because it would be so common. To the extent that this option is successful at influencing the quality of regulation, because of the selective nature of the principles, it would only do so in relation to a subset of aspects of regulatory quality currently applied in New Zealand (e.g., not all the standards currently covered in the *Legislation Guidelines*). This could result in a decrease in regulatory quality in those aspects not covered by the principles. In addition, some of the principles do not map well to the existing accepted standards of regulatory quality set out in the *Legislation Guidelines* and elsewhere. This possibility is supported by feedback during the consultation process that the selection of the principles could lead to overall reductions in regulatory quality due to the perceived deprioritisation of some concepts and values such as equity, social wellbeing and kaitiakitanga, as well as a failure to recognise and explicitly provide for the Crown's obligations under the Treaty/te Tiriti.	+ Establishing high-level principles in primary legislation, clarifying requirements and making them more prominent may result in a higher level of legislative consistency with these principles than under the status quo. However, in this option the principles would be very broad, and it is unclear how effective they would be at driving change relative to not having principles in primary legislation at all. Given that the principles would be more conventional, legislation is less likely to be found inconsistent with the principles, and therefore more attention may be paid to identified inconsistencies. To the extent that this option is successful at influencing the quality of regulation, it would do so in relation to a broader range of aspects of regulatory quality. We note that that the effectiveness of this option in terms of improving legislative consistency with the principles would be highly dependent on the strength of any tests set out in non-legislative guidance to assess consistency against these high-level principles.	+ Establishing high-level principles through primary legislation may result in a higher level of legislative consistency with these principles than under the status quo. Given that the principles would be more conventional, legislation is less likely to be found inconsistent with the principles, and more attention would be paid to identified inconsistencies. Including non-exhaustive examples in primary legislation may provide clarity for agencies, resulting in more robust assessments and better policy development processes over time. To the extent that this option is successful at influencing regulation, it would do so in relation to a broader range of aspects of regulatory quality. We note that the effectiveness of this option in terms of improving legislative consistency with the principles would be highly dependent on the strength of any tests set out in non-legislative guidance to assess consistency against these high-level principles.	0 Benefits of this approach include its more direct focus on good lawmaking principles - which could increase regulatory quality to the extent it incentivises more robust policy and legislative development processes. However, some of the proposed good lawmaking principles set standards that would be very difficult to achieve. The likelihood of findings of inconsistency is therefore relatively high, and less attention would be paid to identified inconsistencies. The trade-off of greater focus on good lawmaking principles is less focus on legislative design principles (although current mechanisms would remain in place, such as the Cabinet mandated Legislation Guidelines and the role of LDAC).

Durability	0	-- Establishing a selective set of detailed principles in primary legislation gives less flexibility for standards to be adapted in response to changing or unforeseen circumstances or consequences, or to different Government priorities, negatively impacting the scheme's durability over time. The novel nature of the selected principles in this option, and their lack of alignment with commonly accepted approaches in New Zealand and other jurisdictions will also reduce their broad acceptability and therefore durability. Feedback from the consultation process largely focused on the perceived prioritisation of some values over others in the selection of the principles, and concerns about the omission of some key values that submitters thought should be reflected. A particular area of concern was the proposed lack of explicit recognition for the Crown-Māori relationship under the Treaty/te Tiriti. Feedback included perceptions that the approach under this option does not reflect the constitutional importance of the Treaty/te Tiriti to New Zealand, could diminish the Treaty/te Tiriti protections in both current and future laws (including settlement protections), reduce protections for Māori environmental interests, and have a significant social and cultural impact on Māori. This lack of broad acceptability signalled by the consultation feedback indicates that the principles in this option are unlikely to have the broad support required for the scheme as a whole to be durable.	0 This option allows for more flexibility than Option Two through the use of non-legislative guidance to elaborate on the standards, which is more easily amendable than primary legislation. This would reduce the likelihood compared with Option Two that a different government would seek to amend or repeal the Act as a whole if it did not support a particular standard. This option lends itself to consideration of a broader range of principles and values that are better aligned with the current accepted standards set out in the *Legislation Guidelines* and elsewhere. This would likely address many of the concerns expressed in feedback from the consultation process. In particular, this option would allow for consideration of the Treaty/te Tiriti principles and how best to recognise and protect Māori rights and interests in the development of legislation, which could address a major concern expressed by most people who made a submission during public consultation. This could mean that the scheme achieves broad support and could give it a degree of durability over time.	0 This option allows for more flexibility than Option Two by use of non-exhaustive examples set in primary legislation, and additional guidance setting out further examples. This would reduce the likelihood compared with Option Two that a different government would seek to amend or repeal the Act if it did not support a particular standard. This option also lends itself to consideration of a broader range of principles and values that are better aligned with the current accepted standards set out in the *Legislation Guidelines* and elsewhere. This would likely address many of the concerns expressed in feedback from the consultation process. In particular, like Option Three, it allows for consideration of the Treaty/te Tiriti principles and how best to recognise and protect Māori rights and interests in the development of legislation, which could address a major concern expressed by most people who made a submission during public consultation. This could mean that the scheme achieves broad support and could give it a degree of durability over time.	- Good lawmaking principles are broadly consistent with established tools for encouraging robust policy process (for example the RIA requirements). Therefore, this option may be more durable, as such tools have had broader and longer-standing acceptance. Conversely, the focus on the good lawmaking principles may make the proposed Bill appear redundant if these are all that are in scope (if it is simply perceived to be duplicating RIA requirements for instance), increasing the potential for a future Government to repeal the legislation.
Costs	0	- - More resourcing will be required than under the status quo to assess proposed and existing legislation against the principles. [LEGALLY PRIVILEGED]s 9(2)(h) [redacted] [LEGALLY PRIVILEGED]s 9(2)(h) [redacted]	- More resourcing will be required than under the status quo to assess proposed and existing legislation against the principles. [LEGALLY PRIVILEGED]s 9(2)(h) [redacted]	- More resourcing will be required than under the status quo to assess proposed and existing legislation against the principles. [LEGALLY PRIVILEGED]s 9(2)(h) [redacted]	- Allows for a more integrated approach with work to strengthen and streamline the regulatory policy making process (including RIA requirements), which could be less costly than other options in relation to new proposals for primary legislation. However, if the scheme included assessment of all existing legislation, then more resourcing would be required than under the status quo.

		s 9(2)(h) [redacted] There may also be costs arising from the application of the principles to policy initiatives that are also too uncertain to estimate, for example costs associated with more consultation, or costs arising from providing compensation for any impairment of property.			
Feasibility and efficiency	0	- - The novel nature of the principles, the types of analysis that the application of these particular principles would require, and the potential for trade-offs between the principles would likely mean that agencies require significant support and guidance to implement the proposal. This would make implementation more difficult and complex.	0 Establishing high-level principles with detail in guidance that is more closely aligned to the legal principles and concepts in the *Legislation Guidance* will likely be easier to implement than Option Two. There could be room for more flexible application of the broader principles, potentially allowing for some efficiencies as assessment of compliance could be focused more on significant proposals. There would still likely be some significant work involved in producing detailed guidance and process to support application of the standards.	0 This option would be very similar to Option Three.	- This option provides an approach which could be integrated with well-established regulatory policy making process (including RIA requirements), which is likely to be more feasible to implement, both in terms of workload for the Ministry in ensuring agencies understand their obligations, and for agencies to maintain the required capability for compliance. However, the strictness of the tests set out in some of the good lawmaking principles could increase implementation challenges for agencies.
Overall assessment	0	- -	0	0	-

What option for the specific set of principles set out in primary legislation is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

129. Relative to other options for establishing principles in primary legislation, Option Three is preferred by the Ministry.

130. Option Three has the benefits associated with establishment of principles in legislation (i.e. more prominence, which could ultimately result in more compliance with consistency assessment requirements). However, it avoids many of the risks with Option Two in particular, [LEGALLY PRIVILEGED]s 9(2)(h) It also provides for a broader range of standards to be set in relation to regulatory quality (including standards relating to the Crown's obligations under the Treaty/te Tiriti, which was a matter of some concern for submitters on the discussion document) and is therefore more likely to get broad buy in, increasing its durability over time.

131. The option is also likely to be less costly to implement than the Option Two ([LEGALLY PRIVILEGED]s 9(2)(h)

Is the Minister's preferred option in the Cabinet paper on the specific set of principles the same as the agency's preferred option in the RIS?

132. The Ministry for Regulation's preferred option if standards are to be established as principles in primary legislation (Option Three) differs from the Minister for Regulation's preferred option (Option Two), which is the option being taken forward in the Cabinet paper.

Cost Benefit Analysis: Preferred options package of subparts one and two

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

Costs of the Minister's preferred option

133. The net costs to agencies over time as a result of the requirements on agencies to produce CAS for new legislation and review included existing legislation for consistency with the principles in the proposed Bill are difficult to assess and may change over time.

