Office of the Minister for Regulation

Chair, Cabinet Expenditure and Regulatory Review Committee

APPROVAL TO CONSULT ON A PROPOSED APPROACH TO THE REGULATORY STANDARDS BILL

Proposal

1. This paper seeks agreement to release a discussion document on a proposed approach to the Regulatory Standards Bill, aimed at improving the quality of New Zealand's regulation.

Relation to government priorities

2. The Coalition Agreement between the New Zealand National Party and ACT New Zealand includes a commitment to legislate to improve the quality of regulation, ensuring that regulatory decisions are based on principles of good law-making and economic efficiency, by passing the Regulatory Standards Act as soon as practicable.

Executive summary

3. In my view, government regulation imposes costs just as great, if not greater, on people's everyday lives as government taxing and spending, with a significant impact on all areas of New Zealand's lives and wellbeing. Yet regulation does not have the level of scrutiny, the laws, or the mechanisms that we have in place for public finance. Conversely, measures to reduce or remove unnecessary regulation, or to stop it being introduced in the first place, can result in significant savings for governments, individuals and businesses.

4. On 27 February 2024, the Cabinet Expenditure and Regulatory Review Committee noted that I was considering options for a Regulatory Standards Bill to address the problem of poor-quality regulation, and invited me to report back with a further paper refining my proposals [EXP-24-MIN-0003 refers]. I am now seeking agreement to consult on a more detailed approach to the Bill through the discussion document *Have your say on the proposed Regulatory Standards Bill*, attached as **Annex 1**.

5. The approach to the Bill set out in the discussion document seeks to bring the same discipline of regulatory management that New Zealand has for fiscal management. However, I have made significant amendments to the previous proposal considered by the Committee. In particular, the discussion document now proposes a Regulatory Standards Board within the executive as a mechanism that can consider the consistency of regulation with the principles, mainly in response to complaints.

6. The proposal also includes some new statutory expectations on responsible Ministers and agencies to support the provisions above, as well as the Ministry for Regulation's broader regulatory oversight role. These measures include encouraging agencies to more actively steward their regulatory systems, which

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will be critical to improving the quality of regulation over time.

7. I propose that public consultation on the discussion document runs for six weeks from 12 November, and includes targeted engagement with business groups, councils, and legal experts.

8. 9(2)(h)

9. I intend to report back to the Committee by February 2025 on the outcome of consultation and to seek agreement to policy decisions.

Background

10. In my view, government regulation imposes costs just as great, if not greater, on people's everyday lives as government taxing and spending, with a significant impact on all areas of New Zealand's lives and wellbeing. Yet regulation does not have the level of scrutiny, the laws, or the mechanisms that we have in place for public finance.

11. Often when government regulates, key questions remain unanswered - including whether there's a real problem to solve, whether the benefits of regulating outweigh the cost, and where costs and benefits fall. This is coupled with a lack of transparency about whether new regulation meets accepted standards and, where it does not meet those standards, why it has still been proceeded with. Furthermore, because rules and regulations stay in place for a long period of time, it is difficult for the public to know who to hold to account for the costs they face from poor quality or unnecessary regulation. Even where regulation may be justifiable at a point in time, a lack of ongoing review and maintenance often create additional costs. These are the issues that the Regulatory Standards Bill seeks to address.

12. On 27 February 2024, the Cabinet Expenditure and Regulatory Review Committee noted that I was considering options for a Regulatory Standards Bill, and invited me to report back with a further paper refining my proposals [EXP-24-MIN-0003 refers].

Overview of proposed Bill

13. I am now seeking agreement to consult on a more detailed approach to the Bill through the attached discussion document *Have your say on the proposed Regulatory Standards Bill*.

14. As with the previous proposal, the Regulatory Standards Bill aims to reduce the amount of unnecessary and poor regulation by increasing transparency and making it clearer where regulation does not meet standards. The approach to the Bill set out in the discussion document seeks to bring the same discipline of regulatory management that New Zealand has for fiscal management by

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providing:

14.1. a benchmark for good regulation through a set of principles of responsible regulation (principles)

14.2. mechanisms to transparently assess the consistency of new legislative proposals and existing regulation with the principles (consistency mechanisms)

14.3. a mechanism for independent consideration of the consistency of existing regulation, primarily in response to stakeholder concerns (a recourse mechanism).

15. While the proposed approach is still largely based on the 2021 Regulatory Standards Bill (which itself was based on a Bill drafted by the 2009 Regulatory Responsibility Taskforce), some significant changes have been made, including in response to feedback from Ministers and agencies. In particular:

15.1. some of the principles in the 2021 Bill have been amended to better align them with broadly accepted principles and practices

15.2. the interpretive role of the courts that was formerly proposed has been removed, and a Regulatory Standards Board proposed in place of the courts, in relation to finding legislation inconsistent with the principles

15.3. new powers and expectations to give effect to the Ministry for Regulation's regulatory oversight role have been included.

Principles

16. Under the proposed approach, the Government would be required to consider a set of principles when developing legislative proposals or exercising stewardship over regulatory systems. In my view, identification of a clear, authoritative set of principles in primary legislation will allow for much more transparent assessments of whether regulatory proposals and existing regulations are consistent with them.

17. I propose that these principles focus primarily on the effect of legislation on existing interests and liberties, good law-making process, and regulatory stewardship. I do not include a principle relating to the Treaty of Waitangi/Te Tiriti o Waitangi.

18. I propose that the Bill includes principles based on those recommended by the 2009 Taskforce and included in the 2021 Bill – with some amendments to better align some of the principles with how they are currently formulated in the Legislation Guidelines or elsewhere in legislation. The proposed approach also includes principles focused on the review and maintenance of existing regulation, which is intended to address the issues that arise when legislation is poorly implemented, or is no longer fit for purpose.

19. The Attorney-General granted approval for Parliamentary Counsel Office (PCO)

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to undertake ongoing drafting work on the principles and related components of the Bill prior to Cabinet approvals to assist in providing a clear understanding of the proposed principles. The discussion document at **Annex 1** therefore includes an initial draft of the principles as they might appear in a Bill if they were to proceed as currently proposed. I note that some of these principles describe concepts differently to, or are broader than, the comparable wording in the Legislation Guidelines or in other legislation. In particular, the principles relating to takings and impairment, and liberties and freedoms, differ from conventional expressions of these principles.

Consistency mechanisms

20. As outlined in the 2009 Taskforce's report, the provisions in the 2021 Bill requiring the responsible Minister and responsible chief executive to certify the compatibility of legislation against the principles were intended to "enhance transparency in the legislative process" and "ensure that accountability and transparency is brought to the conduct of both political and non-political actors in the process of formulating legislation." [1]

New regulatory proposals

21. Under the proposed approach, as in the 2021 Bill, new regulatory proposals would be required to be assessed for consistency with the principles. Where a policy proposal or a draft Bill is assessed as inconsistent with any of the principles, the responsible Minister would be required to make a statement justifying why they are proceeding with the proposal despite these inconsistencies. Similar assessment and justification would be required in relation to secondary legislation covered by the proposal. This statement could be published after a Bill has been introduced, or secondary legislation made (subject to the equivalent provisions of the Official Information and Privacy Acts) to ensure transparency. These measures will help to promote the consistency of new legislation with the principles - while allowing for some exceptions where these can be justified by Ministers.

22. Further work is underway on the implications of this proposal for current Regulatory Impact Analysis requirements set out in Cabinet Office circular CO (20)2, current disclosure statement requirements set out in Cabinet Office circular CO (13) 3, and the disclosure statement provisions set out in Part 4 of the Legislation Act 2019, which is not yet in force. My intention is that these arrangements are streamlined and aligned with the new consistency requirements in the Bill to minimise any new compliance costs for agencies. This may require amendments to, or the repeal of, Part 4 of the Legislation Act.

Existing regulation

23. The proposal includes strengthened requirements for Ministers and agencies to maintain, review and update the regulatory systems for which they are responsible – including assessing the consistency of existing legislation (both primary and secondary) with the principles. This builds on provisions in the 2021

[1] *Report of the Regulatory Responsibility Taskforce*, pp. 55-6

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Bill that required agencies to review their stock of legislation for consistency with the principles.

24. Where existing regulation is reviewed by agencies, and any inconsistencies with the principles identified - and where the responsible Minister does not propose to address these inconsistencies - the responsible Minister would be required to make a statement justifying why they think these inconsistencies should be allowed to continue, and this statement would be published.

25. These measures will help ensure that existing regulation is subject to the same scrutiny as new regulatory proposals – while providing sufficient flexibility for Ministers and agencies to decide on an appropriate programme of reviews in the context of other priorities and resource constraints. Along with other mechanisms like the Ministry for Regulation's regulatory reviews, the aim is to significantly improve the quality of the stock of New Zealand's regulation over time.

Application of consistency mechanisms

26. Similarly to the 2021 Bill, the proposal requires the Minister for Regulation to issue guidelines for assessment of both new and existing regulation which would provide further information in relation to the way the principles should be interpreted and applied, as well as related processes and requirements.

27. The Bill would also enable the Minister for Regulation to specify which classes of regulation are required to comply with consistency requirements. This recognises the need to provide some flexibility to recognise specific circumstances (e.g. emergency situations) or to take a lighter touch on some minor proposals or secondary legislation of lesser significance.

28. The Crown's commitments under Treaty settlements are reflected in deeds of settlement, which are given effect through legislation. I propose that the Bill exclude legislation that gives effect to or is otherwise related to, full and final Treaty settlements.

Recourse mechanisms

29. A key part of the 2021 Bill was the provision of a new role for the courts in both preferring interpretations of legislation that were consistent with the principles, and being able to declare legislation inconsistent with the principles – aiming to create strong incentives on responsible Ministers and agencies to ensure consistency.

30. However, I am now proposing that the Bill establish a Regulatory Standards Board in place of the courts, with members appointed by the Minister for Regulation, and supported by a secretariat from the Ministry for Regulation. The Board would be able to consider complaints about inconsistency of existing regulation with the principles - including the operation of regulatory systems as well as legislation - and would deliver non-binding, recommendatory findings. The Board would also be able to undertake reviews at its own behest, or at the direction of the Minister for Regulation. The Board would not consider regulatory decisions made by Ministers or agencies in individual cases.

31. All Board findings and key relevant supporting information would be published (subject to the equivalent provisions of the Official Information and Privacy Acts) to reinforce transparency.

32. In my view, such a board would offer a relatively low-cost, agile way to consider and respond to complaints quickly. It would play a critical role in incentivising compliance with other components of the Bill in order to support the achievement of the Bill's overall objectives. It would also bolster quality assurance of existing regulation, which is a traditionally weak area for New Zealand's Regulatory Management System.

33. Further work is required on the detailed design of a board. This will include working through how to manage any overlap in the role of a board and the responsibilities of the Regulations Review Committee in relation to secondary legislation.

Other proposed provisions

Setting strengthened regulatory stewardship expectations

34. Given known issues with New Zealand's stock of legislation, encouraging agencies to more actively steward their regulatory systems will be critical to improving the quality of regulation over time.

35. As noted above, under the proposed approach, the Bill would therefore create a duty for agencies in relation to regular review, maintenance and improvement of the legislation they administer. This would essentially clarify and strengthen the legislative stewardship requirements that are currently set out in s 12 of the Public Service Act 2020. To support achievement of this duty, the Bill would create a specific requirement for responsible agencies to develop and publicly report against plans to review their stock of legislation. This will enable the assessments of consistency of existing regulation discussed above.

36. While this approach would place clearer and more specific requirements on agencies in relation to regulatory stewardship, and make this activity more transparent, it would also give agencies significant flexibility to plan and undertake reviews within available resources, as it does not mandate a certain number of reviews, or require regulatory systems to be reviewed within a specified time.

Supporting the Ministry's regulatory oversight role

37. One key way in which the Ministry will influence the quality of New Zealand's regulation is through conducting regulatory reviews to ensure that regulatory systems are achieving their objectives and do not impose unnecessary compliance costs, or unnecessarily inhibit investment, competition and innovation. To support the efficiency and effectiveness of these reviews, the proposed Bill would enable the Chief Executive of the Ministry for Regulation to require information to be provided from public service agencies, statutory Crown entities, and all entities that perform statutory regulatory functions (such as local government) or are contracted by the government to support the delivery of a

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regulatory function.

38. Other proposed provisions to support the Ministry for Regulation's oversight of the quality of legislation include 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, and a power for the Ministry for Regulation to require provision of information from agencies to support this regular report.

39. Such provisions would have the benefit of strengthening accountability and transparency throughout the system, and giving the Ministry for Regulation a solid statutory basis to carry out its central agency role.

Cost-of-living implications

40. There are no cost-of-living implications arising from the proposals in this paper.

Crown Law advice

41. 9(2)(h)

42. 9(2)(h) Legal risk and proposed solutions are set out in the summary of CLO advice in **Annex 2**.

Annex 2 is withheld under 9(2)(h) to maintain legal professional privilege

Financial implications

43. There are no direct financial implications arising from the recommendations in this paper. The public consultation will be undertaken within existing departmental baselines. 9(2)(h)

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9(2)(h)

44. Implementing the proposals in this paper would have financial implications for government. Costs will be dependent on detailed design and how much secondary legislation is covered by the proposal, but Ministry officials advise that they could include additional costs for the Ministry for Regulation in establishing and supporting a Regulatory Standards Board, for agencies that are subject to new assessment and reporting requirements, and for entities required to comply with requests for information as part of regulatory reviews. However, some of these costs could ultimately generate cost-savings or broader benefits (e.g. where they result in the removal or improvement of inefficient regulation). To the extent that the proposal prevents significant work on poor quality regulatory proposals, there may also be savings. The Ministry for Regulation will do further work to identify the financial implications of the proposals following consultation.

45. There are also likely to be other potential costs associated with the risks identified by CLO in its advice. There may also be costs arising from the application of the principles to policy initiatives, for example costs associated with more consultation, or costs arising from providing compensation for any impairment of property.

Legislative implications

46. The Regulatory Standards Bill was originally given a category 3 (a priority to be passed by the end of 2024) in the 2024 Legislation Programme, but has been reassessed as category 6 (drafting instructions to be issued by the end of 2024).

Impact analysis

47. An interim Regulatory Impact Statement is attached as **Annex 3**.

48. 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 interim Regulatory Impact Statement (RIS): *Legislating to improve transparency of the quality of regulation*, produced by the Ministry for Regulation, dated 22 October 2024. The panel considers that it “partially meets” the Quality Assurance criteria.

49. The panel has assessed the RIS on the basis that it is an interim RIS. The panel has not been asked to assess the extent to which the discussion document would support development of the final RIS.

50. The interim RIS clearly acknowledges that the scope of the options has been limited by the Coalition agreement and Ministerial direction in particular “through a focus on legislative rather than non-legislative options.”

51. The panel’s view is that the interim RIS does not provide sufficient analysis of the behavioural incentives and adequacy of current arrangements to make the case that the extent of legislative changes proposed (indicated in the RIS as being the

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discussion document proposal) are necessary to have an impact on lifting the quality of regulation.

52. The Ministry for Regulation has expressed a preference in the interim RIS for an alternative option building on the existing Disclosure Statement regime (through Part 4 of the Legislation Act 2019 coming into force), new legislative provisions to support regulatory stewardship and the Ministry's review and reporting roles. The Ministry considers this could encourage transparency, thereby lifting performance across the regulatory system.