134. We have estimated the level of effort to undertake high quality analysis to support the production of CAS and undertake reviews of existing legislation for consistency with the principles in the proposed Bill. We consider the level of resourcing indicated below to be the minimum required. Some assessments may take more resourcing based on complexity and scope, however this is likely to be balanced with other assessments requiring less resourcing.

135. We have calculated an estimate using the anticipated FTE that would be required for each assessment, based on a broad assumption of how agencies choose to undertake the work. Our assumptions use data that are available on the volumes of stock and flow of legislation across public sector agencies. However, we note this data does not directly translate to the level of difficulty that may be involved in assessments. There is a significant range in the scale and complexity of each piece of legislation and a range of context-specific factors that will impact how agencies need to undertake their assessments. As a result, we have very few precedents to look to for evidence of how much effort will be required.

136. Assuming there is no additional funding for resourcing provided for agencies to undertake the work, there may be an opportunity cost associated with prioritising resourcing to undertake CAS and reviews of consistency at the expense of other policy work. If no additional funding is provided, agencies are likely to provide lower levels of existing resource into reviewing existing legislation than the assumptions provided below, due to the need to balance review requirements with other policy priorities. This would lower the quality of the assessments undertaken.

137. There are factors that may reduce the financial burden on agencies over the long term that our calculations do not account for. For example, the costs may be offset with savings over time from increased consistency of the stock and flow of primary and secondary legislation that results in reduced effort in reviewing and amending legislation and/or operational efficiencies. There could also be broader savings beyond the public sector to the extent that the proposal reduces the amount of poor quality or unnecessary legislation. It is difficult to assess the likely savings as it is not possible to monetise the comparison between legislative quality of the status quo with the possible quality of future legislation as a result of the proposed Bill.

Benefits of the Minister's preferred option

138. The Cabinet paper proposal is expected to result in greater transparency of whether legislation meets the specific standards expressed as principles of responsible regulation and justifications for inconsistencies. This transparency, along with the incentive effect potentially added by the proposed Regulatory Standards Board (covered in section 2B), could influence decisions made during the development, implementation and stewardship of legislation, and ultimately increase the amount of legislation that is consistent with the principles over time.

139. However, delivery of these benefits will be heavily dependent on the impact of competing incentives and the effectiveness of implementation (including allocation of appropriate funding/resourcing).

140. If the proposed Bill were to have the impact as described, this would be in relation to the principles as currently proposed (see **Annex One**). Given the selective nature of the principles, and the fact that they do not include many of the aspects of regulatory quality covered in the Legislation Guidelines (as noted by a number of submitters to the public consultation process), it is difficult to assess the impact on overall regulatory quality even if there are high degrees of compliance with new requirements under the Bill.

141. The strengthened regulatory stewardship requirement in the proposed Bill could also reduce the incidence, or severity, of regulatory failure – through greater monitoring and evaluation activity.

Assumptions for cost-benefit analysis

142. The assumptions underpinning the figures in the table below are:

CAS for new legislation

- Approximately 60 hours of work would be required to produce and approve each CAS and support the responsible Minister or maker (for secondary legislation) to make a statement and provide justification for any inconsistencies.
- The estimated hours focus on the administrative side of producing CAS. The estimation does not include any implications for resourcing or time required during the development of policy and corresponding legislation as a result of following the proposed principles. The costs of such considerations would be context specific and presumably would be built into the proposed scoping of resource and timeframes required for undertaking the policy and legislative work.
- Approximately 100 government Bills or Amendment Papers and 1,350 pieces of new secondary legislation would require a CAS each year.
- The total volume assumes all[22] new secondary legislation remains within scope of the proposed bill's requirements. The volume may decrease should classes of new secondary legislation be excluded from the requirements via a notice from the Minister for Regulation following approval by the House of Representatives. However, because there are no classes of legislation currently proposed for exclusion, the costs have included all new secondary legislation (with the exclusion of by-laws, which have not been costed). We note classes of bills may also be excluded via a notice, however given the smaller volume we would anticipate the number of bills excluded would be a smaller number overall.

Review of existing primary legislation for consistency with the principles of responsible regulation

- The proposed Bill will require agencies to develop a plan to review existing primary legislation for consistency with the principles of responsible regulation. There is approximately 1,000 existing Acts that would require review under agencies plans.

[22] Except for secondary legislation excluded in the bill itself (such as Defence Force Notices and Court rules).

- The Bill does not propose a timeframe for agencies to complete reviews. This means agencies will have the flexibility to manage resourcing for review activity alongside other priorities within the relevant portfolio.
- We have estimated costs assuming 1 FTE per review. However, we note the subject matter and complexity of each Act will impact on the level of resourcing required.
- In addition to the overall total, we have assumed agencies would complete reviews of approximately half of the existing stock (500 Acts) within a 10-year period. This would mean 50 Acts are reviewed per year assuming an even spread of review activity across the 10- year period. This approach assumes the other half of existing legislation would be reviewed beyond the ten-year horizon.
- However, given the proposed Bill does not specify a deadline for review activity, we anticipate there will be significant variation in the timeframes agencies will complete reviews within.
- We also note the proposed Bill provides for the Minister for Regulation to include additional classes of existing secondary legislation within review requirements via a notice following approval by the House of Representatives. Should this mechanism be utilised there will be increased costs for undertaking review activity on specified classes of existing secondary legislation. The bill also proposes that when existing secondary legislation is amended, the underlying principal secondary legislation would become subject to review requirements and the board's purview. This will mean an escalating number of pieces of secondary legislation will be subject to review requirements.
- The costs assume Principal Advisor resource. Senior resourcing reflects the technical and complex nature of the considerations involved in undertaking assessments against the principles. The Principal band is a middle ground - some resourcing will likely come from a lower salary base, while legal support, managerial oversight and Ministerial input is from a higher salary base. 25% overhead has been included.
- The estimated average cost of a review of existing legislation is considerably higher than for new legislation because it cannot take advantage of all the policy work already done as part of developing new legislative proposals. Further, the great majority of the cost relates to the assessment of existing legislation against the good law-making principles, rather than the legislation design principles, due to the nature of the analysis required if the analysis is to be of a useful quality.

Limitations

143. We have not tried to estimate potential savings that may result from efficiencies such as the ability to use technology to support analysis. We have also not estimated the level of relevant existing review work that would lower the marginal cost but, given the specific nature of the consistency assessment work required, we don't expect much offset.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared with taking no action			
Ministry for Regulation	Costs to the Ministry involve: • Additional resource or reprioritised resource to prepare guidance for the	Medium - the Ministry for Regulation may require additional resourcing in order to carry out some of these	Medium

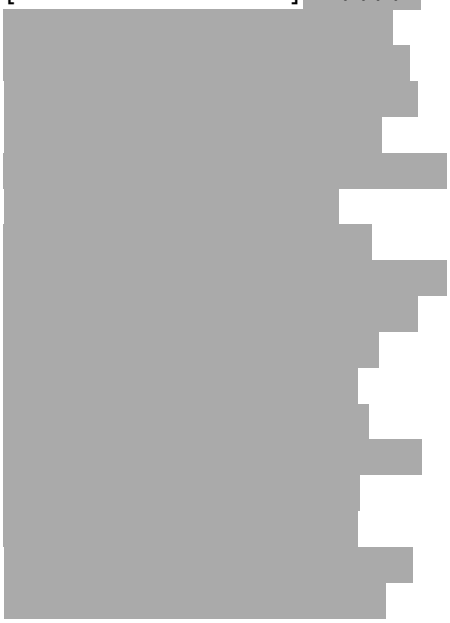
	responsible Minister to issue on the application and interpretation of principles, content and presentation of consistency statements, and how to prepare and carry out plans to regularly review legislation. • Supporting the Minister for Regulation to issue notices under the legislation to exclude classes of legislation from the requirements set out in the proposed Bill. • Supporting the Minister for Regulation in their role to approve exemptions from consistency statements for Government amendments that do not materially change the related Bill. • Providing training and guidance to agencies on new requirements and developing agency capability. • Reviewing agency consistency statements and stewardship reporting to support regular reporting to the Minister on the overall performance of the regulatory management system.[23]	functions, or deprioritise other work. Estimation by the Ministry suggests approximately $1.1 million to $1.4 million per annum in FTE costs.	
Other government agencies (including in-house legal practitioners)	Costs to other agencies involve: • Producing and publishing consistency statements to certify new legislation (primary and secondary) is compliant with the principles. We estimate there are around 100 relevant government Bills or Amendment Papers and 1,350	Variable medium – high. Approximately $8.6m per year for consistency statements for new legislation.	Low- Medium