53. The gaps in the interim RIS may be able to be addressed following the consultation process.

Climate Implications of Policy Assessment

54. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population implications

55. The Preliminary Treaty Impact Analysis that is attached as **Annex 4** includes an initial analysis of the proposals from a Treaty of Waitangi perspective.

Human rights

56. No human rights implications have been identified as arising directly from the recommendations in this paper. However, officials note that more work needs to be done as to the interrelationship between this proposal and international human rights instruments, along with assessments of inconsistency under the New Zealand Bill of Rights Act 1990 (BORA).

57. Implementing the information gathering proposals in this paper may engage the right to freedom of expression (section 14) and the right to be secure against unreasonable search or seizure (section 21) in the BORA. The Ministry for Regulation will undertake further analysis of any human rights implications, including the degree to which the limitation of rights is justified and any safeguards that should be applied to limit the degree of intrusion.

Use of external resources

58. The Ministry for Regulation has engaged one contractor on policy analysis to support the policy development process for the Regulatory Standards Bill. Some external legal support has also been engaged.

Consultation

59. The following agencies have been consulted: the Treasury, the Ministry of Justice, the Parliamentary Counsel Office, the Ministry of Business, Innovation and Employment, the Ministry for the Environment, the Office for Māori Crown Relations - Te Arawhiti, Inland Revenue, the Department of Internal Affairs, the

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National Emergency Management Agency, the Ministry for Culture and Heritage, the Cancer Control Agency, the Ministry of Transport, the Ministry of Health, Land Information New Zealand, the Ministry of Social Development, the Ministry of Education, the Ministry of Foreign Affairs and Trade, the New Zealand Customs Service, the Ministry of Housing and Urban Development, the Department of Corrections, the Office of the Clerk, the Ministry of Defence, the Public Service Commission, Stats NZ, the Serious Fraud Office, the Ministry for Pacific Peoples, the Department of Conservation, the Education Review Office, the Government Communications Security Bureau, the Ministry for Women, the Ministry for Primary Industries, the New Zealand Security Intelligence Service, Oranga Tamariki, the Social Investment Agency, Te Puni Kōkiri, the Independent Children's Monitor, the Ministry for Ethnic Communities, Whaikaha - the Ministry of Disabled People, New Zealand Police and the Reserve Bank of New Zealand (with legally-privileged material redacted). The Department of the Prime Minister and Cabinet has been informed. A summary of substantive feedback provided by agencies is attached as **Annex 5**.

60. The Public Service Commission has asked for the following comment to be included in this paper: The proposals in this paper have implications for the Public Service Commission and its responsibilities. The Commission looks forward to the outcomes of public consultation and will engage further on the detail of the proposals and the options to address them during the public consultation process. We note that, as currently proposed, there would be implications for the scope of the Ministry and Minister of Regulation's roles within government that need further exploration. We also note the interface with section 12 of the Public Service Act and, should Government decide to further codify its expectations of legislative stewardship, we will engage with the Ministry for Regulation on the best way to give effect to the policy intent.

61. Targeted engagement with former members of the Regulatory Responsibility Taskforce has taken place. However, there has not yet been other targeted consultation outside the government on the proposal.

62. I propose that public consultation on the discussion document runs for six weeks from 12 November, and includes targeted engagement with business groups, councils and legal experts.

Communications

63. I propose to issue a media statement to accompany the release of the discussion document. The discussion document will be available on the Ministry for Regulation's website.

Proactive release

64. I propose to proactively release this Cabinet paper and substantive advice (including briefings) related to the Regulatory Standards Bill, with appropriate redactions, once Cabinet decisions have been taken, in accordance with the Government's proactive release policy.

Recommendations

65. The Minister for Regulation recommends that the Committee:

a. **note** that unnecessary or poor regulation is costly for government, individuals and businesses, and there is currently a lack of transparency in relation to what these costs are and where they fall

b. **note** that, on 27 February 2024, EXP invited me to report back with a further paper refining my proposals for a Regulatory Standards Bill to improve the quality of New Zealand's regulation

c. **note** that a more detailed approach to a Bill is set out in the attached discussion document *Have your say on the proposed Regulatory Standards Bill*

d. **agree** to release the attached discussion document as a basis for public consultation on the proposed approach to a Bill

e. **authorise** minor amendments and refinements to be made to the discussion document before it is released

f. **note** that we expect a high degree of interest in the proposal, including from iwi/Māori, 9(2)(h) [redacted]

g. **note** that there are no direct financial implications arising from the recommendations in this paper, however the proposals in the discussion document are likely to have direct financial implications for some government agencies, 9(2)(h) [redacted]

h. **note** that I will report back to the Committee early in 2025 on the outcome of consultation and to seek agreement to policy decisions

i. **agree** to proactively release this Cabinet paper and substantive advice (including briefings) related to the Regulatory Standards Bill, with appropriate redactions, in accordance with the Government's proactive release policy.

Authorised for lodgement

Hon David Seymour
Minister for Regulation

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Have your say on the proposed Regulatory Standards Bill

October | 2024

Ministry for Regulation
Te Manatū Waeture

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Minister’s foreword

Most of New Zealand's problems can be traced to poor productivity, and poor productivity can be traced to poor regulations. To address this, the Coalition Agreement between ACT and National commits to policies aimed at rebuilding the economy and enhancing productivity. Establishing the Ministry for Regulation (the Ministry) and introducing the Regulatory Standards Bill (the Bill) are key initiatives to help the Government achieve these goals

The Bill is the culmination of nearly 25 years of work. I would like to acknowledge those who have paved the way for regulatory reform in 2024, particularly Dr Bryce Wilkinson, whose book "Constraining Government Regulation" laid important groundwork for this Bill. Special thanks also go to Dr Graham Scott, Jack Hodder KC, and other members of the Regulatory Responsibility Taskforce, who refined the Bill in 2009. In 2021, I brought the Bill forward as a Member's Bill, but it was voted down by the previous government. Today, we are taking this opportunity to make real progress on regulatory reform.

The Bill aims to establish high-quality regulatory standards which keep up with societal change, and drive productivity, by codifying principles of good regulatory practice. Future regulatory proposals, as well as existing regulations, must comply with these principles, unless lawmakers justify why they are failing to meet the standard.

The Minister for Regulation (the Minister) will issue guidelines for assessing consistency with these principles, recognising that different types of regulation may require specific considerations.

The Bill also establishes a Regulatory Standards Board (the Board). The Board will assess complaints and challenges to consistency statements, issuing non-binding recommendations and public reports.

Where a statement of inconsistency is made by the Board, the governing Minister must respond to justify deviation from consistency principles. The findings, justification arguments, and relevant documents will be made publicly available to ensure transparency.

The Bill also provides the framework under which the Ministry will operate, empowering it to act in an advisory capacity, promoting good regulatory practice across all sectors. It seeks to bring the same level of discipline to regulatory management that the Public Finance Act brings to public spending, with the Ministry playing a role akin to that of Treasury.

Once regulatory “stock” has been assessed against consistency principles, government departments will have duties to maintain, review, and update their regulatory systems. An

effective regulatory system ensures that its regulatory "stock" remains effective and responsive to change.

These changes will put a lot of emphasis on making regulatory systems more transparent, and more accountable to the people.

Ultimately, this Bill will help the Government achieve its goal of improving New Zealand's productivity by ensuring that regulated parties are regulated by a system which is transparent, has a mechanism for recourse, and holds regulators accountable to the people.

Hon David Seymour
Minister for Regulation
31 October 2024

What is being consulted on?

This discussion document sets out a proposal to introduce a Regulatory Standards Bill.

The Coalition Agreement between the New Zealand National Party and ACT New Zealand includes a commitment to legislate to improve the quality of regulation, ensuring that regulatory decisions are based on principles of good law-making and economic efficiency, by passing the Regulatory Standards Act as soon as practicable.

The proposed Regulatory Standards Bill would aim to bring the same discipline of regulatory management as New Zealand has for fiscal management by providing:

- a benchmark for good regulation through a set of principles of responsible regulation (see **Discussion area one**)
- mechanisms to transparently assess the consistency of new legislative proposals and existing regulation with the principles (see **Discussion area two**)
- a mechanism for independent consideration of the consistency of existing regulation, primarily in response to stakeholder concerns (see **Discussion area three**).

It would also include provisions to support the Ministry for Regulation in its work to improve the quality of regulation (see **Discussion area four**).

A Bill itself has not yet been drafted so your views are being sought on a proposal on what the Bill should contain.

What is not in scope?

For this consultation, feedback is not being sought on:

- the Ministry for Regulation or its functions
- other proposed or current Government policies relating to regulation
- issues with specific regulations or agencies
- funding decisions.

Questions for discussion

The discussion document sets out a range of questions in relation to the proposal, which are intended as a guide for you to provide feedback. However, you do not have to answer all – or any – of these questions.

Supporting information

Some helpful supporting information that may help you form your views on the proposal set out in this discussion document is listed below.

Regulatory impact statement

The Ministry for Regulation has produced a regulatory impact statement, which provides the Ministry's detailed analysis of available options and their relative impacts, including the proposal set out in this discussion document. You can download a copy from the Ministry's website.

Preliminary Treaty impact assessment

The Ministry for Regulation has produced a preliminary Treaty impact assessment, which provides the Ministry's initial analysis of the Treaty impacts of the proposal set out in this discussion document. You can download a copy from the Ministry's website.

The Report of the Regulatory Review Taskforce

The Regulatory Review Taskforce was set up to provide its view on what a Regulatory Standards Bill should contain, and reported its findings to the Government in 2009. The proposal in this document is largely based on that proposal. You can find the Taskforce's report on the Treasury's website.

Other useful supporting information

In 2010, the Institute of Policy Studies at Victoria University of Wellington published a special edition of its Policy Quarterly journal, setting out the different views of a number of experts on the draft Regulatory Standards Bill proposed by the Regulatory Taskforce. This Vol. 6 No. 2 (2010) edition can be found at https://ojs.victoria.ac.nz/pq/issue/view/515.

In 2011, the Regulatory Standards Bill drafted by the Taskforce was introduced to Parliament and considered by the Commerce Select Committee. The reports of the Committee along with public submissions on the Bill can be found on Parliament's website.

Consultation process

Consultation on the proposal to introduce a Regulatory Standards Bill is open from 12 November 2024 until 24 December 2024.

You can provide a submission:

- through the engagement hub on the Ministry's website
- emailing your submission to RSBconsultation@regulation.govt.nz, or
- mailing your submission to Ministry for Regulation, P O Box 577, Wellington 6140.

This consultation document has questions that you can use to complete your submission.

As noted above, the questions are not compulsory. You can answer as many as you want or share your own thoughts about the proposed Bill.

Please send any questions on the submissions process to RSBconsultation@regulation.govt.nz.

What will happen with feedback?

The information provided in submissions will be used to help determine the final shape of the Bill that will be introduced into the House next year.

There will be a further chance to submit on a draft Bill during the Parliamentary Select Committee process in 2025.

Submitters may be contacted directly if clarification of any matters in the submissions is required.

Release of information

The Ministry for Regulation will publish a summary of submissions on its website. Submissions remain subject to request under the Official Information Act 1982. Please clearly indicate in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and which parts you consider should be withheld, together with the reasons for withholding the information. The Ministry will take such objections into account and will consult with submitters as it considers necessary when responding to requests under the Official Information Act.

Private information

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including the Ministry for Regulation. Any personal information you supply to the Ministry in the course of making a submission will be used only for the purpose of assisting in the development of advice in relation to this consultation, for contacting you about your submission, or to advise you of

the outcome of the consultation, including any next steps. The Ministry may also use personal information you supply in the course of making a submission for other reasons permitted under the Privacy Act (e.g. with your consent, for a directly related purpose, or where the law permits or requires it).

We will proactively remove identifying information from any summary of submissions that the Ministry may publish. Any request under the Official Information Act 1982 that includes identifying information will need to be considered in line with that Act. Please clearly indicate in your submission if you consider your name, or any other identifying information, should not be released under the Official Information Act and why, and we will take that into account in the event of a request.

The Ministry will retain personal information only as long as it is required for the purposes for which the information may lawfully be used.

Where any information provided (which may include personal information) constitutes public records, it will be retained to the extent required by the Public Records Act 2005. The Ministry may also be required to disclose information under the Official Information Act, to a Parliamentary Select Committee or Parliament in response to a Parliamentary Question.

You have rights of access to and correction of your personal information, and further details on how to contact us are on the Ministry's website.

Questions

1. What is your name?
2. Are you submitting in a personal capacity, or on behalf of an organisation, iwi, hapū?
3. If you are submitting on behalf of an organisation, iwi, hapū what is the name of that organisation, iwi or hapū?
4. Where in New Zealand are you primarily based?
5. Please provide us with at least one method of contacting you, in case the Ministry needs to discuss your submission further.

Background

Why is good regulation important?

Good **regulation** can help governments to achieve their desired economic, environmental and social outcomes, support the effective operation of markets, and protect communities from harm.

Done poorly, however, regulation can impose costs, limit freedoms, stifle innovation, and give rise to other unintended consequences – or it can simply fail to achieve its intended objectives.

Governments should therefore make careful choices about when they regulate, and any resulting regulation should be designed, implemented, and monitored so that it achieves its objectives, and its benefits outweigh its negative impacts.

'Regulation' versus 'legislation'

This discussion document uses 'regulation' to encompass any government intervention that is intended to direct or influence people's behaviour, or how they interact with each other. 'Regulation' therefore includes, but is not limited to, legislation.

Legislation includes primary legislation (i.e. law made by Parliament) or secondary legislation (where Parliament delegates its law-making power - usually to the Governor-General acting on the advice and with the consent of the Executive Council, a regulator, a Minister or a government department).

The term 'regulation' is also distinct from the term 'regulations' which is used to describe a particular type of secondary legislation made under the delegated authority of an Act.

How good is New Zealand's regulation?

New Zealand's approach to regulation has not always been consistent with best practice.

For instance, in its 2023 *Briefing for the Incoming Attorney-General*, the Legislation Design Advisory Committee (LDAC), which has responsibility for promoting good quality legislation in New Zealand, noted a tendency towards using legislation in cases where it was not strictly required, or where it covered matters already addressed in existing legislation[1].

Unneeded or poor-quality legislation can arise through deficiencies in the policy development process, including a failure to fully consider the impacts of regulatory proposals on regulated parties and regulators. This is often exacerbated by a truncated or rushed legislative process. These deficiencies can also lead to poorly designed and implemented regulation.

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[1] LDAC (2023). *Briefing for the Incoming Attorney-General*, pp. 12-13

In addition, New Zealand has a large stock of outdated or no longer fit-for-purpose legislation. Back in 2014, the Productivity Commission noted that two-thirds of regulator chief executives reported they had to work with legislation that is outdated or not fit-for-purpose.[2] This creates inefficiencies for regulators, imposes unnecessary costs on regulated parties, and means that **regulatory systems** cannot easily adapt to technological, demographic, or other change, or easily respond in emergency situations.

respond in emergency situations.

> *Regulatory systems*
>
> Regulatory systems comprise a set of rules, organisations and activities that share a common policy objective (e.g. health and safety). Regulatory systems are not limited to primary and secondary legislation, but include a range of activities including the delivery of services, education, monitoring and enforcement, and dispute resolution. The Government is responsible for around 180-200 regulatory systems.

New Zealand's regulatory performance has also stagnated or worsened over time, according to results from recent international surveys[3]. While those results are partly due to changes in the scope and methodology of surveys over time, or characteristics particular to New Zealand, such as its small size and relatively less formal constitutional arrangements, they indicate that there may be considerable room for improvement.

What are the current arrangements to promote regulatory quality?

Requirements for responsible Ministers and agencies

There are two main requirements for Ministers and agencies currently in place that are designed to improve the quality of proposed regulation.

- All regulatory proposals taken to Cabinet for approval must be accompanied by a **Regulatory Impact Statement** (RIS), unless an exemption applies. A RIS is a document produced by the responsible government department and provides a high-level summary of the problem being addressed, the options and their associated costs and benefits, the consultation undertaken, and the proposed arrangements for implementation and review.

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[2] Productivity Commission (2014). *Regulatory Institutions and Practices*, p. 224

[3] For instance, New Zealand's has fallen below the OECD average in the most recent OECD Product Market Regulation Indicators survey.

- Most legislation introduced to the House must be accompanied by a **disclosure statement**, intended to promote good practices for the development of that legislation by requiring departments to set out relevant background material, outline the quality assurance processes undertaken by the department and note any significant or unusual provisions. Disclosure statements are currently only provided under administrative arrangements. Part 4 of the Legislation Act 2019 (which provides for new disclosure requirements) has not yet come into force.

All RISs and disclosure statements are published to allow for public scrutiny.

There are no specific requirements relating to the ongoing review and maintenance of legislation and the operation of regulatory systems, beyond a broad duty for Chief Executives in the Public Service Act 2020 in relation to proactively promoting stewardship of the department's legislation (see section 12(1)(e)(v) of the Public Service Act 2020).

Various guidance has been published to support these requirements, including the *Government Expectations for Good Regulatory Practice*[4] and *Starting out with regulatory stewardship*[5].

New Zealand is also party to several international agreements (including Free Trade Agreements) that contain expectations for good regulatory practice, including publishing descriptions of our good regulatory practice mechanisms and processes, public consultation on proposed regulatory measures, and impact assessments on regulatory proposals.

Regulatory oversight arrangements

Regulatory oversight arrangements help make sure that regulation is of good quality and Ministers and agencies are meeting relevant expectations – just as there are assurance and audit arrangements in place for departments' financial performance (for instance, the Treasury's scrutiny of new spending proposals).

> *Regulatory oversight*
>
> Regulatory oversight involves the establishment of mechanisms and institutions to oversee, support, and implement regulatory policy to promote better regulatory quality. It can include setting up dedicated structures (such as the Ministry for Regulation), or processes, guidance and requirements.

[4] This can currently be found on the Treasury's website

[5] This can currently be found on the Treasury's website

First and foremost, **Parliament** plays an important role with respect to oversight of regulatory quality. In addition to its broad role in holding the executive (including Minsters and agencies) to account, Parliamentary select committee processes ensure that proposed legislation is subject to appropriate Parliamentary and public scrutiny.

One select committee, the Regulations Review Committee, examines all secondary legislation and may also examine proposed secondary legislation-making powers in bills. The Committee considers whether the secondary legislation ought to be drawn to the special attention of the House on one or more grounds. The Regulations Review Committee also investigates complaints about the operation of secondary legislation and may report on the complaints to the House.

How Parliament holds the executive to account

New Zealand's constitutional framework is based on parliamentary sovereignty, which means Parliament is supreme over the other branches of government – the executive and the judiciary. Parliament's primary roles are to legislate and to maintain public trust in government by holding the executive to account. The executive sets the legislative priorities and supports the law-making process, but parliament is ultimately responsible for producing good quality laws through effective scrutiny.

Parliament holds the executive to account through a range of structures and procedures. These include scrutiny by members of Parliament during question time, select committee processes, the work of Officers of Parliament such as the Auditor General, Parliamentary agencies such as the Office of the Clerk, and the government's own accountability systems.

In addition, the Ministry for Regulation is responsible for some oversight and quality control arrangements to help ensure new regulatory proposals meet required standards:

- It administers the requirements for quality assurances of RISs, which must all be independently assessed against set quality assurance criteria. In most cases, this assessment is arranged by the responsible department – however, the Ministry for Regulation can decide to arrange quality assurance for particularly complex, significant proposals, or where there are concerns about the department's capacity to carry out robust quality assurance.
- It can audit the robustness of quality assurance processes put in place by agencies.
- It monitors compliance with Cabinet's impact analysis requirements.

- It has established a second opinion advice role, where it provides separate advice on the quality of regulatory proposals put forward by other agencies – in the same way that the Treasury scrutinises proposals with fiscal implications.

Others also play a role in helping ensure legislation introduced to the House is of a high quality, supporting the Attorney-General as senior law officer in carrying out their particular responsibility for maintaining the rule of law:

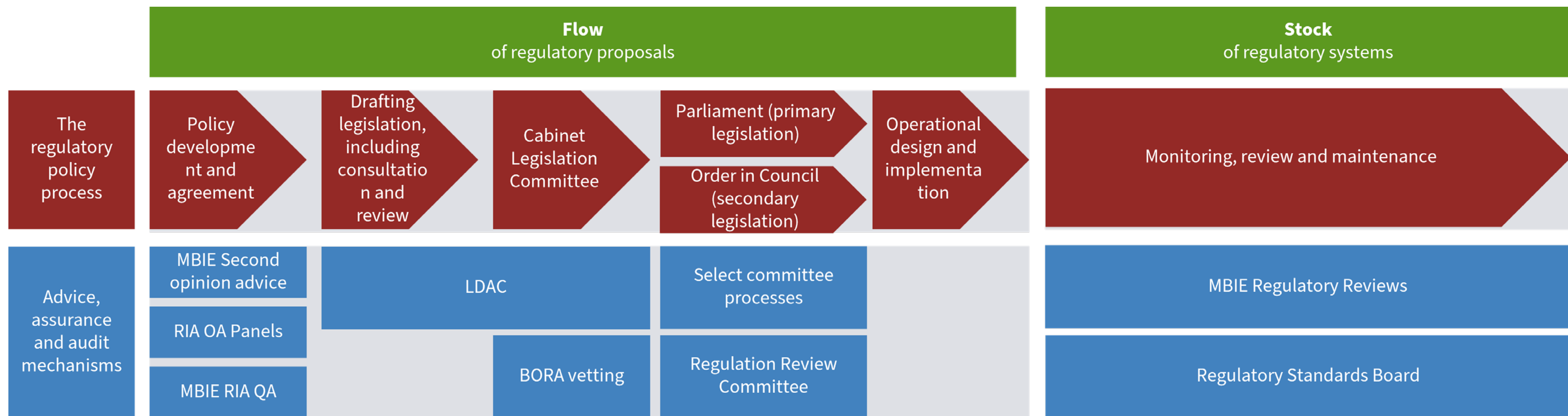
- The Parliamentary Counsel Office (PCO) is responsible for drafting Government bills and amendments to them, drafting much of New Zealand's secondary legislation, and publishing all introduced bills, Acts and the secondary legislation it drafts. PCO's objective is to promote high-quality legislation that is easy to find, use, and understand, and to exercise stewardship over New Zealand's legislation as a whole.
- The Legislation Design Advisory Committee (LDAC) promotes quality legislation by engaging with departments early in the development of policy and legislation to resolve problems in the design of legislation and to identify potential public and constitutional law issues. It also publishes and maintains the Legislation Guidelines[6], which are endorsed by Cabinet, and makes submissions to select committee where key legislative design issues arise.
- The Ministry of Justice is responsible for scrutinising proposed legislation to assess whether it is consistent with the New Zealand Bill of Rights Act 1990 (BORA). BORA protects and promotes human rights and fundamental freedoms in New Zealand.
- The Office for Māori Crown Relations – Te Arawhiti administers the Treaty provisions oversight group which is available to meet with agencies to support the development of legislative provisions.

There are fewer regulatory oversight arrangements within the Executive in relation to the performance of existing regulation. However, the Ministry for Regulation has responsibility for:

- improving the functioning of regulatory systems by undertaking regulatory reviews of specific regulatory systems or sectors
- raising the capability of regulators to design, operate and govern regulatory systems effectively.

The diagram below sets out how all these aspects of regulatory oversight fit together.

[6] These can be found on LDAC's website.



MBIE – Ministry of Business, Innovation and Employment

RIA – Regulatory Impact Assessment

OIA – Official Information Act

LDAC – The Legislation Design and Advisory Committee

BORA – Bill of Rights Act

Why a Regulatory Standards Bill?

New Zealand's current regulatory oversight arrangements as outlined in the previous section are under-developed compared with many other countries. In particular, New Zealand tends to rank low relative to other countries in relation to oversight and quality control of regulation.[7] Some issues with our current approach to regulatory oversight include that:

- departments' performance in relation to RIA requirements can be patchy, with many RISs not fully meeting requirements. In addition, there are increasing levels of non-compliance with RIA requirements, and the devolved nature of the quality assurance process can make it more difficult to test the robustness of assessments made by departments. The Ministry for Regulation is currently leading work to help address some of these issues
- there are few checks and balances in place in relation to the performance of existing regulation, or monitoring of department's **stewardship** of their regulatory systems
- while there are standards for regulation set out in a number of different places (e.g. the *Government Expectations for Good Regulatory Practice* and the Legislation Guidelines) there is no one, single place to find these standards
- aspects of our oversight arrangements, including the relatively informal nature of these arrangements along with limited accountability mechanisms, mean that we need to make some improvements to better comply with our international obligations in relation to good regulation.

Regulatory stewardship

Regulatory stewardship is the governance, monitoring and care of regulatory systems. It aims to ensure that all the different parts of a regulatory system work well together to achieve its goals, to keep the system fit for purpose over the long term and to deliver value for money for taxpayers.

[7] OECD (2021). *OECD Regulatory Policy Outlook*

The idea of a Regulatory Standards Bill – to strengthen regulatory oversight and improve the quality of regulation through legislative means – was first proposed in 2006, when the Regulatory Responsibility Bill was introduced as a private member's Bill, but did not progress past its first reading in Parliament.

In 2009, the Government established the Regulatory Responsibility Taskforce to consider what should be in a Regulatory Standards Bill.

In its report, the Taskforce expressed a view that:

> [t]he fundamental nature of the principles contained in the [Legislation] Guidelines, and patchy compliance by policy-makers with the guidelines and the regulatory impact analysis requirements, signals the need for a coherent, mandatory, regulatory quality regime. Analysis of the scale and scope of a problem, the various options for addressing it, whether legislation is required (and whether existing laws are sufficient) should be the first things examined by policymakers. Yet all too often they are the last. The Taskforce members are satisfied that the constitutional principles require additional and effective mechanisms to motivate early, and transparent, consideration of proposals against them. They should have legislative force.[8]

The Taskforce therefore proposed a draft Bill to set principles in legislation and require regulation to be assessed against these standards.

The Taskforce's Bill formed the basis of the Regulatory Standards Bill that was introduced as a private Member's Bill in 2021 (which similarly did not progress at the time).

While there are many similarities of the proposed Regulatory Standards Bill outlined in this discussion document with the Taskforce's draft Bill and the 2021 Regulatory Standards Bill, there are also some key differences, including that it proposes:

- amendments to some of the principles in the 2021 Bill to better align them with broadly accepted principles and practices
- establishment of a Regulatory Standards Board as an alternative to the courts in finding legislation inconsistent with the principles
- new powers and expectations to give effect to the Ministry for Regulation's regulatory oversight role.

This discussion document seeks feedback on each of these components of the proposed Bill.

Questions

[8] Regulatory Taskforce (2009). *Report of the Regulatory Responsibility Taskforce*, p. 16

6. What are your overall views on the quality of New Zealand’s regulation?
7. What are your overall views on the current arrangements in place to promote high quality regulation?
8. Do you ever use RISs to find out information about proposed government regulation? If so, how helpful do you find RISs in helping you make an assessment about the quality of the proposed regulation?
9. Do you ever use disclosure statements to find out information about a Bill? If so, how helpful do you find disclosure statements in helping you make an assessment about the quality of the Bill?
10. What are your views about the effectiveness of the regulatory oversight arrangements currently in place?
11. What are your views on setting out requirements for regulatory quality in legislation? Are there any alternatives that you think should be considered?

Discussion area one: Setting standards for good regulation

How would standards for good regulation be set?

It is proposed that the Bill would set out a set of principles that the Government would consider when developing legislative proposals or exercising stewardship over regulatory systems. The principles would be in primary legislation, consistent with the Taskforce's view that this was necessary to give the principles sufficient weight.

These **principles of responsible regulation** would act as a set of criteria against which new regulatory proposals or existing regulation could be assessed.

The principles would be broad and expressed at a high level. The Bill would require the Minister for Regulation to release non-statutory guidelines that would set out in more detail how the principles should be interpreted and applied.

What would the principles cover?

It is proposed that the Bill include principles based on the Taskforce's recommended principles, as set out in the 2021 Bill.

These principles are selective rather than comprehensive – for instance, they do not cover all the principles set out in the *Legislation Guidelines*. Instead, as the Taskforce noted, they "focus primarily on the effect of legislation on existing interests and liberties and good law-making process."[9]

In some cases, the wording of the principles differs slightly from the ones in the 2021 Bill – these reflect changes made to better align some of the principles with how they are currently formulated in the Legislation Guidelines or elsewhere in legislation. However, other principles reflect new formulations of legal principles.

It is also proposed that the Bill include some new principles focused on the review and maintenance of existing regulation, given that many issues arise when legislation is poorly implemented, or is no longer fit for purpose.

The proposed principles fall into three broad categories:

- principles relating to the design and content of legislation
- principles relating to good law-making
- principles relating to regulatory stewardship.

[9] Regulatory Taskforce (2009), p. 38

What would the principles not cover?

Because the principles focus solely on the effect of legislation on existing interests and liberties and good law-making process, there are some principles in the Legislation Guidelines that are not proposed to be covered in the Bill.

For instance, even though there is some overlap with rights set out in the BORA, the proposed Bill would not cover all of these rights.

In addition, it is not proposed that the Bill would include a principle relating to the Treaty of Waitangi/Te Tiriti o Waitangi when developing legislation.

What would the specific principles be?

The proposed principles are set out below.

Legislative design principles

Rule of law

- The importance of maintaining consistency with the following aspects of the rule of law:
    - the law should be clear and accessible
    - the law should not adversely affect rights and liberties, or impose obligations, retrospectively
    - every person is equal before the law
    - there should be an independent, impartial judiciary
    - issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion.

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.

Taking of property

- Legislation should not take or impair, or authorise the taking or impairing of, property without the consent of the owner unless:
    - there is good justification for the taking or impairment
    - fair compensation for the taking or impairment is provided to the owner

    - compensation is provided to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment.

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 costs of efficiently 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:
    - 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
    - the costs of efficiently achieving the objective or providing the function

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

Good law-making

- The importance of consulting, to the extent practicable, the persons or representatives of the persons that the Government considers will be substantially affected by the legislation.
- The importance of carefully evaluating:
    - the issue concerned
    - the effectiveness of any relevant existing legislation and common law
    - whether the public interest requires that the issue be addressed
    - any options (including non-legislative options) that are reasonably available for addressing the issue
    - 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.