[23] Resourcing assumes a team including 3 x principal advisors, 1 x senior advisor, 1 x principal legal support and a manager to develop guidance and support agency training. An additional 1 FTE is included to support the issuing of notices and reporting requirements, considering exemption requests and supporting the Ministry's regular reporting requirements. We consider this resourcing level to be the minimum required to adequately undertake the Ministry's functions, due to the complexity of the guidance that will be required and the scope of consultation that may be needed given the broad range of agencies that will be required to follow the guidance material.

	pieces of new secondary legislation each year. • Developing and reporting on plans for reviews of existing legislation and undertaking the reviews for existing primary legislation and secondary legislation that is amended following the Bill coming into force. • Supporting responsible Ministers to make statements on any inconsistencies identified in reviews of primary legislation and/or publishing statements on any inconsistencies found in secondary legislation. • Providing information to the Ministry for Regulation for regulatory reviews or to support the Ministry for Regulation reporting to the House if requested. • Providing information to or responding to recommendations from the Regulatory Standards Board.	Approximately $187.5m total cost for reviewing existing primary legislation for consistency with the principles in the proposed Bill.[24] Costs will not be distributed evenly across the public service as the volume of legislation made and/or administered by agencies varies significantly. For example, we understand 15 agencies are responsible for more than 90 percent of all secondary legislation. Also contributing to the uneven distribution is the varying volumes and complexity of regulatory systems managed across the public service.	
	[LEGALLY PRIVILEGED: s 9(2)(h) [redacted] Increased costs associated with internal legal review required to consider compliance with the principles provided for in legislation. Potential costs of prioritising reviews of new regulatory proposals and existing legislation	Assuming half of the current stock of primary legislation is reviewed within 10 years, with an even spread per year (50 Acts) the total cost per year over the first 10 year period would be approximately $9.375m.[25] This is the level we believe would be the	

[24]This is an overall figure for reviewing all existing primary legislation across an unspecified timeframe. Further assumptions are set out below to provide an estimated annual cost for ten years following the bill coming into force.

[25] For context, we currently estimate that the Government spends approximately $1B per year on its policy processes.

	against the principles to ensure compliance over other policy work.	minimum required to undertake well-considered reviews. However, if no additional funding is provided, the actual cost of reviewing existing legislation is likely to be considerably lower, but with subsequent implications for the quality of assessments, and therefore the benefits of assessments. Alternatively, review activity may be spread over a longer time period.	
Crown	[LEGALLY PRIVILEGED] s 9(2)(h)  There may also be costs arising from the application of the principles to policy initiatives that are also too uncertain to estimate, for example costs associated with more consultation, or costs arising from providing compensation for any impairment of property.	Uncertain but could be significant.	Low
Judiciary/Legal practitioners	[LEGALLY PRIVILEGED] s 9(2)(h)	[LEGALLY PRIVILEGED] s 9(2)(h)	Low

	s 9(2)(h)	s 9(2)(h)	
Members of the public	Some indirect transactional costs – e.g., some parties may face additional costs from changes resulting from reviews of existing legislation. There may be costs associated with regulatory uncertainty as it will potentially be easier to challenge regulatory settings or reviews of existing legislation may result in more frequent regulatory amendments. Updates may result in businesses needing to adapt systems/processes to comply with changes.[26]	Variable – low to medium. Depends on the regulatory system members of the public interact with and the likelihood of legislative amendments as a result of consistency assessments of legislation.	Low
Total monetised costs	The Ministry's estimate includes costs to Ministry for Regulation and other government agencies only. It does not include the potential costs for local government from including by-laws within scope of the proposed Bill or any potential administrative costs associated with Parliament's receipt of 100 consistency statements per year.	Variable – medium to high. Higher compared with the status quo. Approximately $18m per annum, if the work is to be done to a reasonable standard, and assuming half of existing Acts are reviewed within the first 10 years. Costs will be much lower in practice if not funded, but would also significantly lower assessment quality and any resulting benefits.	Low - Medium
Non-monetised costs		Higher compared with taking no action.	Medium
Additional benefits of the preferred option compared with taking no action			

[26] We note this may be a secondary impact, as the bill does not require amendments to legislation that is deemed inconsistency with the proposed principles. Responsible Ministers may choose to acknowledge inconsistencies without proposing to remedy.

Ministry for Regulation	Greater ability to assess the effectiveness of other government agencies' stewardship of the regulatory systems they administer. Forward plans for reviewing legislation, published by government agencies, could result in greater information certainty on the pipeline of new regulatory proposals which can facilitate Ministry for Regulation functions (e.g., administration of the RIA system).	Low to medium	Medium
Other government agencies (including in-house legal practitioners)	If requirements for more regular review of legislation result in more up-to-date legislation, then this could make it easier for government agencies to do their jobs. Increased understanding within agencies of impact of regulatory decision-making in practice, through increased reviews. Possible increase in regulatory quality due to agencies undertaking more robust assessments.	Variable, low to medium, relative to the status quo depending on the agency's existing regulatory practices and whether regular review leads to changes to legislation.	Low
Parliament	Potential for improved Parliamentary scrutiny through having additional mechanisms to evaluate new legislation introduced into the House. Flow-on benefits of more robust debate on the quality of legislation.	Medium	Low
Members of the public	Benefits derived if there are improvements in regulatory quality over time. Potential avoidance of regulatory failure that may otherwise result from the lack of monitoring and evaluation of existing regulation/regulatory systems.	Variable, depending on the positive impact of changes, e.g., avoidance of regulatory failure could result in benefits.	Low
Total monetised benefits		-	-

Non-monetised benefits	Likely higher compared with taking no action.	Uncertain	Low

What are the marginal costs and benefits of the Ministry's preferred option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the Ministry's preferred option compared with taking no action			
Ministry for Regulation	The responsibilities are similar to Option Two, involving: • Drafting guidance and supporting material to establish principles via government notice relating to good regulatory design and good law making principles • Drafting guidance on the application and interpretation of high-level principles • Providing training and guidance to agencies on how to comply with new requirements • Reviewing agency disclosure statements and stewardship reports • Preparation of periodic agency compliance reports • Ongoing review of principles	Medium - the Ministry for Regulation may require additional resourcing to carry out some of these functions, or deprioritise other work. Despite similar responsibilities, the costs are likely to be lower than Option Two because this option can build more easily on existing disclosure statement and LDAC guidelines and experience. Estimation by the Ministry suggests something under $1m per year on average in FTE costs, though likely to be lumpy across years.	Medium
Other government agencies (including in-house legal practitioners)	Costs to other agencies involve: • Producing and publishing disclosure statements for new primary legislation and some secondary legislation. This process would be more formal than under the status quo, likely resulting in higher compliance costs.	Variable but likely to be higher - the obligation to periodically review existing legislation will likely impose significant costs on agencies, especially those that administer a large number of regulatory systems or complex regulatory	Low

	• Producing and reporting on plans for review of existing legislation • Undertaking additional stewardship activity, such as monitoring, evaluation, and review of regulatory systems • Providing information to the Ministry for Regulation for regulatory reviews and periodic agency compliance reports if requested.	systems; particularly for agencies that are less advanced in their regulatory stewardship work.	
Parliament	Potential increase in need for House time to approve principles set out in Government notices and directions on consistency mechanisms, depending on frequency of updates.	Low. The volume and frequency of notices is unlikely to utilise significant House time but will be higher than under the status quo.	Low
Judiciary	[LEGALLY PRIVILEGED] s 9(2)(h)	s 9(2)(h)	Low
Lawyers / Legal Practitioners outside of the public sector	[LEGALLY PRIVILEGED] s 9(2)(h)	s 9(2)(h)	Low
Members of the public	Level of certainty as to expected standards required from legislation may reduce if principles are updated/ evolve frequently.	Variable depending on the regulatory system members of the public interact with.	Low
Total monetised costs		Variable but higher compared with taking no action.	Low

Non-monetised costs		Likely higher compared with taking no action.	Low
Additional benefits of the Ministry's preferred option compared with taking no action			
Ministry for Regulation	Greater flexibility to support the evolution of standards for regulatory design and good law-making over time and ensure consistency with any developments in the Regulatory Management System. Greater ability to assess the effectiveness of other government agencies in stewardship of the regulatory systems they administer. Increased ability to provide detail to agencies on how to apply them. Forward plans for reviewing legislation, published by government agencies, could result in greater information certainty on the pipeline of new regulatory proposals which can facilitate Ministry for Regulation functions (e.g., administration of the RIA system).	Low to medium	Medium
Other government agencies (including in-house legal practitioners)	If requirements for more regular review of legislation result in more up-to-date legislation, then this could make it easier for government agencies to do their jobs. Provision of guidance material to support agencies to undertake stewardship duties will increase regulatory stewardship capabilities across agencies.	Medium	Low
Parliament	Increased opportunity to affirm principles and maintain oversight if principles are able to evolve over time.	Medium	Low

	Increased cross-Parliament support for principles will increase engagement and durability over time. Potential for improved Parliamentary scrutiny through having additional mechanisms to evaluate new legislation introduced into the House. Flow-on benefits of more robust debate on the quality of legislation.		
Members of the public	Benefits derived if there are improvements in regulatory quality over time. Potential avoidance of regulatory failure, which may otherwise result from the lack of monitoring and evaluation of existing regulation/regulatory systems. Increased confidence in the durability of the principles as the ability for principles to evolve over time and cross-Parliament support will reduce the risk of significant changes over time.	Variable depending on the regulatory system members of the public interact with.	Low
Total monetised benefits		Uncertain	Low
Non-monetised benefits		Likely higher compared with taking no action.	Low

Section 2B: Assessing options to address the policy problem – assurance mechanism to support the application of the principles

144. Section 2B analyses options around how to design and implement an assurance mechanism independent from agencies to support the application of the principles. The proposed assurance mechanism would be an integral part of the regime introduced by the proposed Bill as it would support an increased volume of New Zealand's new and existing legislation to be assessed for consistency with the principles for responsible regulation over time.