Regulatory stewardship

- Legislation should continue to be the most effective, efficient, and proportionate response to the issue concerned that is available.
- The system should continue to be fit for purpose for the people, area, market, or other thing that is regulated
- Unnecessary regulatory burdens and undue compliance costs should be eliminated or minimised
- Any regulator should have the capacity and the capability to perform its functions effectively
- Any conflicts or adverse interactions with other regulatory systems should be eliminated or minimised
- The importance of monitoring, reviewing, and reporting on the performance of the system

Questions

12. What are your views on setting principles out in primary legislation?
13. Do you have any views on how the principles relate to existing legal principles and concepts?
14. Do you agree with the focus of the principles on:
    - rights and liberties?
    - good law-making processes?
    - good regulatory stewardship?
15. Do you have any comments on the proposed principles themselves?
16. In your view, are there additional principles that should be included?

Discussion area two: Showing whether regulation meets standards

A key part of the 2021 Regulatory Standards Bill was a requirement for Ministers and agencies to certify new and existing legislation against the principles.

Similarly, it is proposed that the Bill provides for both new legislation and existing regulation to be assessed against the principles of responsible regulation.

This approach aims to create a strong incentive for departments and Ministers to ensure that regulation for which they are responsible is consistent with the principles, or that any departure is justified. It also aims to ensure that there is full transparency and accountability where a Responsible Minister chooses:

- to proceed with legislation despite it being inconsistent with the principles (without justification)
- to not address unjustified inconsistencies identified in existing regulation.

By applying the same scrutiny to both new regulatory proposals and existing regulation, the aim is to significantly improve the quality of New Zealand's existing stock of regulation over time.

How would new regulatory proposals be assessed?

The proposed approach would set requirements for agencies to ensure that new regulatory proposals are assessed for consistency with relevant principles, and any inconsistencies identified.

These requirements would apply prior to:

- a proposal coming to Cabinet
- primary legislation being introduced into the House, or secondary legislation being made and published (noting that not all secondary legislation would be covered by this requirement)

At either stage, a regulatory policy proposal or draft legislation could be assessed as inconsistent with any of the principles. There would then be two options for the responsible department and Minister:

- the regulatory policy proposal or the draft legislation could be amended to ensure consistency with the principles (or withdrawn entirely)
- the responsible Minister would be required to make a statement justifying why they are proceeding with the proposal despite these inconsistencies.

To provide transparency, any Ministerial statements, along with the relevant key supporting information generated through the assessment process could be published

after a Bill has been introduced, or secondary legislation made (subject to equivalent provisions of the Official Information and Privacy Acts).

How would existing regulation be assessed?

The proposed approach would set new requirements for both Ministers and departments in relation to the review of regulation for which they are responsible.

These requirements include a duty for Ministers and departments to maintain, review and update the regulatory systems for which they are responsible. This duty is discussed further in **Discussion Area Four**.

Under this duty, departments would be responsible for regularly reviewing their regulation for consistency with the regulatory stewardship principles.

Where a responsible department identifies any inconsistency with those principles, there would be two options for the department and the responsible Minister:

- an agency could commit to amendment of the regulation within a specified time (for instance, by adding it to a forward plan for regulatory amendments)
- the responsible Minister would be required to make a statement justifying why they are choosing not to remedy these inconsistencies.

Again, to help ensure full transparency, the Bill would require the publication of any Ministerial statements, along with the relevant key supporting information generated through the assessment process (subject to equivalent provisions of the Official Information and Privacy Acts).

How would processes for assessing consistency be set?

Under the proposed approach, the Bill would only set out the high-level expectations of departments and Ministers above. It would not set out detailed processes.

Instead, under the proposed approach, the Minister for Regulation would be required to issue guidelines in relation to the assessment of consistency of proposed and existing regulation. These guidelines would set out:

- further information on how the principles should be interpreted and applied
- what steps agencies and Ministers should take to ensure that they consider the principles when developing new proposals or reviewing their regulation, and any processes they will follow
- the information that should be provided when assessing the consistency of regulation or justifying any inconsistency

- requirements for publication of any information generated through these processes.

What would be exempt from consistency requirements?

There will be situations where it may not be possible or desirable for new or existing regulation to be assessed for consistency with the principles, for instance in emergency situations, or in relation to proposed or existing regulation that has only minor or technical impacts or significance (e.g. much secondary legislation).

The proposed approach would therefore enable the Minister for Regulation to determine which class of regulation is required to comply with consistency requirements. Other regulation not covered by the direction would be exempt.

This would aim to provide some flexibility to recognise specific circumstances, or to ensure departments and Ministers are focusing on regulation that has the most potential or actual impact on New Zealanders.

The ability to exclude the application of mechanisms to certain proposals will also be important to ensure new arrangements align with **RIS exemptions** where appropriate.

> *RIS exemptions*
>
> Cabinet Office Circular CO (20) 2 sets out where a RIS is not required for certain types of government regulatory proposals. These exemptions include where a proposal is minor or technical in nature, in emergency situations, or where the analysis that would be set out in a RIS has been done elsewhere (e.g. where a business case has been produced).

The Crown's commitments under Treaty settlements are reflected in deeds of settlement, which are given effect through legislation. The proposed approach would therefore exclude legislation that gives effect to, or is otherwise related to, full and final Treaty settlements.

How would these arrangements fit with existing processes?

There would be a degree of overlap between the proposed new arrangements for assessing consistency, and some of the existing arrangements for promoting the quality of regulation discussed in the **Background** section above, in particular the requirements relating to RISs and disclosure statements. It will be important that these are aligned and streamlined, to minimise costs and complexity.

Given that RIS requirements and other guidance (such as the Legislation Guidelines) are administrative rather than statutory (i.e. they are not required by legislation) new arrangements to align and streamline the new proposal and current RIS requirements can be designed once a Bill has been drafted.

However, requirements for disclosure statements are set out in **Part 4 of the Legislation Act 2019**. While these requirements have not yet been brought into force, they include provisions for the Government to issue standards that would operate in a similar way to the proposed principles – however they would be set out in secondary legislation and affirmed by the House.

Part 4 of the Legislation Act 2019

Part 4 of the Legislation Act requires notices to be issued by the Attorney-General and the Responsible Minister (which we anticipate would become the Minister for Regulation) and agreed by Parliament, that set out what disclosure statements must contain. The notices would specify what information disclosure statements must contain about departures from legislative guidelines and standards, and identify legislative guidelines or standards for this purpose.

Similarly to the proposed Bill, this would effectively set quality benchmarks for all legislative proposals, but it would do this in secondary rather than primary legislation. However, Part 4 has not yet been brought into force, and no notices have therefore yet been issued. In the meantime, departments are still required to prepare disclosure statements, but the requirement is administrative (i.e. a Cabinet requirement) rather than a statutory requirement.

Any changes to the disclosure regime would therefore require amendment or repeal of Part 4. This would be worked through in more detail during the drafting of a Bill.

Questions

17. Do you agree that there are insufficient processes in place to assess the quality of new and existing regulation in New Zealand? If so, which parts of the process do you think need to be improved?
18. Do you think that the new consistency checks proposed by the Regulatory Standards Bill will improve the quality of regulation? Why or why not?
19. Do you have any suggested changes to the consistency mechanisms proposed in this discussion document?

20. Which types of regulation (if any) do you think should be exempt from the consistency requirements proposed by the Regulatory Standards Bill, (for example, regulation that only has minor impacts on businesses, individuals, and not for-profit entities, regulation that corrects previous drafting errors, or regulations made under a declared state of emergency)?

Discussion area three: Enabling people to seek independent assessment of whether regulation meets standards

The 2021 Bill created a specific role for the courts in applying the principles. This role included:

- preferring interpretations of legislation that were consistent with the principles
- being able to declare legislation inconsistent with the principles in response to applications to the court.

The Taskforce saw these roles as strengthening the application of the principles and providing strong incentives for responsible Ministers and departments to ensure good quality regulation – to avoid the courts publicly declaring regulation inconsistent with the principles. It also provided a way for individuals or businesses to complain about poor quality regulation.

Current mechanisms for considering complaints about regulation

There are already a range of ways that members of the public can raise complaints about the quality of regulation in New Zealand, or the way that regulation has been applied or enforced. These include:

- the Regulations Review Committee, which focuses on secondary legislation (described earlier in this discussion document)
- the Office of the Ombudsman
- independent Commissions within Government (e.g. the Human Rights Commission, the Health and Disability Commissioner)
- bringing a judicial review case to the courts
- bringing a legal case to a tribunal (e.g. the Employment Relations Authority)
- raising the issue with a Minister or Government agency directly (or with local government and non-government administering agencies)
- creating a petition on the New Zealand Parliament website regarding the regulation.

Proposed approach

The proposed approach would aim to complement current mechanisms for hearing complaints about regulation.

It differs from the 2021 Bill in that it no longer provides a role for the courts. Instead, it proposes that a Regulatory Standards Board be established to consider the consistency of regulation with the principles in response to complaints.

The proposed Board would aim to offer a relatively low-cost, agile way to consider and respond to complaints quickly. It would focus on the consistency of existing regulation with the principles.

What form would the Board take?

The proposed Board would be established as a statutory board that would make non-binding recommendations independent of Ministers and departments.

It would be made up of members appointed by the Minister for Regulation, and would be supported by a secretariat from the Ministry for Regulation.

The Bill would require members to have a range of skills, including legal and economic expertise.

What would the Board do?

The Board would be able to consider complaints about inconsistency of existing regulation with one or more of the principles, and would deliver non-binding, recommendatory findings.

The Board would consider the operation of regulatory systems (e.g. how well regulation is being implemented) as well as the content and design of legislation.

The Board would also be able to undertake reviews at its own behest, or at the direction of the Minister for Regulation.

After considering an issue, the Board would provide a short report setting out any view it has come to on the consistency of regulation with the relevant principle(s), along with any recommendations for addressing this inconsistency.

If there was insufficient information for the Board to come to any conclusion on the consistency of regulation, and the Board thought further investigation was worthwhile, the Board could also recommend that the responsible agency should undertake a review of the whole or particular parts of that regulatory system to assess it for consistency.

If the Board found any inconsistency with the principles, the responsible Minister would be required to respond to that finding, including justifying any decision not to address identified inconsistencies.

All Board findings would be published (subject to equivalent provisions of the Official Information and Privacy Acts) to ensure transparency.

The Board's report could also be presented to the House to help strengthen Parliamentary scrutiny.

What would the Board not do?

The aim is that the Board would not:

- cut across any existing complaint mechanisms
- consider decisions made by Ministers or agencies in relation to individual cases.

The Board would not initially have a role in assessing new regulatory proposals – but this could be reviewed over time.

How would the Board operate?

In order to manage the costs of the Board and the costs to agencies in responding to any complaints, the Board would:

- have some discretion in relation to whether to consider complaints, and what principles to consider in response to any complaints.
- operate 'on the papers' (i.e. it would not hold hearings) and on the basis of reasonably available information.

Questions

21. Have you used any of the existing mechanisms described above to raise issues or bring complaints about the quality of regulation to the Government? If so, did you find them effective?
22. Do you think that New Zealand needs a new structure or organisation to consider complaints about the quality of regulation? Why or why not?
23. If a new structure is created specifically to consider complaints about regulation:
    a. do you think a Regulatory Standards Board would be the best mechanism to do this?
    b. are there any alternatives that you think would be preferable to the proposed Board for investigating complaints about regulation?
24. Do you have any views on the detailed design of the proposed Board, including how it would operate and the proposed number of members?
25. In your view, what individual skills or experience should Board members have?

Discussion area four: Supporting the Ministry for Regulation to have oversight of regulatory performance

The proposal includes setting some new expectations for Ministers and agencies in the Bill to help improve the quality of regulation by:

- supporting the measures discussed earlier in this discussion document
- helping the Ministry for Regulation to take on a strong regulatory oversight role.

Setting strengthened regulatory stewardship expectations

Under the proposed approach, the Bill would:

- set a broad requirement for agencies in relation to regular review, maintenance and improvement of the legislation they administer. This would clarify and strengthen the legislative stewardship requirements that are already set out in s 12 of the Public Service Act 2020.
- require responsible agencies to develop and publicly report against plans to review their stock of legislation.

The proposed Bill could allow the Minister for Regulation to set further, more detailed requirements on how this should be done - e.g. in relation to the timing of plans and reports and what they must contain.

Given known issues with New Zealand's stock of legislation, encouraging agencies to more actively steward their regulatory systems will be critical to improving the quality of regulation over time.

This approach aims to place clearer and more specific requirements on agencies in relation to regulatory stewardship, and make this activity more transparent. However, it also aims to give agencies significant flexibility to plan and undertake reviews, as it does not mandate a certain number of reviews, or require regulatory systems to be reviewed within a specified time. Despite this, as a result of this proposal, agencies may need to dedicate greater resource to monitoring, evaluating, and reviewing their stock of legislation, which is likely to create costs for agencies.

Supporting the Ministry's regulatory oversight role

The Ministry for Regulation is responsible for conducting regulatory reviews that aim to assess whether regulatory systems are achieving their objectives and are not imposing unnecessary compliance costs, or unnecessarily inhibit investment, competition and innovation.

Under the proposed approach, the Bill would give the Minister and Ministry for Regulation some powers to help carry out these reviews, with the aim of ensuring that these reviews can be carried out as efficiently and effectively as possible.

In particular, the Ministry will need to obtain information from entities that exercise regulatory functions – both to help decide whether a regulatory review is warranted, and to inform regulatory reviews. While most information would likely be requested and shared co-operatively, there may be some situations, where a statutory power to obtain information may be required. However, any such powers would not override prohibitions or restrictions on the sharing of information already set down in legislation. Entities required to comply with requests for information as part of regulatory reviews are likely to incur costs, which will range depending on the size and complexity of the information request and the entity's existing capacity and capability to comply with the request.

The proposed approach would also aim to increase the impact of reviews by enabling Parliament to consider review reports and to hold the Government to account for its response to the review.

More specifically, under the proposed approach, a Bill would support the Ministry's role in carrying out regulatory reviews by:

- providing for the Minister for Regulation to initiate regulatory reviews and set terms of reference for reviews
- providing information-gathering powers to enable the Chief Executive of the Ministry for Regulation to require information to be provided on request, to support the effective and efficient conduct of reviews, 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 entity that makes or administers 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
    - any entity contracted by the government to support the delivery of a regulatory function, also known as third-party service providers
- setting a requirement for the review report to be presented to the House together with the Government's response.

Other proposed provisions to support the Ministry for Regulation's oversight of the quality of regulation include:

- a requirement for the Ministry for Regulation to produce a regular report to the Minister for Regulation to present to Parliament assessing the overall performance of the Regulatory Management System, including a broad assessment of consistency of regulation against the principles
- a power for the Ministry for Regulation to require provision of information from agencies to support this regular report.

Such provisions would have the benefit of strengthening accountability and transparency throughout the system, and giving the Ministry for Regulation a solid statutory basis to carry out its central agency role.

Questions

26. Do you support the proposals in this section for strengthened regulatory stewardship expectations on agencies to be set out in a Bill?
27. Do you agree that there may be some situations where a power for the Chief Executive of the Ministry for Regulation to obtain information will be required to help decide whether a regulatory review is warranted and to inform regulatory reviews?
28. Do you agree that the proposed information gathering powers are justified for the purpose of informing regulatory reviews? Do you think the powers should apply to all the types of entities listed above, or only some?
29. Do you think the information gathering powers are broad enough to enable the Ministry for Regulation to undertake regulatory reviews effectively and efficiently?
30. Do you think any safeguards or procedures should be applied to limit how the information gathering powers are used by the Ministry for Regulation? What safeguards do you think should be put in place?
31. Do you support the proposals in this section in relation to the Ministry for Regulation's broad oversight role?
32. Are there any other measures you think a Bill should contain to support the quality of regulation?

Any other comments?

The Ministry would welcome any further comments you may have on the proposed Regulatory Standards Bill, including in relation to the following:

- Do you think the overall proposal will be effective in raising the quality of regulation in New Zealand?
- Do you think there are other provisions that should be included in the Bill. If so, what would they be?
- Would you prefer any alternative options to the Bill, including non-legislative options?

What’s next?

Your feedback on the proposal contained in this document will help inform further policy development and contribute to drafting a Regulatory Standards Bill.

There will be a further opportunity for you to provide feedback on a Bill if it progresses to select committee.

The proposed timeline for introduction of a Bill is in the first half of 2025.

Questions glossary

Questions **Page 8-9**

1. What is your name?
2. Are you submitting in a personal capacity, or on behalf of an organisation, iwi, hapū?
3. If you are submitting on behalf of an organisation, iwi, hapū what is the name of that organisation, iwi or hapū?
4. Where in New Zealand are you primarily based?
5. Please provide us with at least one method of contacting you, in case the Ministry needs to discuss your submission further.

Questions **Page 18**

6. What are your overall views on the quality of New Zealand's regulation?
7. What are your overall views on the current arrangements in place to promote high quality regulation?
8. Do you ever use RISs to find out information about proposed government regulation? If so, how helpful do you find RISs in helping you make an assessment about the quality of the proposed regulation?
9. Do you ever use disclosure statements to find out information about a Bill? If so, how helpful do you find disclosure statements in helping you make an assessment about the quality of the Bill?
10. What are your views about the effectiveness of the regulatory oversight arrangements currently in place?
11. What are your views on setting out requirements for regulatory quality in legislation? Are there any alternatives that you think should be considered?

Questions **Page 23 -24**

12. What are your views on setting principles out in primary legislation?
13. Do you have any views on how the principles relate to existing legal principles and concepts?
14. Do you agree with the focus of the principles on:
    a. rights and liberties?
    b. good law-making processes?
    c. good regulatory stewardship?
15. Do you have any comments on the proposed principles themselves?
16. In your view, are there additional principles that should be included?

Questions **Page 29**

17. Do you agree that there are insufficient processes in place to assess the quality of new and existing regulation in New Zealand? If so, which parts of the process do you think need to be improved?
18. Do you think that the new consistency checks proposed by the Regulatory Standards Bill will improve the quality of regulation? Why or why not?
19. Do you have any suggested changes to the consistency mechanisms proposed in this discussion document?
20. Which types of regulation (if any) do you think should be exempt from the consistency requirements proposed by the Regulatory Standards Bill, (for example, regulation that only has minor impacts on businesses, individuals, and not for-profit entities, regulation that corrects previous drafting errors, or regulations made under a declared state of emergency)?

Questions **Page 32 - 33**

21. Have you used any of the existing mechanisms described above to raise issues or bring complaints about the quality of regulation to the Government? If so, did you find them effective?
22. Do you think that New Zealand needs a new structure or organisation to consider complaints about the quality of regulation? Why or why not?
23. If a new structure is created specifically to consider complaints about regulation:
    a. do you think a Regulatory Standards Board would be the best mechanism to do this?
    b. are there any alternatives that you think would be preferable to the proposed Board for investigating complaints about regulation?
24. Do you have any views on the detailed design of the proposed Board, including how it would operate and the proposed number of members?
25. In your view, what individual skills or experience should Board members have?

Questions **Page 36 - 37**

26. Do you support the proposals in this section for strengthened regulatory stewardship expectations on agencies to be set out in a Bill?
27. Do you agree that there may be some situations where a power for the Chief Executive of the Ministry for Regulation to obtain information will be required to help decide whether a regulatory review is warranted and to inform regulatory reviews?
28. Do you agree that the proposed information gathering powers are justified for the purpose of informing regulatory reviews? Do you think the powers should apply to all the types of entities listed above, or only some?
29. Do you think the information gathering powers are broad enough to enable the Ministry for Regulation to undertake regulatory reviews effectively and efficiently?

30. Do you think any safeguards or procedures should be applied to limit how the information gathering powers are used by the Ministry for Regulation? What safeguards do you think should be put in place?
31. Do you support the proposals in this section in relation to the Ministry for Regulation's broad oversight role?
32. Are there any other measures you think a Bill should contain to support the quality of regulation?

Te Kāwanatanga o Aotearoa
New Zealand Government

Interim Regulatory Impact Statement: Legislating to improve transparency of the quality of regulation

Coversheet

Purpose of Document	
Decision sought:	This interim Regulatory Impact Statement (RIS) has been produced to support Cabinet's decision to publicly consult on a proposed Regulatory Standards Bill via the accompanying discussion document *Have your say on a proposed Regulatory Standards Bill.*
Advising agencies:	Ministry for Regulation
Proposing Ministers:	Minister for Regulation
Date finalised:	30 October 2024

Problem Definition

The quality of regulation is important for New Zealand's long-term productivity, growth, living standards, and in supporting New Zealanders' wellbeing, but there are challenges in designing and implementing good quality regulation. The Regulatory Management System (RMS) does not currently support a high level of transparency to enable a broad range of stakeholders to easily identify whether new and existing regulation meets standards of good regulatory quality. Such transparency is an important component of an effective RMS because it helps strengthen incentives for responsible Ministers and agencies to work throughout the regulatory policy cycle to ensure new and existing regulation meets quality standards. This weakness in the RMS could be remedied to some degree through the introduction of clear, authoritative standards for good quality regulation, and mechanisms that require transparent and accessible assessment of regulation against these standards.

Executive Summary

The quality of regulation is crucial to improving New Zealand's long-term productivity, growth, living standards, and supporting New Zealanders' wellbeing. Well-designed and implemented regulation can help governments to achieve their desired economic, environmental and social outcomes, support the effective operation of markets, and protect communities from harm. On the other hand, poor regulation can impose costs, limit freedoms, stifle innovation, and give rise to other unintended consequences – or it can simply fail to achieve its intended objectives.

There are multiple challenges in ensuring that new regulation is designed and implemented well, and that existing regulation is reviewed and maintained to ensure it is still necessary and fit for purpose. A number of features and common practices relating to the design, implementation and ongoing stewardship of regulation can negatively impact on the overall quality of New Zealand's regulation. Examples include: the tendency to

overuse legislation as a lever, patchy agency performance in relation to regulatory impact analysis requirements, a large amount of outdated or no longer fit for purpose legislation and a general lack of focus on monitoring and review of the performance of regulatory systems.

The factors underlying these features and practices are complex and often involve competing incentives and pressures on responsible Ministers and agencies. These factors include: the fact that reforms are often undertaken at high speed, a perception of regulation as a relatively cheap intervention compared to other levers, capacity and capability constraints within agencies, the complexities involved in assessing and quantifying the full benefits, costs and impacts of regulation, and a lack of clear transparency about the quality of new regulatory proposals or existing regulation.

An effective Regulatory Management System (RMS) can help address some – but not all – of these issues, by articulating standards, setting expectations and processes, creating incentives and consequences, building capability, and supporting transparency.

In this context, it is difficult to assess the overall quality of New Zealand's regulation and how effectively the RMS is performing in supporting that. International indicators likely provide the most helpful assessment. These show that, while New Zealand's regulation and aspects of the RMS perform relatively well, there is likely to be significant room for improvement in the quality of New Zealand's regulation, and the RMS could play a central role in achieving that.

One particular weakness of the current RMS is that it does not support a high level of transparency in relation to whether new and existing regulation clearly meets standards of good regulatory quality. Such transparency is an important component of an effective RMS because it helps strengthen incentives for responsible Ministers and agencies to work throughout the regulatory policy cycle to ensure new and existing regulation meets quality standards. While Regulatory Impact Statements (RISs) and disclosure statements are currently the main mechanisms aimed at providing such transparency, their ability to do this is limited, particularly relating to the ability of a broad range of stakeholders, including the general public, to be able to use them to access and understand key information about regulatory quality.

The current proposal for the Regulatory Standards Bill (the Bill), as detailed in the accompanying discussion document, aims to improve transparency in relation to whether regulation does/does not meet standards by providing:

- a benchmark for good regulation through a set of principles of responsible regulation that all regulation should comply with
- mechanisms to transparently assess the consistency of new legislative proposals and existing regulation with the principles
- a mechanism for independent consideration of the consistency of existing regulation, primarily in response to stakeholder concerns.

The current proposal was developed to fulfil the Coalition Government's commitment to legislate to improve the quality of regulation by "ensuring that regulatory decisions are based on principles of good law-making and economic efficiency". While the approach being consulted on is still largely based on the previous Bill drafted by the 2009 Regulatory Responsibility Taskforce, some key changes include:

- amending some principles in the 2021 Bill to better align them with broadly accepted principles and practices

- the addition of principles for regulatory stewardship building on the obligation for Government agencies in section 12(e) of the Public Service Act 2020
- removal of the new interpretive role of the courts originally set out in clause 10 of the 2021 Bill
- substitution of a Regulatory Standards Board in place of the courts in relation to a recourse mechanism for legislation inconsistent with the principles
- addition of new powers and expectations to help support the Ministry for Regulation's regulatory oversight role.

This document provides interim analysis on two sets of options relating to the principles and associated mechanisms (Section 2A), and the recourse mechanisms (Section 2B). The Ministry for Regulation's analysis is as follows.

Regulatory responsibility principles and accompanying consistency mechanisms

The Ministry for Regulation's preferred approach is to build on the disclosure statement regime (through Part 4 of the Legislation Act 2019 coming into force) and create new legislative provisions to support regulatory stewardship, and the review and reporting roles of the Ministry.

The Ministry supports the overall objectives that the Bill seeks to achieve and notes there are merits to the proposal in the discussion document.

However, the Ministry considers that an enhanced disclosure statement regime with enhanced obligations, will achieve many of the same benefits (e.g. increasing regulatory quality, ensuring greater accountability and transparency, and more robust arrangements for the stewardship of regulatory systems) 9(2)(h) [redacted] The Ministry also considers this option would impose fewer compliance costs on government agencies.

Recourse mechanism

The Ministry for Regulation's preferred approach (subject to further work on detailed design and feedback from public consultation), if any additional recourse mechanism is preferred, is a mechanism situated in either the Parliamentary or Executive branches of Government. The Ministry notes that a Parliamentary mechanism may align more closely with the stated objectives based on preliminary analysis, however some Parliamentary mechanisms (e.g. where amendments to Standing Orders are required) may be more appropriately determined by Parliament itself.

The Ministry considers that this approach better aligns with New Zealand's existing legal and constitutional settings.

Feedback provided through the public consultation process, and further analysis on the detailed design of recourse mechanisms, will inform its preferred option in the final RIS produced to accompany Cabinet's final policy decisions.

Limitations and Constraints on Analysis

Scope constraints

This interim RIS has been produced in accordance with the Coalition Agreement's commitment to legislate to improve the quality of regulation. The Minister for Regulation has further directed that the starting point in the development of a Regulatory Standards

Bill should be based on a previous Member's Bill under the same name, which was introduced to the House in 2021 but did not proceed past First Reading. The options analysed in this interim RIS have been constrained by these directions (e.g. through a focus on legislative rather than non-legislative options).

Other limitations on analysis

The options set out in this interim RIS focus on addressing the transparency of the quality of regulation in New Zealand generally, rather than in relation to a specific piece of legislation or regulatory system. The options are also based on introducing a series of requirements and processes to better incentivise Ministers and agencies developing new regulatory proposals or stewarding regulatory systems. These requirements would be introduced within the context of strong, competing, and likely ongoing incentives (e.g. pressures to quickly progress regulatory proposals) and agency capacity constraints.

These characteristics place significant challenges when assessing the relative benefits of options, for instance:

- It is difficult to estimate likely levels of government compliance with the principles over time, compared to what would have happened under the expected dynamic status quo, noting that there is no mechanism being proposed that would prevent legislation being passed (or regulation continuing in place) that is inconsistent with the principles.
- Even if there are high levels of compliance with the principles, the benefits would depend on how the principles are applied and interpreted, which is likely to vary considerably across the principles (assessment of benefits also depends on views on the merits of the principles themselves, which will also vary).
- The extent to which the Bill improves regulatory quality in specific regulatory systems depends on the existing regulatory and operational settings within that system – assessment of benefits (and costs) across systems is therefore likely to be highly variable.
- Any benefits from the options (e.g. from improved regulatory quality) are generally intangible, less able to be monetised, and often only able to be realised in the long-term (e.g. it may take years for outdated legislation to be reviewed and modernised).

The costs associated with implementing the Bill are relatively more immediate, tangible and quantifiable (although they largely depend on choices, such as the scope of the requirements).

However, there are significant limitations to assessing costs more broadly, including:

- the difficulty of assessing the opportunity costs and where they fall – for instance 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.
- 9(2)(h)

This interim RIS identifies other work undertaken by the Ministry for Regulation towards improving regulatory quality more generally, including non-legislative measures. Given the strong linkages between the Regulatory Standards Bill and the other suite of measures towards improving the quality of regulation (e.g. regulatory reviews, guidance issued to

support capability building and operation of regulatory systems), there are limits around the ability to, and utility of, extrapolating the impacts of the Bill alone towards improving regulatory quality relative to the suite of other measures.

Responsible Manager(s)

9(2)(a)

Pip van der Scheer

Manager, Regulatory Management System

Ministry for Regulation

Quality Assurance

Reviewing Agency:	Joint quality assurance panel with members from the Ministry for Regulation, Ministry of Justice, Ministry for Business, Innovation and Employment and the Treasury.
Panel Assessment & 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 interim Regulatory Impact Statement (RIS): Legislating to improve transparency of the quality of regulation, produced by the Ministry for Regulation, dated 22 October 2024. The panel considers that it "partially meets" the Quality Assurance criteria. The panel has assessed the RIS on the basis that it is an interim RIS. The panel has not been asked to assess the extent to which the discussion document would support development of the final RIS. The interim RIS clearly acknowledges that the scope of the options has been limited by the Coalition agreement and Ministerial direction in particular "through a focus on legislative rather than non-legislative options." The panel's view is that the interim RIS does not provide sufficient analysis of the behavioural incentives and adequacy of current arrangements to make the case that the extent of legislative changes proposed (indicated in the RIS as being the discussion document proposal) are necessary to have an impact on lifting the quality of regulation. The Ministry for Regulation has expressed a preference in the interim RIS for an alternative option building on the existing Disclosure Statement regime (through Part 4 of the Legislation Act 2019 coming into force), new legislative provisions to support regulatory stewardship and the Ministry's review and reporting roles. The Ministry considers this could encourage transparency, thereby lifting performance across the regulatory system. The gaps in the interim RIS may be able to be addressed following the consultation process.

Glossary of terms

The table below provides definitions of terms used in this interim Regulatory Impact Statement (interim RIS).