145. The proposed assurance mechanism was previously referred to in the interim Regulatory Impact Statement (RIS), October 2024, as a "recourse mechanism." While the discussion document was exclusively focused on delivering the function via a statutory Board, the options presented in this document consider a range of ways to implement the above-described function, including the option for a statutory Board.

What scope will options be considered within?

146. The objective of setting up the proposed assurance mechanism is to complement and support new proposed components of the Regulatory Management System, namely by providing an independent mechanism for inquiring into the consistency of primary and secondary legislation against the set of proposed principles for responsible regulation.

147. This proposed function is intended to act as an incentive for agencies to devote a greater amount of their finite resources to assessing the primary and secondary legislation they develop and administer against the principles in the proposed Bill and do this with an adequate level of rigour.

148. To achieve the above objective, the range of feasible options considered was narrowed by clear Ministerial direction that agencies are expected to undertake consistency assessments against the regulatory principles when they are reviewing legislation they administer periodically.

149. The Minister's preference is that the assurance mechanism should be set up to add value in two ways:

- provide for independent inquiry into complaints from the public that specific existing primary and secondary legislation is inconsistent with the principles. The Minister for Regulation and/or the independent reviewers themselves should also be able to instigate an inquiry, and
- look into agencies' consistency assessment statements for Bills or amendments once they are introduced into the House and step in in a timely manner where an agency may have made a poorly substantiated statement.

150. Lastly, the assurance mechanism is expected to deliver non-binding recommendary findings independent of Ministers responsible for and agencies administering the legislation under assessment.

Options that have not progressed for further analysis

151. This RIS outlines three feasible options regarding the form the proposed mechanism could take instead of the status quo. Another five options to deliver the assurance function were identified, briefly considered and discarded for the reasons explained below.

152. The options that have not progressed for further analysis are:

- **A Regulatory Standards Board established as a crown entity:** This option was discarded because of the significant cost for the public sector to set up and operate a crown entity with an extremely narrow scope.
- **Recourse to the courts:** This option was assessed at a high level in the Interim RIS (October 2024). It has been discarded due to the potential for:
    - unjustifiable costs imposed on the court system, depending on the volume of complaints
    - limiting accessibility for complainants due to costs and formality
    - long wait times for complaints to be considered by the courts
    - the courts inhibiting or limiting other work that agencies carry out, and
    - [LEGALLY PRIVILEGED]s 9(2)(h)
- **A specialist tribunal:** This option was discarded because it is not a usual feature of a tribunal to make declarations of consistency. A tribunal is a quasi-judicial institution; as such, it has been discarded for similar reasons to the option of recourse to the court (discussed above).
- **An Interdepartmental Executive Board (IEB):** This option was discarded because of the high administration burden for Chief Executives and agencies, and the significant overlap with the work of those agencies to review the regulations they administer. This option would also have created a conflict between the chief executives on the IEB, many of whom would have been in the position of reassessing their own agency's consistency assessments of the legislation and regulations they are responsible for administering with the principles for responsible regulation.
- **Expansion of the current Regulatory Review Committee's scope or a new select committee:** This option was discarded because of the limited time and resources Members of Parliament have for committee work amongst their other duties. For the assurance mechanism to effectively discharge its role and support the proposed Bill's objectives, the RRC or a dedicated select committee would need to carry out inquiries into a substantial volume of primary and secondary legislation, as well as occasional assessments of agencies' consistency statements for Bills before the House, which would be well beyond a select committee's resource capacity.

Criteria for analysing the options

153. The options discussed below have been analysed using the criteria that were also applied in Section 2A. They are:

- Effectiveness
- Durability
- Costs
- Feasibility and efficiency.

154. The criteria used below have the same meaning as for the other areas of this RIS except for the effectiveness criterion. For the assurance mechanism options analysis, effectiveness means that an option lends to seamless and comprehensive delivery of the assurance function.

What options are being considered?

Option One – status quo

155. In this option, there would be no dedicated assurance mechanism set up. The current ways that existing primary and secondary legislation are assessed for quality would continue to be applied by relevant Ministers and agencies. New legislation and amendments would be considered for quality using existing mechanisms (such as Regulatory Impact Statements where applicable) and through agencies' own assessments of consistency with the principles for responsible regulation. Complaints about existing primary and secondary legislation would be through the courts, the Ombudsman and the Regulatory Review Committee where applicable.

Current ways existing primary and secondary legislation are assessed for quality

156. Ministers and agencies are currently responsible for ensuring the legislation they administer are reviewed and amended to remain fit for purpose. They currently review existing legislation and regulatory systems at appropriate times (such as in response to adverse incidents) and when resources allow.

157. In addition, section 12(1)(e)(v) of the Public Service Act 2020 places regulatory stewardship duties on Chief executives regarding the legislation they are responsible to administer. In practice, this means Chief executives are already responsible for ensuring legislation and regulatory systems they administer are consistent with the Government's expectations for good regulatory practice (April 2017).

158. The Ministry for Regulation would also have a role to advise the Minister for Regulation on all matters relating to the Regulatory Standards Act as the administering agency.

159. That said, and as extensively explained in the problem definition, agencies are expected to deliver competing Ministerial priorities and currently there are weak incentives to look into the quality of existing legislation (if it is not a Ministerial priority).

160. Under the proposed Bill, agencies would also have to plan to undertake consistency assessments against the principles for responsible regulation for the primary and secondary legislation they administer if in scope.

Current ways new legislation and amendments are assessed for quality

161. New primary and secondary legislation and amendments that pass through the House are assessed for quality through:

- consultation with impacted parties and relevant government agencies
- the quality assurance processes within agencies
- Regulatory Impact Analysis processes (where applicable)
- Ministerial consultations
- Select committee stage of the legislative process, and
- Parliamentary debates at readings of the Bill in the House.

The way new legislation and amendments would be assessed for consistency with the principles in the proposed Bill

162. Under the proposed Bill, agencies would also undertake the consistency assessments with the principles for the flow of all new primary Bills and secondary legislation as proposed in section 2A and would draft relevant statements. These statements would be included in the explanatory note of Bills and amendments and considered as part of the suite of information (e.g., Cabinet papers, draft Bill and RIS) available to Members of Parliament when making decisions around new and amended legislation.

How complaints about the consistency of regulation with the proposed principles are addressed

163. Complaints from the public about existing legislation would continue to be managed through existing mechanisms.

164. There is a range of methods through which individuals and businesses can currently raise complaints about existing primary and secondary legislation. Those institutions were listed in the Interim RIS (see page 37) and the discussion document (see page 30). Those institutions will continue to operate regardless of whether the Bill is introduced.

Submitters' views

165. In response to the discussion document, most submitters who commented on the proposal that an independent statutory Board is established as a recourse mechanism questioned the need for it. Some submitters just raised specific concerns about proposed features of the Board; many submissions suggested no Board should be established.

Option Two – Ministry for Regulation-led assurance mechanism

166. In this option, public servants in the Ministry for Regulation would deliver the assurance functions, namely:

- carrying out inquiries following a complaint, on their own accord or on Minister for Regulation direction into existing primary and secondary legislation for consistency with the principles for responsible regulation, and
- assessing agencies' consistency assessment statements for new legislation and amendments at a suitable time following the introduction of those Bills to the House following a complaint, Minister for Regulation direction, or at their own behest.

How the Ministry would deliver the assurance function

167. The Chief Executive of the Ministry for Regulation would reconfigure its existing resources and infrastructure to carry out inquiries (following a complaint, at the behest of the Minister or on its own accord) into existing primary and secondary legislation for potential inconsistency with the principles.

168. The Ministry for Regulation's Red Tape portal could be used as an avenue to receive relevant complaints. Following an inquiry, the Ministry would inform the Minister for Regulation on its findings and make recommendations. Any recommendations would be published on the Ministry's website for transparency. The Minister would table the Ministry's annual summary report of findings and recommendations to the House to enhance accountability of the Executive to Parliament.

169. Staff could also be called to occasionally assess agencies' consistency statements for Bills or amendments before the House and submit a report with its conclusions at Select Committee stage.

170. To support the efficient delivery of the assurance mechanism objectives, the Ministry could set up a dedicated team comprised of existing staff and appoint an internal manager with accountability for the assurance function. This person, and their team, would offer an additional level of assurance regarding any recommendations, drive the pace of work and be the central point of interaction with the Minister for Regulation.

171. The Ministry would need to consider whether adjustments are needed to current work programmes to prevent any internal duplication. To manage additional workload, particularly keeping up with the timeframes of assessing agencies statements of consistency in relation to Bills and amendments before the House, the Ministry would likely need to deprioritise certain areas of work. Alternatively, the Ministry could secure new funding for the assurance function.

Submitters' views

172. Some submitters questioned the need for the Board when considering the Ministry for Regulation's newly established functions to review regulatory systems. Some of these submitters expressed their preference for Ministry staff to conduct the consistency assessments over un-elected Board members. Therefore, there is some level of support for Option Two.

Option Three – A statutory Board

173. This option is a proposal for the assurance mechanism to be delivered via a statutory Board that is designed in the same manner as other existing Ministerial Advisory Committees.

174. The proposed Board would:

- consider claims that existing primary and secondary legislation in scope is inconsistent with the legislative design and relevant good lawmaking principles
- report its views on these claims to the Minister for Regulation and make non-binding recommendations
- assess agencies' consistency assessment statements for a portion of Bills and amendments before the House and submit a report at Select Committee.

175. The Ministry for Regulation would provide secretarial and administrative support for the Board, as well as research and analytical support. The Ministry website would be used to receive complaints, publicise information and guidance on how to interact with the Board, and to publish non-binding recommendary reports.

176. The establishment of the statutory Board would follow the guidance prepared by the Public Service Commission.[27] The Board members would not be public servants, or Members of Parliament. This is a design choice rather than a prohibition. It is intended to create a degree of independence from the public service and Parliament.

177. Board members would be appointed by the Minister for Regulation. Board members would be remunerated in line with both the provisions of the proposed Bill and the relevant sections of the Cabinet Fees Framework.[28]

Submitters' views

178. As already indicated, most submitters who commented on the proposal that an independent statutory Board is established as a recourse mechanism questioned the need

[27] Public Service Commission, "Establishing a ministerial advisory committee" (August 2022).
[28] Cabinet Office Circular, "CO(22)2 - Cabinet Fees Framework", (October 2022).

for it and suggested it should not be established. Some submitters commented that it would be important for any such Board to be independent of the public service and Parliament. Many submitters objected to the proposal that the Minister for Regulation appoint the members of the Board, on the grounds that they considered this to be inappropriate as it would lead to a shared political bias among members, or cause conflicts of interest, among other issues.

Option Four – An Officer of Parliament

179. Under this option, a new Officer of Parliament would be established to deliver the assurance functions. The Officer of Parliament would have dedicated staff to support its operation. The proposed Officer of Parliament could be termed the "Commissioner for Regulatory Standards."

180. Currently there are three Officers of Parliament: The Auditor-General, the Ombudsman and the Parliamentary Commissioner for the Environment. This option looks to the Commissioner for the Environment as the most relevant comparator.

181. An Officer of Parliament must only discharge functions that the House of Representatives, if it so wished, might carry out. All officers of Parliament report to the House of Representatives, rather than a specific Minister. As such, the relationship of the proposed Officer of Parliament to the Minister for Regulation would be via the Speaker of the House and the Officers of Parliament Committee. The Committee would lead the appointment of the proposed Parliamentary officer and would determine the level of funding for the Officer and its staff.

182. In this option, the Ministry for Regulation would not need to provide secretariat services. Instead, the Officer of Parliament would have a dedicated staff complement that would support the Officer of Parliament to deliver all aspects of the assurance function already described.

183. This staff complement has not been estimated in size or costs because this option is not preferred. For comparison only, the Parliamentary Commissioner for the Environment Vote for the 2023/24 financial year was for $4.42 million.[29] We do not consider the costs of the proposed Officer of Parliament would be comparable to that of either the Ombudsman or the Auditor-General (which are approximately $56 million[30] and $163 million[31] respectively).

Submitters views

184. The option of establishing a new Officer of Parliament was not included in the discussion document but some submitters suggested that either a Parliamentary Commissioner or the Ombudsman should take on the proposed functions of the Board.

185. The submission from the Office of the Ombudsman suggested that, under the Ombudsman Act 1975, the Ombudsman already had the jurisdiction take on the proposed role of carrying out inquiries into the consistency of legislation with the principles. However, this suggestion was based on the proposal in the discussion document. Given the assurance function has since been expanded to also include assessing, in certain occasions, the consistency of agencies' statements accompanying Bills and amendments before the House, this function no longer comfortably falls within the jurisdiction of the Ombudsman.

[29] Vote Parliamentary Commissioner for the Environment 2024/25 Financial year.
[30] Vote Ombudsman 2024/25 Financial year.
[31] Vote Audit 2024/25 Financial year.

Option Four assessment

186. This option has advantages, such as independence from government agencies and Ministers responsible for the primary and secondary legislation under assessment and could deliver the assurance function in a highly effective manner. However, the costs of this option are likely to be prohibitive.

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

	Option One – Status Quo	Option Two – *Ministry for Regulation-led assurance mechanism*	Option Three – *Statutory Board*	Option Four – *Officer of Parliament*
Effectiveness	0	+ The Ministry for Regulation has been set-up with a core mandate to strengthen New Zealand's Regulatory Management System (RMS) and improve the quality of regulation, including the experience that New Zealanders have of complying with regulation. Ministry staff including the Chief Executive have been appointed because they had the skills and capabilities required to deliver on this mandate. Therefore, using existing Ministry staff to deliver the proposed assurance function would ensure seamless and comprehensive delivery of the functions' intended objectives as staff have the knowledge and experience required to: • conduct inquiries into potential inconsistencies of legislation with the principles (function akin to regulatory reviews) and • assess agencies' statements of consistency for Bills and amendments before the House (function akin to RIA) and submit a report at Select Committee (somewhat similar to activities of the second opinion team).	++ For the Board to deliver the assurance function with support from Ministry staff. As already indicated, Ministry staff have the capability and expertise to deliver the assurance function and could do so through supporting the operations of a Board. The Board's impact would always be dependent on the level of skill, knowledge and mana of its members. With both the stock and flow of legislation, the Board would need to apply discretion and prioritise where to spend its efforts for most value. That said, a Board comprised of members who have the drive and appetite to focus on uplifting the quality of regulation, supported by Ministry staff, could deliver the assurance function effectively and prove a driving force behind raising consistency with the principles in the legislation stock and flow.	++ Having a dedicated Officer of Parliament would be an effective way to deliver the assurance function. This is because the resources and efforts of the Officer would be focused on conducting inquiries into potential inconsistencies of legislation with the principles and assessing agencies' statements of consistency for Bills and amendments before the House. The Officer of Parliament would have dedicated staff with appropriate skills and expertise including administrators, analysts, corporate functions, and managers. The Officer, and their staff, would produce a higher volume of reports (than other options) and so this would raise the visibility of the work Ministers and agencies need to do to achieve consistency of legislation with the principles of responsible regulation. As with options two and three, with both the stock and flow, the Officer of Parliament would need to apply discretion and prioritise where to spend review and assessment effort for most value.
Durability	0	+ The level of flexibility in this option is high because the Ministry can adjust and recalibrate the delivery of this function based on how often the public uses the complaints' function, Ministerial direction, agency feedback, resource availability and decisions relating to opportunity cost regarding other areas of work the Ministry is called to deliver on. The level of expected buy-in is higher than options three and four as some submitters have questioned the need for a Board when considering the Ministry for Regulation's newly established function to review regulatory systems. Some of these submitters expressed their preference for Ministry staff to conduct the consistency assessments over un-elected Board members.	– The level of flexibility in this option is medium to low. For the Board to update its approach and operating parameters in the face of changing circumstances and new information could take significant time. The Board as a group would need to process information, evaluate its significance and agree to an updated approach. There is a lower level of buy-in for this option than the status quo and option two. We heard several concerns from the submitters on the Discussion Document about a range of factors related to the proposals for the Regulatory Standards Board. For example, submitters did not want the Minister to appoint members, were concerned the Board would act in favour of individual interests and against public wellbeing, and may not have sufficient skills, experience and representation to perform the intended functions of the Board well.	– The level of flexibility in this option is medium. Officers of Parliament are provided for by Standing Orders which are in themselves difficult to adjust, as well as relevant Acts (see Environment Act 1986, Ombudsmen Act 1975, and the Public Audit Act 2001). However, the Officer and its staff could update and change their operational approach to delivering the function in the face of changing circumstances and new information. The Officer would necessarily have a staff, and this means the very high cost of this option may well be unacceptable to many parties. See costs discussion below.
Costs	0	+ The Ministry has funding to fulfil its key functions, namely: • ensure the quality of new regulation • improve the functioning of existing regulatory systems • raise the capability of those who design and operate regulatory systems	– The costs for setting up and the ongoing operation of a Board comprising of five to seven members are high. These would include upfront cost for the Ministry to set up secretariat support and assist with the selection and appointment of Board members. There would be ongoing cost of the Board members' pay, expenses, accommodation and flights, but they are not high.	– – There would need to be an appropriation for the proposed Officer of Parliament and its supporting staff. This appropriation would also need to cover facilities, corporate functions, and overhead costs. The costs of this option are likely to be less than those of the Parliamentary Commissioner for the Environment initially; however, the costs may increase over time depending on the