Term	Definition
Legislation	Legislation means the whole or a part of an Act or any secondary legislation (Legislation Act 2019, s 5).
Legislation Act 2019, Part 4	Part 4 of the Legislation Act 2019 sets out disclosure requirements for Government-initiated legislation. The purpose of the Part is to better inform Parliamentary and public scrutiny of Government-initiated legislation, and promote good administrative practices for the development of such legislation (Legislation Act 2019, s 101).
Regulation	The Ministry for Regulation takes a broad view of regulation to encompass any government intervention that is intended to order or influence people's behaviour, or how they interact with each other, including by directing the use and exchange of private property, resources or capital to pursue a desired policy objective.
Regulatory impact analysis (RIA)	The RIA regime is a set of requirements for impact analysis which apply to all Government regulatory proposals, governed by Cabinet Circular (20)2. The RIA system is administered by the Ministry for Regulation as part of its function to lift the quality of new regulatory proposals and advice.
Regulatory Management System (RMS)	The RMS is a set of policies, institutions, tools, and processes employed by central government to help it develop, deliver, and maintain high-quality regulation that provides value for money, and does not impose unnecessary costs.
Regulatory stewardship	Regulatory stewardship is the governance, monitoring, and care of regulatory systems. It aims to ensure that all the different parts of a regulatory system work together to achieve its goals, to keep the system fit for purpose over the long term, and to deliver value for money to taxpayers. Under the Public Service Act 2020, all government agency Chief Executives have stewardship responsibilities for legislation administered by their agencies, supplemented by Cabinet-mandated expectations that require agencies to properly govern, monitor, and care for their regulatory systems.
Regulatory systems	Regulatory systems consist of formal and informal rules, norms, and sanctions, given effect through the actions and practices or designated actors that work together to shape people's behaviour or interactions in pursuit of a broad goal or outcome.

Section 1: Diagnosing the policy problem

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

Regulation is an emerging focus amongst Government priorities

1. The 54th New Zealand Government has identified regulation as an important driver of productivity and economic growth. The Coalition Agreement between the New Zealand National Party and ACT New Zealand sets out several initiatives which relate to improving the quality of regulation, including the establishment of a new Ministerial portfolio for Regulation, creating a new government agency that would assess the quality of new and existing legislation and regulation, and enacting a Regulatory Standards Act to improve the quality of regulation by "ensuring that regulatory decisions are based on principles of good law-making and economic efficiency".

History of the Regulatory Standards Bill

2. Various forms of a Regulatory Standards Bill have been introduced to the House on three previous occasions – in 2006 as the Regulatory Responsibility Bill (the 2006 Bill), in 2011 as the Regulatory Standards Bill (the 2011 Bill) on the recommendation of the Regulatory Responsibility Taskforce (established in 2009), and in 2021 as a private Member's Bill (the 2021 Bill).

3. Public consultation on a Regulatory Standards Bill was also carried out over several different occasions:
   - The 2006 Bill received over 220 submissions from individuals and organisations as part of the Select Committee process.[1]
   - From June to August 2010, the then-Minister for Regulatory Reform ran a public consultation process on the draft 2006 Bill produced by the Regulatory Responsibility Taskforce via a consultation document "Questions arising from the Regulatory Responsibility Bill". Submitters were asked to respond to a set of questions on the draft bill and regulatory quality generally.
   - Public consultation on the 2011 Bill opened through the Select Committee process after its introduction in March 2011. The 2011 Bill received around 50 submissions from a range of submitters encompassing businesses and industry associations, legal institutions and practitioners, academic think-tanks and unions.

4. Public feedback on previous versions of a Regulatory Standards Bill has been mixed. While there has been general support towards the aim of improving regulatory quality, including through the consolidation of a set of standards regulation should adhere to in its design, development and implementation, some components of previous Regulatory Standards Bills have received considerable criticism from legal practitioners, academics, and constitutional experts. Much of this criticism centred around the proposed roles for the judiciary to prefer interpretation of legislation consistent with the principles set out in previous Regulatory Standards Bills and to declare legislation inconsistent with the principles. This role has been cited as being likely to impact on the respective balance of powers between Parliament and the judiciary, invite a level of judicial interference which may seek to undermine Parliamentary supremacy in passing

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[1] Submission Analysis published by the then-Ministry of Economic Development can be found here.

legislation, and introduce significant ambiguity in New Zealand's legal and constitutional landscape.[2] For these and several other reasons (e.g. the novel wording of principles), the Parliament's Commerce Committee recommended that the Bill not be passed on two separate occasions during the Select Committee process.

5. In 2011, a previous Regulatory Impact Statement (RIS) was written to accompany the introduction of the 2011 Bill into the House. The RIS recommended strengthening Parliamentary review to improve scrutiny of legislation, over the Regulatory Responsibility Taskforce's proposed Bill. As the 2011 Bill was halted at the Select Committee stage, the National-ACT Confidence and Supply Agreement instead included a commitment to achieve a "mutually agreed outcome" based on the Treasury's preferred option as expressed in the 2011 RIS. This was followed by a discussion document released by the Treasury in 2012 to consult on a revised proposal, eventually resulting in the enactment of Part 4 of the Legislation Act and given administrative effect as the current disclosure statement regime.

6. In 2021, the Bill was again introduced to the House as a private Member's Bill, but did not progress past First Reading.

Current proposal for the Regulatory Standards Bill

7. The current proposal for the Regulatory Standards Bill (the Bill), as detailed in the accompanying discussion document, is largely based on the previous versions of Regulatory Standards Bills introduced to the House on two occasions in 2011 and 2021.[3]

8. The current proposal for the Bill includes:
   - a benchmark for good regulation through a set of principles of responsible regulation that all regulation should comply with (analysed in Section 2A of this interim RIS)
   - mechanisms to transparently assess the consistency of new legislative proposals and existing regulation with the principles (analysed in Section 2A of this interim RIS)
   - a mechanism for independent consideration of the consistency of existing regulation, primarily in response to stakeholder concerns (analysed in Section 2B of this interim RIS).

9. While the proposed approach is still largely based on the 2021 Bill, some changes have been made, including:
   - amending some principles in the 2021 Bill to better align them with broadly accepted principles and practices
   - the addition of principles for regulatory stewardship building on the obligation for Government agencies in section 12(e) of the Public Service Act 2020
   - removal of the new interpretive role of the courts originally set out in clause 10 of the 2021 Bill

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[2] These issues were surfaced across a number of Select Committee submissions received on the 2011 Bill.

[3] The 2021 Bill can be found on the New Zealand Legislation website: Regulatory Standards Bill 27-1 (2021).

- a proposal for a Regulatory Standards Board in place of the courts in relation to a recourse mechanism for legislation considered to be inconsistent with the principles
- addition of new powers and expectations to give effect to the Ministry's regulatory oversight role.[4]

10. Throughout the development of the current proposal, targeted agency consultation has been occurring with key agencies, including the Parliamentary Counsel Office, the Crown Law Office, the Ministry for Business, Innovation and Employment, the Ministry of Justice, the Office for Māori Crown Relations – Te Arawhiti, the Treasury, the Public Service Commission and Ministry of Māori Development – Te Puni Kōkiri. To date, agencies have identified that the proposals would involve additional resourcing and are likely to be costly. Further agency consultation is being undertaken and feedback will be reflected in the final RIS.

Developments in New Zealand's regulatory oversight landscape

11. This section sets out recent and expected developments in New Zealand's regulatory oversight landscape, which are relevant to the case for a Regulatory Standards Bill. In summary, these are:
    - the establishment of the Ministry for Regulation, including new funding for various new functions and initiatives, such as regulatory reviews and second-opinion advice on regulatory proposals; and
    - the impending bringing into force of Part 4 of the Legislation Act 2019, which sets out disclosure statement requirements for Government-initiated legislation.

The establishment of the Ministry for Regulation

12. The Coalition Agreement between the New Zealand National Party and ACT New Zealand also provided for a Ministerial portfolio for Regulation, and a new Government agency "required to assess the quality of new and existing legislation and regulation". As part of this, the Ministry for Regulation was set up as a new public service agency and Central Agency in March 2024.[5][6] The Ministry's purpose is to improve the quality of regulation in New Zealand through four key functions:
    - ensuring the quality of new regulation
    - improving the functioning of existing regulatory systems
    - raising the capability of those who design and operate regulatory systems, and
    - providing continuous and enduring improvements to the regulatory management system.

13. While the responsibility to manage and steward individual regulatory systems rests with the individual government agency that administers the legislation, the Ministry is

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[4] 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 were exempted from the regulatory impact analysis requirements on the basis that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.

[5] Public Service (Ministry for Regulation) Order 2024

[6] The Ministry for Regulation is one of five Central Agencies that oversee cross-cutting Government functions, alongside the Department of the Prime Minister and Cabinet, Public Service Commission, the Treasury and Social Investment Agency.

responsible for leading and making continuous improvements to New Zealand's overall Regulatory Management System (RMS).

14. The Ministry is, or will be, undertaking a range of measures towards enhancing regulatory quality. These objectives and functions are outlined in Ministry's *Strategic Intentions* and include:
    - making continuous and enduring improvements within New Zealand's regulatory management system, including by providing guidance and setting clear expectations on regulatory performance for government agencies, working closely with other agencies with a stewardship role in the RMS (e.g. the Parliamentary Counsel Office, and Ministry of Justice)
    - lifting the quality of new regulatory proposals and advice through improving the process and quality of regulatory impact analysis, engaging with government agencies to support capability-building, and ensuring that regulatory policy is informed by robust analysis of impacts, costs and benefits
    - supporting government agencies to understand and fulfil regulatory stewardship responsibilities, including the development and communication of guidance, tools and practical support for system leaders, clarifying stewardship roles and responsibilities across the public sector, and provide leadership to identify and address system-wide risks to regulatory performance
    - investigating and reviewing regulatory issues and regulatory systems across government, by enabling members of the public to contact the Ministry for to raise specific or systemic regulatory issues
    - identifying and improving issues from analysis and benchmarking projects about the New Zealand regulatory environment, issues identified through regulatory reviews, legislative analysis and regulatory stewardship, and good practice drawing from overseas practices.

Impending legislative developments

15. The Ministry is the administering agency responsible for Part 4 of the Legislation Act 2019, which sets out disclosure statement requirements for Government-initiated legislation. There is an existing statutory requirement to bring into force Part 4 of the Legislation Act by 24 March 2026.

16. Bringing into force Part 4 of the Legislation Act 2019 would encompass several supporting mechanisms including for the establishment of good practice standards for regulation as part of the disclosure statement regime. More specifically:
    - disclosure statement provisions enable setting of legislative guidelines or standards via a government notice, which can cover both the content and effect of legislation and the process of its development
    - regulatory standards would be provided for through the existing disclosure statement provisions, and can be complemented with non-statutory expectations and guidance
    - under section 107 of the Legislation Act 2019, the responsible Minister (likely to be the Minister for Regulation) and the Attorney-General would jointly issue notices that would set standards which primary legislation and specified classes of secondary legislation must be assessed against. This could be supplemented by non-statutory guidance
    - the House of Representatives would need to pass a resolution approving each notice (and therefore the regulatory standards) before it is issued

- under section 110 of the Legislation Act 2019, the Minister for Regulation may also issue directions in relation to administrative arrangements for disclosure to ensure a consistent approach across agencies 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.

Scope of this interim RIS

17. This interim RIS has been produced at an intermediate stage of the policy development process for the Regulatory Standards Bill and accompanies the discussion document "*Have your say on a proposed Regulatory Standards Bill*" for public consultation. The Ministry has also produced a preliminary, high-level Treaty Impact Analysis on the Bill, released alongside the discussion document and interim RIS. Following public consultation, the Ministry will develop a final RIS to accompany Cabinet's substantive decisions on the Bill, anticipated to take place in early 2025.

What is the policy problem or opportunity? What objectives are sought in relation to the policy problem?

Summary of the policy problem

The quality of regulation is important for New Zealand's long-term productivity, growth, and living standards, and in supporting New Zealanders' wellbeing, but there are challenges in design and implementing good quality regulation. The Regulatory Management System does not currently support a high level of transparency to enable a broad range of stakeholders to easily identify whether new and existing regulation meets standards of good regulatory quality. Such transparency is an important component of an effective Regulatory Management System because it helps strengthen incentives for responsible Ministers and agencies to work throughout the regulatory policy cycle to ensure new and existing regulation meets quality standards. This could be remedied through the introduction of clear, authoritative standards for good quality regulation, and mechanisms that require clear and accessible assessment of regulation against these standards.

The quality of regulation is an important determinant of wellbeing

18. The quality of regulation is crucial to improving New Zealand's long-term productivity, growth, and living standards, and supporting New Zealanders' wellbeing.

19. Regulation is an important lever to help the government achieve its objectives by directing or influencing people's behaviour, or how people interact with each other. Regulation affects the lives of all New Zealanders through the laws, processes, and systems they interact with on a daily basis. More broadly, regulation underpins markets, protects the rights and safety of citizens, and their property, and ensures the efficient and equitable delivery of public goods and services.[7]

20. Well-designed and implemented regulation can help governments to achieve their desired economic, environmental and social outcomes, support the effective operation of markets, and protect communities from harm. On the other hand, poor regulation can impose costs, limit freedoms, stifle innovation, and give rise to other unintended consequences – or it can simply fail to achieve its intended objectives.

21. Improving New Zealand's regulatory performance in the long term would help to support:
    - better returns on physical and financial capital
    - more productive use of human capability
    - greater social cohesion
    - a flourishing natural environment.

…but there are challenges in designing and implementing good quality regulation…

22. While the benefits of high-quality regulation - that is, regulation that is likely to achieve its objectives without imposing undue or unnecessary constraints or costs - are clear, there are multiple challenges in ensuring that new regulation is designed and

[7] *Regulatory Institutions and Practices*, Productivity Commission (2014), p. 15

implemented well, and existing regulation is reviewed and maintained to ensure it is still necessary and fit for purpose.

…both in relation to new regulatory proposals…

23. In relation to the **design of new regulation**, there are a number of features of, and common practices related to, New Zealand's regulatory policy development processes that can negatively impact on the overall quality of New Zealand's regulation including:
    - A historical and ongoing over-use of legislation (particularly as a perceived low cost, 'quick fix' response to specific incidents) where existing legislation could be adapted to achieve the intended objectives, or the objectives could be achieved without use of legislation.[8] This can lead to unintended consequences or, more broadly, increasing complexity and incoherence in regulatory systems.
    - The regular design and implementation of reforms at high speed – often as a response to high profile issues that the public is concerned about - hampering robust assessment of regulatory impacts and a focus on good implementation.[9]
    - Patchy agency performance in relation to regulatory impact analysis (RIA) requirements, with many RISs not fully meeting requirements. In addition, there are increasing levels of non-compliance with RIA requirements, and the devolved nature of the quality assurance process can make it more difficult to test the robustness of assessments made by agencies. This can result in poorly designed and implemented regulation, along with a failure to identify the full impacts of regulatory proposals on regulated parties, regulators, and other regulatory systems.[10]

…and New Zealand's existing stock of regulation

24. Similarly, there are a number of features and practices relating to **New Zealand's existing stock of regulation** that negatively impact on its quality including:
    - a large amount of outdated or no longer fit-for-purpose legislation,[11] which creates inefficiencies for regulators, imposes unnecessary costs on regulated parties, and means these regulatory systems cannot easily adapt to technological, demographic, or other change, or respond to emergency situations
    - a general lack of focus on monitoring and review of regulatory performance, including a lack of systematic evaluation of the outcomes of regulatory policies.

25. The factors underlying these features and practices are complex and involve often competing incentives and pressures on responsible Ministers and agencies. However, some key underlying factors include:

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[8] For instance, in its 2023 Briefing for the Incoming Attorney-General, the Legislation Design Advisory Committee (LDAC), which has responsibility for promoting good quality legislation in New Zealand, noted a tendency towards using legislation in cases where it was not strictly required, or where it covered matters already addressed in existing legislation See LDAC (2023). *Briefing for the Incoming Attorney-General*, pp. 12-13s

[9] For instance, LDAC notes this in its 2022 Annual Report.

[10] The Ministry (and previously the Treasury) formally recorded 25 cases of non-compliance in the 2023 calendar year, and 27 cases in the 2024 calendar year to date.

[11] Almost two-thirds of regulator chief executives surveyed by the Productivity Commission in 2014 reported that agencies often work with legislation that is outdated or not fit-for-purpose.

- The regular design and implementation of reforms at high speed – often as a response to high profile issues that the public is concerned about – hampering robust assessment of regulatory impacts and a focus on good implementation.[12]
- Capacity (and sometimes capability) constraints within agencies at all points of the regulatory policy cycle (i.e. regulatory development, implementation, and review) which can lead to poorly designed and/or implemented regulation. In addition, work to review and update existing regulation tends to be less of a priority than implementing new reforms – resulting in agencies often struggling to keep. regulatory systems up to date through regular maintenance and periodic renewal
- The complexities involved in assessing and quantifying the full costs and impacts of regulation as a lever – including because its effectiveness often relies on influencing behaviour, sometimes over a very long time period, in the face of other incentives or influences. This can make it difficult for agencies to robustly assess the costs and benefits of regulation and where these costs and benefits fall.
- A lack of clear transparency in relation to how new or existing regulation measures up against agreed regulatory quality standards, which can mute incentives for responsible Ministers and/or agencies to ensure the quality of that regulation, and hamper public and Parliamentary scrutiny of it.

An effective RMS can help to lift regulatory quality by addressing some of these issues

26. An effective RMS[13] can help address some (but not all) of these issues by:
    - clearly articulating the standards that any regulation should meet – for instance, via key documents such as the *Government Expectations for Good Regulatory Practice* and the *Legislation Guidelines*
    - setting clear expectations and processes to help ensure both new and existing regulation meets those standards, for instance through the RIA Cabinet Office Circular for new regulatory proposals
    - creating incentives and consequences to encourage compliance with those expectations and processes, for instance, requiring a post-implementation review to be conducted in cases where a RIS has not been completed to acceptable standards
    - helping build capability across the system to support more robust regulatory policy development and better implementation of regulatory reforms
    - supporting transparency across the system so that it is clear where regulation has not met accepted standards – for instance, via the publication of disclosure statements.

It is difficult to make an assessment of the overall quality of New Zealand's regulation

27. As highlighted in the 2011 RIS, there are limitations on the ability to measure regulatory quality where the metric of measurement is linked to the outcome of that regulation being in place. The 2011 RIS noted that this type of measurement does not

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[12] For instance, LDAC notes this in its 2022 Annual Report.

[13] The RMS is the set of policies, institutions, tools, and processes employed by central government to help it develop, deliver, and maintain high quality regulation that does not impose unnecessary costs.

distinguish between the legislative instrument and its implementation, and that different views on the importance and desirability of outcomes sought would result in variable assessments of quality. Added to this, as noted above, assessing the full costs of any regulation can be difficult and complex.

28. Another way of looking at regulatory quality is whether it is consistent with standards that describe characteristics of high-quality regulation – with the assumption that this is more likely to lead to desired outcomes while minimising cost. As outlined above, these standards are set out in a number of places, including the Legislation Guidelines (which focus on aspects of good legislative design) and the Government Expectations of Good Regulatory Practice (which focus more broadly on good regulatory design and practice).

29. However, while these standards can be applied to regulation in specific cases, they do not lend themselves to a system-wide assessment of the quality of New Zealand's regulation.

International indicators show New Zealand's regulation performs relatively well…

30. International indicators can help present a picture of how New Zealand performs relative to other countries with respect to its regulation – noting that many of these indicators measure a mixture of the quality of regulation in specific regulatory systems, and the robustness of the overall RMS. Overall, New Zealand performs relatively well across a range of indicators:
    - New Zealand ranked in the 99th percentile for regulatory quality in the 2022 World Bank Worldwide Governance Indicator.
    - New Zealand ranked seventh out of 140 countries overall in the World Justice Project Rule of Law Index for 2022, placing fifth for the regulatory enforcement factor.
    - New Zealand ranks above the OECD average across its Product Market Regulation Indicators (PMRI) questionnaire. With lower scores representing better performance, New Zealand scored 1.32 compared to the OECD average of 1.34 in the 2024 survey, and at 1.24 compared to the OECD average of 1.38 in the 2018 survey. Areas of strength identified by the PMRI include New Zealand's administrative requirements for new firms, barriers to entry and trade and investment.
    - New Zealand has consistently ranked above the OECD average across stakeholder engagement and RIA across the OECD Indicators and Regulatory Policy and Governance surveys.

…but suggest there is room for improvement, particularly in relation to the RMS

31. However, New Zealand's regulatory performance has stagnated or diminished over time, according to the most recent results. Those results are partially attributable to changes in the scope and methodology of surveys over time, and reflect that some of these indicators are not being formally documented as a result of New Zealand's small size and relatively less formal constitutional arrangements. Nonetheless, the results indicate that there may be room for improvement in New Zealand's regulatory arrangements.

32. In particular, New Zealand scores relatively poorly in relation to ex post review and evaluation of both primary and secondary legislation. The OECD notes that oversight of ex post evaluations remain underdeveloped compared to quality control of RIA generally, despite their critical importance for regulatory quality.[14]

33. These indicators, along with the issues outlined earlier, suggest that there is likely to be significant room for improvement in the quality of New Zealand's regulation, and that the RMS could play a central role in achieving that.

There are a number of weaknesses in New Zealand's RMS

34. There are a number of characteristics of New Zealand's RMS that, over time have likely limited its effectiveness in supporting the development, implementation and maintenance of high quality regulation. These include limited resource devoted to central oversight, the largely devolved nature of RIA quality assurance processes, and a lack of tools and processes focused on ex post review. The establishment of the Ministry for Regulation, and much of the work discussed in Section 1 of this RIS aims to address some of these issues.

35. However, one particular weakness of the current RMS is that it does not support a high-level of transparency in relation to whether new and existing regulation clearly meets standards of good regulatory quality.

36. Such transparency is an important component of an effective RMS because it helps strengthen incentives for responsible Ministers and agencies to work throughout the regulatory policy cycle to ensure new and existing regulation meets quality standards.

37. While RISs and disclosure statements[15] are currently the main mechanisms aimed at providing such transparency, their effectiveness in doing this is subject to a number of limitations – particularly when thinking about the ability of a broad range of stakeholders, including the general public to be able to access and understand key information about regulatory quality:
   - There are multiple places in which standards of regulatory quality (including best practice processes for developing regulation and for regulatory stewardship) and associated guidance for complying with these standards can be found.[16] These standards are all supplied for different purposes, 'owned' by different agencies, and apply at different stages of the regulatory policy cycle. In addition, most of these are written for policy, regulatory and legal professionals, which likely further impacts on their accessibility to non-expert audiences.
   - While most RISs are readily available on the Ministry for Regulation's website (and previously the Treasury's website), they are often complex and technical in

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[14] OECD Regulatory Policy Outlook 2021, p. 117-118

[15] Noting that the coming into force of Part 4 of the Legislation Act would address some of these issues.

[16] As well as the *Government Expectations for Good Regulatory Practice* and *Legislation Guidelines*, these include Cabinet Circular (20)2 governing the regulatory impact analysis (RIA) system, RIA guidelines including best practice impact analysis, conducting effective consultation, best practice monitoring, evaluation and review, Crown Law Office's "Judge Over Your Shoulder" guide to good decision-making and the law in New Zealand, Parliamentary Counsel Office guidance to support government departments with legislative stewardship, e.g. the Secondary Legislation Drafting Toolkit, the Ministry for Regulation resources to support Regulatory System Capability, the Department of the Prime Minister and Cabinet's Policy Project frameworks, and The Office for Māori-Crown Relations – Te Arawhiti resources on Crown engagement with Māori.

nature, and provide a broad and often detailed assessment of the costs and benefits of the proposal.[17] Quality assurance of RISs focus on whether the analysis in the RIS meets certain standards for analysis, rather than the proposal itself meeting standards of regulatory quality (although there are overlaps between the two things). This lessens their effectiveness as a tool to help a broad range of stakeholders easily understand whether a proposal meets standards of regulatory quality.

- Disclosure statements provide a brief assessment of whether agencies have followed some of the key processes they are expected to have followed in developing legislation and highlight certain significant powers or unusual features that may be of particular Parliamentary or public interest and may warrant further explanation. However, while Part 4 of the Legislation Act is not yet in force, disclosure statements do not provide a definitive statement about the quality of the proposed regulation against standards.
- Neither RISs nor disclosure statements provide any explicit indication about how or whether any issues with the quality of regulatory proposals they identify were factored into decisions to proceed with the proposals - including any justifications for why a regulatory proposal does not meet specific standards.
- There are no equivalent mechanisms or requirements relating to assessment of existing regulation by agencies (which would ideally result in Ministers taking forward proposed reforms to that regulation). This is particularly problematic because many legislative proposals are exempted from RIA requirements, so may not be subject to any detailed scrutiny of their quality or impacts.
- There is a lack of transparent reporting on how the system is functioning as a whole in relation to regulatory quality – due both to a historic lack of resource devoted to this oversight function (which is now the responsibility of the Ministry for Regulation) and a lack of available information on which to base this reporting.

What objectives are sought in relation to the policy problem?

38. The proposed Regulatory Standards Bill has the overall objective of improving transparency in relation to where regulation does or does not meet standards, on the presumption that this transparency will then influence decisions made during the development, implementation and stewardship of regulation – and ultimately increase the amount of regulation that 'meets' quality standards.

39. The proposals for the Bill presented in this interim RIS have several sub-objectives that support the overarching goal of improving transparency. These are:
    - to establish and promote a benchmark for good regulation through quality standards for responsible regulation, which all regulation should comply with
    - to establish mechanisms to assess consistency of new legislative proposals and existing regulation with regulation quality standards
    - to provide an avenue for independent consideration of the consistency of existing regulation, primarily in response to stakeholder concerns.

[17] The Impact Analysis framework involves defining the policy or operational problem that needs to be addressed, identifying the policy objectives and the full range of feasible options for addressing that problem. It also includes analysing those options for their potential impacts and assessing their costs, benefits and risks, carrying out consultation, implementation planning, and arrangements for ongoing monitoring, evaluation and review.

Section 2A: Deciding upon an option to address the policy problem – regulatory principles and associated mechanisms

What scope will options be considered within?

40. This section analyses options for setting out **regulatory principles** in legislation, and mechanisms for transparently assessing the consistency of regulation against the principles. The option sets are presented as packages, rather than distinct components, because there are strong linkages between the principles and consistency mechanisms.[18]

41. The option sets also include some accompanying measures to further support increasing the quality of regulation.

42. The options in this interim RIS set out three groups of regulatory responsibility 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.
    - Principles relating to regulatory stewardship: these principles refer to the considerations around monitoring, evaluation and review of regulatory systems.

43. This interim RIS will use the current status quo (Option 1) as a baseline for assessing the set of options, given that Part 4 of the Legislation Act has not yet come into force and comparative assessments would require several assumptions around its impacts at a future point in time.

Focus on legislative options

44. This interim RIS focuses predominantly on legislative options to address the identified problem because the proposal set out in the discussion document is based on the introduction of the Bill, as provided for in the Coalition Government commitment to "legislate to improve the quality of regulation".

45. The Ministry for Regulation has therefore not considered in any detail whether the intended objectives of the proposal could be achieved without any legislative change. However, the Ministry notes that the disclosure regime that forms part of Option 4 is set out in legislation already (and it would likely require repeal or amendment under Options 2 or 3).

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[18] For example, where primary legislation sets out that the review of existing legislation for consistency with regulatory responsibility principles would be through non-statutory notices issued by the Minister, this would preclude consistency mechanisms also being prescribed in legislation.

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

46. Five criteria will be used to compare options to the status quo:
    - **Durability:** standards and associated mechanisms should have broad buy-in and acceptability while having sufficient flexibility to evolve with changes in the regulatory management system to enable their enduring impact over time.
    - **Compatibility with established norms:** standards and associated mechanisms should align with enduring and well-understood norms in New Zealand's legal and constitutional landscape – including the respective roles of the different branches of government, lines of vertical accountability across government, and existing policy settings in the regulatory management system.
    - **Accountability:** standards and associated mechanisms should clearly set out the relative responsibilities for Ministers and government agencies.
    - **Effectiveness:** standards and associated mechanisms should ensure sufficient transparency of the assessment of regulation against standards, including that these assessments can be accessed and understood by the public.
    - **Cost:** assessment of estimated costs of each option relative to the status quo.

47. 9(2)(h)

48. The criteria outlined above carry equal weighting in the assessment of options, however some options contain features that are more relevant to some criteria relative to others. For example, statutory power providing the Ministry for Regulation with a regulatory oversight role form a component of Options 3 and 4 only, therefore reference to this in the multi-criteria analysis will only be present in the assessment of those options.

What options are being considered?

49. A high-level overview of the components of the four options is outlined in the overleaf below, followed by more detailed descriptions on each of the options.

    Option 1: the status quo at the time of writing.

    Option 2: principles for legislative design and good law-making set out in primary legislation along with statutory certification mechanisms and a role for the courts to prefer interpretation with the principles. *Option 2 reflects the approach in the 2011 and 2021 Bills.*

    Option 3: modified principles for legislative design, good law-making and regulatory stewardship practices set out in primary legislation, with a mixture of statutory and non-statutory certification mechanisms. *Option 3 represents the proposal set out in the accompanying discussion document.*

Option 4: building on the current Disclosure Statement regime plus new legislative provisions to support regulatory stewardship and the review and reporting roles of the Ministry for Regulation. *Option 4 is the Ministry's preferred option.*

50. The Ministry has released a preliminary, high-level Treaty Impact Analysis alongside the discussion document and interim RIS to support the public consultation process. The preliminary Treaty Impact Analysis provides an indication of the possible Treaty impacts of the policy proposals, the nature of Māori rights and interests, and implications for Treaty settlements. It serves as an initial early review of policy proposals by officials and will be further refined following proposed consultation on a discussion document.

Overview of options

The Ministry's functions and work programme (including non-legislative initiatives) outlined in Section 1 are assumed to form part of the wider operating context across all four options presented below.