		• provide continuous and enduring improvements to the Regulatory Management System. Any reconfiguration of the Ministry to deliver the assurance mechanism could be within existing headcount if there were a decision to deprioritise other work. Alternatively, additional funding could be allocated to the Ministry to carry out the assurance function. Costs incurred for agencies to conduct consistency assessments of existing legislation following recommendation by the Ministry's assurance mechanism, cooperate with the Ministry on inquiries about consistency with the principles, complete assessment statements for Bills and amendments are opportunity costs. These activities are expected to be funded within agencies' existing baselines.	The Ministry would provide facilities for Board meetings and administrative and analytical services that could be absorbed within baselines the same way as if the Ministry were delivering the function.	required level of output. The 2024/25 financial year, the Vote Parliamentary Commissioner for the Environment was $4.42m.[32]
Feasibility and efficiency	0	+ Potential overlap with the assurance mechanism and the regulatory reviews programme of the Ministry for Regulation can be resolved during implementation phase to avoid duplication of effort. The new function would require reallocation of roles and duties to existing staff and teams, and any disruption would be mitigated and minimised with effective change management process. Current regulatory stewardship arrangements, recently set up regulatory review teams and a regulatory red tape complaints portal are already in place, have ongoing funding and are being, and will continue to be, reviewed and adjusted to meet emerging needs.	+ This option requires the establishment and operation of a Board with support from the Ministry for Regulation. These are tasks and functions the Ministry can organise and deliver with some disruption of its daily operations (such as initial change management processes, and ongoing balancing of the assurance workload with the programme of regulatory review work). Depending on the speed of appointments the Board may be up and running reasonably quickly and commence assessment work in a shorter timeframe than in option three (Officer of Parliament). The existing regulatory red tape complaints portal could be used for receiving complaints from organisations and the public. Potential overlap with the work of the Board and the regulatory reviews programme of the Ministry for Regulation can be resolved during implementation phase to avoid duplication of effort.	- Establishing a new Officer of Parliament may have high barriers of entry which may delay its achievement. Even if it is agreed by Parliament, and a suitable candidate is selected to be the Officer, they would require a dedicated staff to support their work as well as a physical premises and corporate functions. All this means delays in the commencement of the Officer's work. Once the work was running, it would be expected to operate at a faster pace than options one and two. Potential overlap with the work of the Officer of Parliament and the regulatory reviews programme of the Ministry for Regulation can be resolved during implementation phase to avoid duplication of effort.
Overall assessment	0	+ This option scores highest-equal, alongside Option Three. It is relatively cost-effective and flexible, and the results of public consultation indicate that it has a level of support. However, its findings may not have as much influence as a Board of independent experts.	+ **This is the Minister for Regulation's preferred option and is included in the Cabinet paper accompanying the proposed Bill.** A statutory Board could prove effective in discharging the assurance function. However, this option is somewhat costlier than a Ministry-delivered assurance mechanism (see tables in next section) and potentially has low durability.	– – This option is not preferred. This option would be very effective in discharging the assurance function. However, it is not easily implementable and it is by far the costliest option to deliver, therefore we expect that it would also have low buy-in from the public.

[32] Vote Parliamentary Commissioner for the Environment 2024/25 Financial year.

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

176. The multi-criteria analysis indicates that there is merit in both Option Two and Option Three. While Option Two is likely to be more cost effective and flexible, the findings of inquiries undertaken by a statutory Board (Option Three) may be more influential.

177. The policy objective is to create a mechanism for independent assurance of the consistency of new and existing legislation with the principles for responsible regulation. Both Option Two and Option Three meet the policy objectives by setting up an assurance mechanism and applying the Ministry for Regulation's existing capability and infrastructure. While Option Three has the additional aspect of a Board, the research and analysis work in both options would be conducted by Ministry staff.

178. Both options create a new incentive for agencies to conduct sound assessments for consistency with principles of responsible regulation, as any incongruence between their assessment and a potential assessment from the Ministry or the Board may signal the agency did not apply an adequate level of rigour.

179. Option Two is expected to provide marginally higher net benefits when compared with Option Three because it is lower cost. The expected costs for Option Two are $980,000 per annum, while Option Three may cost between $1.04 million and $1.17 million per annum. The main difference between Option Two and Option Three is the costs related to Board members and associated expenses. The costs for both Options Two and Three are likely to be mostly stable over time, when accounting for inflationary pressures.

180. There are several uncertainties for both options; these are noted in the costs and benefits tables below. Ultimately, the actual net benefits of either option will be significantly influenced by implementation details.

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

182. The Minister's preferred option is Option Three: A Statutory Board. The Ministry for Regulation's preference is for Option Two (Ministry-led assurance function) OR Option Three (Statutory Board).

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

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Ministry for Regulation	Costs to the Ministry include: • Resource to undertake Board nominations, recruitment and appointment processes, both for the initial establishment and ongoing re-appointment or new appointments as terms expire. • Secretariat support of 1 FTE to support preparation of Board papers, administration associated with Board meetings, travel bookings, public queries and ministerial support resourcing. We anticipate the level of work involved in responding to queries from the public about the complaints process, OIA requests etc may be high in the first year. Any overflow	Medium Current estimate is $950,000 per year for the Ministry to provide support functions to the Board.[33] Current Board fee estimates are between $63,000 and $185,000 per year.[34] Additional expenses are variable but could be within the range of $24,000 to $34,000 per year.[35]	Low to Medium

[33] One advisor salary costed within the Ministry's advisor pay band including 25% overhead for new resourcing. And, three senior advisors, one principal and one principal legal advisor.
[34] The range is broad as it includes the potential fees for five board members at the low end of the fee range through to seven board members at the high end of the range. A 20% contingency has been included to account for the possibility of an exception to pay above the range. The current range is based on 2025 dollars and would likely increase to account for inflation in outyears.
[35] Additional expenses include flights, accommodation and daily expenses on a basis of $800 per member per trip.

	in resourcing would need to be covered within baseline or supported by the research and analytical resourcing. • Research and analytical support to the Board of 5 FTE. • Board member fees are based on 5 – 7 Board members meeting 11 times per year with one day of preparation per meeting. Fees are calculated at the midpoint of Group 4, Level 1 of the Cabinet Fees Framework with 20% contingency built-in to account for the possibility of additional Board members and/or a fees exemption to pay above the range if required to attract potential Board members with the necessary skillsets. • Additional expenses are included on the assumption of 5 meetings being held in person per year.	We have not estimated the impact from the potential for duplication in functions between regulatory reviews undertaken by the Ministry and complaints heard by the Board. We assume that implementation design will seek to minimise duplication.	
Other government agencies (including in-house legal practitioners)	There will be costs and opportunity costs, which will vary depending on the frequency of an agency's processes being subject to review by the Board. Resource is likely required by relevant agencies to support responding to findings from the Board. Agencies who undertake regulatory review processes for existing	Variable for agencies depending on the volume of un-excluded legislation they each administer. This assumes this additional work comes at an opportunity cost to other work programme commitments and Ministerial servicing, unless additional resources are secured.	Low - Medium

	legislation they administer as a result of findings by the Board are also likely to incur costs.		
Parliament	No additional costs foreseen.	Low	High
Judiciary	No additional costs foreseen.	Low	High
Lawyers / Legal Practitioners outside of the public sector	No additional costs, unless legal practitioners choose to support a member of the public making a complaint pro bono	Low	High
Members of the public	Time cost associated with making complaints and providing supporting evidence.	Variable depending on complexity of complaint and regulatory system	Medium
Total monetised costs	Board membership fees and expenses and the analysis and administration costs.	$1.04 million - $1.17 million.	Low - Medium
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Ministry for Regulation	Increased avenues to gain insight into the functioning of regulatory systems to support the Ministry's oversight role.	Variable	Medium
Other government agencies (including in-house legal practitioners)	Government agencies can gain greater visibility of the impacts (including unforeseen impacts or unintended consequences) of regulation when issues are surfaced through the Board's complaints mechanism, or are commenced at the Minister or Board's behest, and when reports are published.	Variable, depending on the nature of complaints and findings reports from the Board.	Low
Parliament	Additional opportunity to scrutinise the consistency	Medium	Medium

	of legislation with legislative design and relevant good law-making principles through the tabling of a summary of the Board's recommendation and findings reports in Parliament. Select Committees will have the benefit of having the opportunity to consider the Board's report on a portion of bills and amendments before the House prior to making their final recommendations to the Committee of the Whole.		
Lawyers / Legal Practitioners outside of the public sector	Potential opportunities to support members of the public to access complaint mechanism. Increased opportunity for public law experts to utilise complaints mechanism to support the scrutiny of legislative development processes.	Low	Low
Members of the public	New complaints processes available. Increased transparency and accountability regarding legislative development processes which has the potential to result in increased trust in government. Potential for reduction in costs to comply with regulatory systems if relevant changes are made as a result of agencies implementing findings from the Board.	Medium	Low
Total monetised benefits		Variable. It is difficult to monetise the potential benefits as they are	Low - Medium

		dependent on the Board's recommendations, agencies' responses to those recommendations and the impacts of any changes or actions as a result.	
Non-monetised benefits		Variable, depending on the actions taken in response to the findings reports.	Medium

What are the marginal costs and benefits of a Ministry-led assurance function?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the Ministry-led assurance function compared to taking no action			
Ministry for Regulation	Costs for the Ministry include: • Increase in salary for an existing manager position that would be reappointed to the role to manage the assurance function.[36] • Complaints portal management. • Resource for analysis and reporting similar as to the Minister's preferred option. • Legal support.	Low Estimated cost of $30,000 for salary increase of an existing management position. Administrative support similar to a Board secretariat role and analytical and legal support may require additional resourcing as with Option Three. However, there is more likelihood of resourcing being managed within baseline as part of existing regulatory review and stewardship functions as the Ministry will have an increased ability to align the work of teams.	Low - Medium
Other government agencies (including in-house legal practitioners)	Costs associated with responding to recommendary findings reports. This cost would likely fall within baseline as part of an agency's	Medium	Low

[36] Moves salary for a manager up a pay band to recognise additional responsibilities.

	responsibilities for administering legislation and regulation.		
Parliament	No additional costs foreseen.	Low	High
Judiciary	No additional costs foreseen.	Low	Medium - High
Lawyers / Legal Practitioners outside of the public sector	No additional costs, unless legal practitioners chose to support a member of the public making a complaint pro bono.	Low	Low
Members of the public	New complaints processes available. Increased transparency and accountability regarding legislative development processes, which has the potential to result in increased trust in government. Potential for reduction in costs to comply with regulatory systems if relevant changes are made as a result of agencies implementing findings from the Board.	Medium	Low
Total monetised costs		$980,000 if all new resourcing is required to support the assurance function manager's role. Noting the possibility of resourcing within baseline above.	Low
Non-monetised costs		Low	Low
Additional benefits of this option compared to taking no action			
Ministry for Regulation	Increased avenues to gain insight into the functioning of regulatory systems to support the Ministry's oversight role.	Variable	Low - Medium
Other government agencies (including	Government agencies can gain greater visibility of the impacts (including	Variable, depending on the nature of complaints and findings reports from	Low – Medium

in-house legal practitioners)	unforeseen impacts or unintended consequences of regulation) when issues are surfaced through the assurance function.	the manager of the assurance function.	
Parliament	N/A	N/A	N/A
Lawyers / Legal Practitioners outside of the public sector	Potential opportunities to support members of the public to access complaint mechanism. Increased opportunity for public law experts to utilise complaints mechanism to support the scrutiny of legislative development processes.	Low	Low
Members of the public	New complaints processes available. Increased transparency and accountability of legislative development processes, which has the potential to result in increased trust in government. Potential for reduction in costs to comply with regulatory systems if relevant changes are made as a result of agencies implementing findings from the Board.	Medium	Low
Total monetised benefits		Variable. It is difficult to monetise the potential benefits as they are dependent on the Ministry's recommendations, agencies' response to those recommendations and the impacts of any changes or actions as a result.	Low - Medium
Non-monetised benefits		Variable, depending on the actions taken in response to the findings reports.	Medium

Section 3: Delivering an option

How will the proposal be implemented?

183. We understand that the Minister wishes to have legislation in place by the end of 2025.

184. New primary and secondary legislation will be introduced to establish a regulatory standards regime under the Regulatory Standards Act. The Act will be implemented through administrative powers and requirements on government agencies and Ministers.

Responsibility for the operation and enforcement of the new arrangements

185. The Ministry for Regulation will be responsible for oversight of the new arrangements, providing advice, guidance and reporting on compliance across government. Established teams within the Ministry will undertake this activity.

186. The legislation will also include a provision to enable the Minister to issue guidance on best practice and Ministerial expectations for complying with the new arrangements. This provision could be used by the Minister to address operational matters and supplemented by additional material produced by the Ministry.

187. The functions of the proposed Regulatory Standards Board will be supported by the Ministry for Regulation, and are expected to be funded from within existing baselines.

Arrangements coming into effect

188. The Minister has expressed a preference to introduce the proposed Bill in May 2025, with transitional provisions meaning that new regulatory proposals introduced from 1 July 2026 will need to comply with the new arrangements.

189. Implementation work will be required, which includes but is not limited to:

- supporting the preparation of Ministerial guidance
- developing supporting materials, such as further guidance and communications materials, including updating RIA and disclosure regime Cabinet circulars and associated guidance
- informing and educating affected agencies through dedicated material
- developing guidance on how to comply with the new arrangements
- establishing the Board and the Ministry's secretariat function and analytical support the Board would require
- developing the Ministry's reporting strategy.

190. The assessments for consistency with the principles are planned to be incorporated into existing policy processes, including the RIA requirements. Part 4 of the Legislation Act 2019 would be required to be repealed.

191. For the Regulatory Standards Board to be set up, the Minister would need to appoint the Board members following the passage of the Act and in accordance with the Act's provisions. The Board would also need to develop and approve its Terms of Reference and detailed process guidance with support from Ministry staff. The Ministry's website would need to be updated to include information on how complaints of legislation being inconsistent with the principles can be made as well as what the complainants can expect will happen. This process could take at least three months.

Transitional Provisions

192. To allow time for the policy and implementation work, including agency and Minister familiarisation with the new arrangements, certification requirements would apply to Government Bills, and amendments introduced from 1 July 2026.

193. During this time, the Ministry will continue to develop detailed design and implementation plans, and replace the current disclosure regime (established by Cabinet circular) with the new arrangements.

Other agencies' involvement in implementation and ongoing operation

194. Government agencies responsible for administering legislation and makers of secondary legislation of types not excluded from the requirements of the Act will be responsible for assessing consistency of new regulatory proposals against the principles and establishing the related certification processes. They will also need to develop plans for reviewing their stock of existing legislation (primary and included secondary legislation)and prepare and publish reports on the reviews it carries out. The impact of operationalising this will depend on the size of the agency and its current regulatory stewardship (or similar) function and level of maturity.

195. Agencies will need to respond to findings of the Board if an inquiry is conducted in response to a complaint.

196. Agencies will also be required to provide information for the Ministry's regulatory reviews, as per the requirements in the Act. Agencies responsible for entities that make or administer secondary legislation and entities authorised to undertake a regulatory function will additionally need to provide information for those entities, where they hold it.

197. Agencies have been consulted through the development of this policy.

Risks and mitigations

198. As identified in the options analysis, there is a risk that due to volume of consistency assessments required, agencies will need to prioritise resource for this, potentially crowding out other work. This may mean Ministers and agencies find it more difficult to resource other policy priorities, potentially resulting in persisting issues or unrealised benefits of regulation, specific to their portfolio. This risk may be mitigated somewhat by the level of agency resource already allocated to regulatory systems and stewardship, meaning that the additional requirements are partially absorbed into these functions. However, the level of this activity is uncertain (presumed low) and variable across agencies.

199. There is also a risk that due to the volume of assessments for new regulatory proposals, agencies and Ministers adopt standard wording and responses, which may reduce the impact of the principles over time. This risk is somewhat mitigated by the Board having access to consistency statements for all new regulatory proposals, and reviewing those that are prioritised. The Minister and Ministry will also be able to update guidance, processes and expectations in response to issues identified.

200. There is a risk that the requirements on Ministers and agencies provided for in the Act are not sufficient incentive amidst competing drivers, and the desired improvements to regulatory quality are not seen. Due to the complexity of the regulatory environment in New Zealand, this risk is apparent under any option. If this occurs, it will only be apparent over the long-term. However, the possibility of a Board inquiry may increase the incentive for robust and thorough assessments and statements by agencies and Ministers. This risk may

also be mitigated by the Ministry's review of how the Act is working after 5 years as well as ongoing monitoring of the RMS.

201. [LEGALLY PRIVILEGED] s 9(2)(h) [redacted]

202. Another risk identified throughout the submissions process is the level of public and political opposition, specifically to the principles currently in the proposed Bill. As the principles are proposed to be set in primary legislation, they will not be easily adaptable. This risk might be mitigated over time if improvements to regulatory quality are seen after enactment.

Key implementation differences for Option Three (Ministry's preferred option)

Responsibility for the operation and enforcement of the new arrangements

203. Responsibility for the new arrangements related to the principles and accompanying measures are the same as the Minister's preferred option.

204. If the Ministry were directed to manage the assurance function internally (as Option Two outlines) there would be some key implementation similarities and differences with the Minister's preferred option of establishing a Regulatory Standards Board (Option Three).

205. Under both options, public servants in the Ministry for Regulation would undertake the administrative and analytical work to fulfil many of the assurance function's duties. This would require a rearrangement of existing resources and infrastructure in the Ministry to carry out inquiries. For example, changes could be made to the Regulation Red Tape portal to receive complaints.

206. Under Option Two, the Ministry would need to appoint an internal manager to lead the assurance function and establish the processes for engaging with agencies and the Minister for Regulation.

207. Under Option Three, the Ministry would need to support the Minister for Regulation to establish the Regulatory Standards Board. This would include managing the nominations and appointments processes as well as developing the processes required for ongoing secretariat support.

208. Whether adjustments are needed to accommodate this new function alongside the Ministry's existing work programme would also need to be assessed.

Arrangements coming into effect

209. Part 4 of the Legislation Act 2019 would need to be left to automatically come into force (by April 2026), likely with some amendments. New legislative provisions such as roles for the Minister for Regulation, for the Ministry's regulatory oversight role and information-gathering powers would also need to be drafted and brought into effect, as supporting measures.

Transitional Provisions

210. It is likely that similar transitional provisions for the new legislative requirements (e.g., consistency mechanisms) to the Minister's preferred option would be applicable. There is an existing statutory mechanism that brings into force Part 4 of the Legislation Act 2019 by 24 March 2026.

Annex Two

Other agencies' involvement in implementation and ongoing operation

211. Chief Executives of agencies responsible for administering legislation and makers of included secondary legislation types will be responsible for preparing and publishing disclosure statements (section 103 of the Legislation Act 2019) in accordance with any directions issued by the Minister under section 110 of the Legislation Act 2019.

212. Agencies will still have to comply with the duty to review, maintain and improve the stock of legislation they administer, report on their plans to do so, and provide information to the Ministry for Regulation to support regulatory reviews.

Risks and mitigations

213. A key risk with the Ministry's preferred option is that it does not provide sufficient incentive in the context of competing drivers, and that it is therefore ineffective. This could be mitigated by monitoring activity after implementation, with the Minister and Ministry responding to identified issues with, for example, communication and engagement campaigns, training, and updating Minister-issued guidance.

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

214. The Act will be administered by the Ministry for Regulation and form part of the RMS.

215. The Ministry plans to conduct a Post-Implementation Review of the Act within five years after its enactment to evaluate whether it is meeting its objectives, identify costs and benefits following its implementation, and consider any proposals that could enhance the Act's fitness for purpose in the context of the wider RMS at the time of the evaluation.

216. The monitoring, evaluation and review plan would be the same for Option Two (the Ministry's preferred option).

Annex One: Analysis of specific principles

The summary analysis below draws on advice from the Legislation Design Committee and the Crown Law Office, along with feedback from public consultation on the discussion document.

	Principle	**Analysis**
Rule of law	The importance of maintaining consistency with the following aspects of the rule of law: (i) the law should be clear and accessible: (ii) the law should not adversely affect rights and liberties, or impose obligations, retrospectively: (iii) every person is equal before the law: (iv) there should be an independent, impartial judiciary: (v) issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion	The exact nature of the rule of law is contestable, and careful work is needed to ensure that any rule of law principles line up with settled legal understandings. The Legislation Guidelines already provide a well-established starting point for thinking about the rule of law in relation to legislative design. In this context, in relation to the components of this proposed principle: • the force with which some of the principles are stated does not reflect some of the inherent uncertainties. For instance, a blanket requirement for all law to be 'clear and accessible' without any qualification could impose very onerous obligations, depending on how it was interpreted. In addition, 'clear' and 'accessible' lack precision in the context in which they are used, and it is not clear to whom the legislation must be clear • the principle that everyone is equal before the law is broadly open to interpretation and carries a risk that it could be interpreted as substantive equality – i.e. a requirement that governments consider how to achieve equal outcomes for people, not just equal treatment (equality in the administration of law).
Liberties	Legislation should not unduly diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person	The values expressed in this principle do not have settled meanings, are open to interpretation, and incorporate concepts in a way that is broader than is generally recognised in other jurisdictions. [LEGALLY PRIVILEGED] s 9(2)(h) [redacted]

		s 9(2)(h) [redacted] s 9(2)(h) [redacted] [LEGALLY PRIVILEGED] s 9(2)(h) [redacted] s 9(2)(h) [redacted]
Taking of property	Legislation should not take or impair, or authorise the taking or impairment of, property without the consent of the owner unless– (i) there is a good justification for the taking or impairment; and (ii) fair compensation for the taking or impairment is provided to the owner; and (iii) the compensation is provided, to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment	Property rights are already provided for in reasonably determinate and well-established rules and principles, including interpretive principles. However, this principle goes much further than current understandings in New Zealand and similar provisions in other jurisdictions. In particular: • the reference to impairment could capture any effect on property, however minor • 'fair' compensation is inherently subjective and therefore could be interpreted in unexpected ways • the idea that compensation should be provided by those who obtain the benefit is a novel concept, does not appear in any overseas jurisdiction, and would be extremely difficult to apply in practice.

		[LEGALLY PRIVILEGED]s 9(2)(h)
Taxes, fees, and levies	The importance of maintaining consistency with section 22 of the Constitution Act 1986 (Parliamentary control of public finance) Legislation should impose, or authorise the imposition of, a fee for goods or services only if the amount of the fee bears a proper relation to the cost of providing the good or service to which it relates Legislation should impose, or authorise the imposition of, a levy to fund an objective or a function only if the amount of the levy is reasonable in relation to both– (i) the benefits that the class of payers are likely to derive, or the risks attributable to the class, in connection with the objective or function; and (ii) the costs of efficiently achieving the objective or providing the function.	These principles are already well-established aspects of legislative design and in some cases legality (see Chapter 17 of the Legislation Guidelines). While they have broad acceptance in the New Zealand context, it may be duplicative and unnecessary to establish these in primary legislation. It is also unclear why these principles of legislative design are included in the proposed Bill, but others are not.
Role of courts	Legislation should preserve the courts' constitutional role of ascertaining the meaning of legislation Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.	This principle aligns with section 10 of the Legislation Act 2019, and reinforces the courts' constitutional role. The wording in the second clause of this principle aligns with the wording in section 4 of Queensland's Legislative Standards Act. This means the principle is likely to have broader acceptance than some of the other principles, given these consistencies. However, the Legislation Guidelines (see 12.2) note that the starting point is that Parliament is entitled and empowered to make and amend any law. That includes altering the law declared in completed court cases, or by amending or otherwise clarifying the law that is likely to arise in pending cases. The fact that litigation is occurring or has been

		concluded does not put the law at issue in a case beyond the reach of legislation.
Good law-making	The importance of consulting, to the extent that is reasonably practicable, the persons or representatives of the persons that the responsible agency considers will be directly and materially affected by the legislation The importance of carefully evaluating— (i) the issue concerned; and (ii) the effectiveness of any relevant existing legislation and common law; and (iii) whether the public interest requires that the issue be addressed; and (iv) any options (including non-legislative options) that are reasonably available for addressing the issue; and (v) who is likely to benefit, and who is likely to suffer a detriment, from the legislation Legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons Legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available.	There are a number of potential issues relating to the good lawmaking principles including: • [LEGALLY PRIVILEGED] s 9(2)(h) [redacted] • the inherent difficulty of quantifying the 'benefits' and 'costs' of many proposals – noting that, in many policy areas (for example, in the justice or social policy areas) the 'benefits' are often qualitative rather than quantitative, and 'costs' (notably in the longer term) are not quantifiable. [LEGALLY PRIVILEGED] s 9(2)(h) [redacted] • some of the tests set by these principles leave little room for value judgement, even though decisions about benefits and costs routinely involve these types of judgements.