	Option 1 **Status quo**	Option 2 **Principles for legislative design and good law-making set out in primary legislation along with statutory certification mechanisms and a role for the courts to prefer interpretation with the principles (2011/2021 Bill)**	Option 3 **Modified principles for legislative design, good law-making and regulatory stewardship practices set out in primary legislation, with a mixture of statutory and non-statutory certification mechanisms (discussion document proposal)**	Option 4 **Building on the Disclosure Statement regime plus new legislative provisions to support regulatory stewardship and *the review and reporting roles of the Ministry for Regulation* (the Ministry's preferred option)**
Principles for legislative design	Non-legislative guidance, particularly the Legislation Guidelines issued by the Legislation Design and Advisory Committee and endorsed by Cabinet in CO (21) 2	Set out in primary legislation and expressed verbatim as per the 2011/2021 Bill	Set out in primary legislation and partially modified from the principles expressed in the 2011/2021 Bill	Principles would be set out in a government notice issued under section 107 of the Legislation Act; the notices would be presented to, and would need to be approved by, the House of Representatives before being issued
Principles for good law-making	Non-legislative guidance via Cabinet circular CO (20) 2 set out Cabinet's RIA requirements, which include proper identification of the problem or opportunity, all feasible options to be considered, impact and risk analysis to be completed and a rationale for the option being recommended. The circular is supported by more detailed guidance for agencies.	Set out in primary legislation and expressed verbatim as per the 2011/2021 Bill	Set out in primary legislation and partially modified from the principles expressed in the 2011/2021 Bill	Principles would be set out in a government notice issued under section 107 of the Legislation Act; the notices would be presented to, and would need to be approved by, the House of Representatives before being issued
Principles for regulatory stewardship	Section 12(e) of the Public Service Act 2020, supported by non-legislative guidance	Same as status quo	New category of principles set out in primary legislation	Non-legislative guidance linked to new stewardship duties for government agencies
Mechanisms for ensuring consistency with principles	Non-legislative requirements in CO (20) 2 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. Non-legislative requirements for disclosure statements for Government-initiated legislation (via Cabinet Office Circular CO (13) 3)	The responsible Minister and Chief Executive must sign a written certificate to certify the compatibility of new legislation with principles and explain any inconsistencies; this certificate must be presented to the House of Representatives Requirement that every public entity must include in each of its annual reports a statement of steps taken to comply with notices issued in the Gazette set out under clause 14 of the 2021 Bill; and general requirement for public entities to regularly review all legislation that it administers for compatibility with the principles under clause 15 of the 2021 Bill	Obligation on the Minister for Regulation to issue guidance on the interpretation and application of principles New regulatory proposals would be assessed prior to Cabinet policy decisions and prior to legislation being introduced to the House, with inconsistencies explained in a statement to be publicised Existing regulation would be assessed against reporting and review obligations set out in the Bill; the responsible Minister would be required to make a statement justifying why they are choosing not to remedy these inconsistencies New duty for agencies for regular review, maintenance and improvement of the legislation they administer and require responsible agencies to develop and publicly report against plans to review their stock of legislation	Directions on consistency mechanisms would be issued as government notices by the Minister for Regulation under section 110 of the Legislation Act; the notices would be published and represented to the House of Representatives New duty for agencies for regular review, maintenance and improvement of the legislation they administer and require responsible agencies to develop and publicly report against plans to review their stock of legislation
Accompanying measures		The courts would be given a new role to require all legislation to be interpreted consistently with regulatory principles where possible The courts would be given the power to grant declarations of incompatibility where legislation is inconsistent with the regulatory principles	Statutory power providing the Ministry for Regulation with a regulatory oversight role, enabling the Ministry to produce regular reporting to Parliament assessing overall performance against the principles Statutory power to allow the Ministry to require information for the purpose of regulatory reviews directly from public service agencies, statutory Crown entities, and all entities that perform statutory regulatory functions (such as local government) or are contracted by the government to support the delivery of a regulatory function (i.e., third-party service providers)	Statutory power providing the Ministry for Regulation with a regulatory oversight role, enabling the Ministry to produce regular reporting to Parliament assessing overall performance against the principles Statutory power to allow the Ministry to require information for the purpose of regulatory reviews from public service agencies, and from statutory Crown entities with the written approval or direction of the Prime Minister or Minister responsible for the statutory Crown entity

Option 1 – Status quo

51. Option 1 reflects the status quo at the time of writing (as set out in the table above).

Option 2 – Principles for legislative design and good law-making set out in primary legislation along with statutory certification mechanisms and a role for the courts to prefer interpretation with the principles (2011/2021 Bill)

Principles for responsible regulation

52. Option 2 is the approach set out in the 2011 and 2021 Bills. Under this option, the Bill would set out principles in respect to legislative design and good law-making practices in primary legislation. Clause 6 of the 2021 Bill outlines a set of regulatory principles that all legislation *should* comply with, including:
    - being consistent with the rule of law (e.g. every person is equal before the law, issues of legal right and liability should be resolved by application of the law)
    - personal liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property
    - not to take or impair, or authorise the taking or impairment of, property except in public interest or with compensation provided
    - not to impose or authorise the imposition of a tax except by or under an Act
    - preserve the courts' role of authoritatively determining the meaning of legislation
    - not to be made unless, to the extent practicable, the persons likely to be affected have been consulted
    - not to be made unless there has been a careful evaluation of the issue concerned, effectiveness of existing legislation or common law, public interest, options (including non-legislative options) reasonably available for addressing the issue, likely persons who would benefit or suffer detriment from the legislation, and all potential adverse consequences of the legislation (including potential legal liability of the Crown or any other person) are reasonably foreseeable.

Mechanisms for certifying consistency with the principles

53. Under this option, the Minister and Chief Executive with responsibility for a Government Bill (or the Member of Parliament responsible in the event of a Member's Bill) must sign a written certificate to certify the compatibility of new legislation with the principles of responsible regulation, with the certificate being presented to the House of Representatives. Should there be departures from the principles set out in the Bill, the certificate must state those incompatibilities, explain their justification, and reasons why the legislation is proceeding despite the lack of justification.

54. The Bill further sets out statutory review of legislation for compatibility with the principles, prescribing that every public entity must include in each of its annual reports under the Public Finance Act 1989, Crown Entities Act 2004, or any other Act, a statement of steps taken to comply with notices issued in the Gazette set out under clause 14 of the 2021 Bill. Clause 15 of the 2021 Bill sets out a general requirement for public entities to regularly review all legislation that it administers for compatibility with the principles.

Accompanying mechanisms

55. The 2021 Bill provides a new role for the judiciary to prefer the interpretation of any legislation consistent with the principles set out in the Bill, and a role to declare any legislation to be inconsistent with these principles.

Option 3 – Modified principles for legislative design, good law-making and regulatory stewardship practices set out in primary legislation, with a mixture of statutory and non-statutory certification mechanisms (discussion document proposal)

56. Option 3 reflects the approach taken forward in the accompanying discussion document for public consultation.

Principles for responsible regulation

57. Under this option, the principles for inclusion in primary legislation comprise of principles relating to legislative design and good law-making *modified from the wording of the 2021 Bill*, with the addition of principles relating to regulatory stewardship.

58. The wording of some of the principles has been modified from the 2021 Bill:
    - amending the test for the principles such that the Government must have “sufficient regard to the principles” rather than “legislation should be consistent” with the principles
    - amending the wording of some of the principles to enable ease of interpretation and reflect greater alignment with broadly accepted practices and guidelines
    - removing the new role for the courts to prefer interpretations of legislation consistent with the regulatory standards, to reduce ambiguity and uncertainty around the respective roles of the three branches of government
    - setting out a *requirement* for non-statutory guidance to be issued to support application of the principles, rather than a discretionary measure as the 2011 and 2021 Bill provides.

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

Mechanisms for certifying consistency with the principles

60. Under this option, the Bill would require the Minister for Regulation to issue guidance on the interpretation and application of principles. This guidance could include:
    - further information on how the principles should be interpreted and applied
    - what steps agencies and Ministers should take to ensure that they have sufficient regard to the principles when developing new proposals or reviewing their regulation, and any processes they will follow
    - the information that should be provided when assessing the consistency of regulation or justifying any inconsistency
    - requirements for publication of any information generated through these processes.

61. Under this option, new regulatory proposals would be assessed for consistency with the regulatory responsibility principles prior to a proposal coming to Cabinet for policy decisions (through either a legislative or non-legislative mechanism), and prior to legislation being introduced to the House. Where a regulatory policy proposal or draft legislation is inconsistent with any of the principles, the responsible Minister would be required to make a statement justifying why they are proceeding with the proposal despite these inconsistencies before the legislation is introduced. This statement, along with all the information generated through the assessment process would be published (subject to equivalent provisions to the Official Information and Privacy Acts) to ensure transparency.

62. In relation to existing regulation, the Bill would require Government agencies to regularly review, maintain, and improve regulation administered by their agency through published forward plans for review. Ministers and agencies would be required to publicly report on plans to review their stock of legislation against the principles, along with the outcomes of those reviews including any identifying and proposing remedies where existing regulation is inconsistent with the principles. Where inconsistencies are identified, but not proposed to be remedied, Ministers would be required to justify these inconsistencies.

Accompanying measures

63. This option includes provisions to support the Ministry for Regulation's oversight of the quality of legislation, enabling the Ministry to produce regular reporting to Parliament assessing overall performance against the principles.

64. Under this option, the 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, statutory Crown entities, and all entities that perform statutory regulatory functions (such as local government) or are contracted by the government to support the delivery of a regulatory function (i.e., third party service providers). This proposal means that the ability to request information from wider state services outside of public service agencies, such as statutory Crown entities, would not require written approval from the Prime Minister or the Minister responsible for the state service, and requests for information outside central government, such as from local government or third-party providers, would be made directly rather than to the agency responsible for the regulatory system.

Option 4 – Building on the disclosure statement regime through bringing Part 4 of the Legislation Act 2019 into force, plus new legislative provisions to support agency regulatory stewardship and the review and reporting roles of the Ministry for Regulation (the Ministry's preferred option)

65. Option 4 comprises an evolving status quo that builds on Part 4 of the Legislation Act 2019 coming into force, combined with a mixture of supporting certification mechanisms and information-gathering powers for the Ministry for Regulation's regulatory reviews.

Principles for responsible regulation

66. 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 that set standards which primary legislation and specified classes of secondary legislation must be assessed against. The House of Representative would pass a resolution approving each notice before it is issued.

67. Standards would be set out through a combination of provisions under section 107 and strengthening non-legislative guidelines:
    - 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, supported by the Legislation Design and Advisory Committee (LDAC) Legislation Guidelines and Cabinet's impact analysis requirements

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

Mechanisms for certifying consistency with the principles

68. Under this option, standards would be given effect through a mixture of statutory and non-statutory mechanisms. Within the Legislation Act 2019, section 110 provides that the Minister may also 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.

69. Additional legislative measures could be introduced to strengthen the impetus for Government agencies and Ministers to give effect to the principles and pursue their regulatory programmes in a way that upholds the principles. For example, legislation could be introduced which would provide the Minister for Regulation the power to issue statements that set out requirements, processes and expectations for new regulatory proposals and stewardship of existing regulatory systems by way of Regulatory Responsibility Statements (RRS) with legal status similar to other instruments made under legislation, such as Government Policy Statements. RRSs would be required to be tabled in the House, made publicly available, and required for agencies to give effect to. In accordance with Parliamentary practice, a Select Committee could take on a scrutiny role and oversee the Government's performance. However, as the RRSs would not be secondary legislation, they could not be formally disallowed.

70. The Bill would further establish mechanisms to transparently show whether and how Ministers and agencies have complied with the requirements, processes and expectations in RRSs in relation to regulatory proposals and regulatory systems they are responsible for.

71. As with Option 3, this option includes a duty on agencies for regular review, maintenance and improvement of the legislation they administer and require responsible agencies to develop and publicly report against plans to review their stock of legislation.

Accompanying measures

72. As with Option 3, this option establishes a regulatory oversight role for the Ministry for Regulation, enabling the Ministry to produce regular reporting to Parliament assessing overall performance against the principles.

73. Under this option, the 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.

74. 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 (20)2 on the RIA process 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 or LDAC guidelines which support the development of regulatory policy.

How do the options compare to the status quo?

	Option 1 Status Quo	Option 2 Principles for legislative design and good law-making set out in primary legislation along with statutory certification mechanisms (2011/2021 Bill)	Option 3 Modified principles for legislative design, good law-making, and regulatory stewardship practices set out in primary legislation, with a mixture of statutory and non-statutory certification mechanisms (approach outlined in the discussion document)	Option 4 Building on the disclosure statement regime with new legislative components for regulatory stewardship and regulatory review information gathering powers
Durability	0	- - Having legislative design principles in primary legislation means they are much less flexible in responding to changes in regulatory best practice, societal expectations, and understanding of how systems operate. The selection of principles relating to legislative design is narrow in nature (i.e. with a focus on property rights and freedoms and liberties) and excludes other key principles relevant to legislative design. This is likely to impact on broad support and buy-in for the principles as a whole Some of the specific principles do not appear to have broad buy-in as evidenced by public submissions on this version of the Bill identifying significant divergences in views, including legal and constitutional experts expressing strong opposition to the principles as expressed in the Bill alongside the courts' interpretative and declaratory roles.	- As with Option 2, having legislative design principles in primary legislation means they are much less flexible in responding to changes in regulatory best practice, societal expectations, and understanding of how systems operate. However, the modification of the principles to better align in some respects with generally accepted practices may mean this option has marginally better durability. As with Option 2, the selection of principles relating to legislative design is narrow in nature (i.e. with a focus on property rights and freedoms and liberties) and excludes other key principles relevant to legislative design – however it is likely preferable to Option 1 as it includes provision for a broader range of principles (i.e. the regulatory stewardship principles).	+ Setting out principles via a government notice affirmed by the House, rather than in primary legislation, creates a greater degree of agility that allows principles to evolve over time alongside developments in the RMS, while the requirement for cross-Parliament support mitigates risks of principles being overly changeable. This is likely to lead to better durability over time.
Compatibility with established norms	0	- - 9(2)(h) [redacted]	- 9(2)(h) [redacted] It is unclear how this proposal would fit in with existing processes and requirements such as RIA requirements and Part 4 of the Legislation Act 2019.	++ The approach allows for a balance between the certainty and visibility of high-level, enduring, and generally accepted principles, and flexibility in the supporting non-statutory certification mechanisms that provide more detail on the standards, as well as supporting material on how to apply them. 9(2)(h) [redacted] This option would align with existing processes and requirements such as RIA requirements and Part 4 of the Legislation Act 2019.

		The Select Committee identified a number of areas where this version of the Bill would add an extra layer to existing legislative processes and practices (e.g. overlap of new with existing principles, omission of principles and inconsistencies posed with the Regulation Review Committee's role), therefore negatively reflects its compatibility with established norms in the law-making process. It is unclear how this proposal would fit in with existing processes and requirements such as RIA requirements and Part 4 of the Legislation Act 2019.		
Accountability	0	+ This option could strengthen accountability by making Ministers explicitly certify consistency of regulation and justify any departures. There could be less accountability in relation to existing regulation, as the proposal would just require agencies to review their legislation against the standards over time.	++ (certification mechanisms) / - (functions and powers) This option would strengthen accountability in a similar way to Option 1 – however, it would also require agencies and Ministers to report on consistency of proposed legislation prior to Cabinet decisions being made, as well as prior to legislation being introduced, it could also enhance accountability by requiring agencies to set and report against a plan to review existing regulation, and for Minsters to justify any ongoing inconsistency. However, the statutory information-gathering powers would cut across existing lines of vertical accountability across government, and represents a material departure from information-gathering powers afforded to most other public service agencies.	+ This option could provide stronger accountability by requiring agencies to make disclosures about the quality of legislation being put forward to the House. Similarly to Option 2, it could also enhance accountability by requiring agencies to set and report against a plan to review existing regulation.
Effectiveness	0	+ This option could be more effective than the status quo, creating greater transparency by requiring Ministers and/or Chief Executives to certify whether proposed legislation is compatible with the principles, and the justification for any incompatibility. This certification would happen before a Bill is introduced to the House of Representatives; and before the commencement of a Bill's third reading in the House of Representatives – or in the case of secondary legislation, certification would happen before that legislation is made. In the case of existing regulation, the requirement for public entities to include in annual reports information on steps taken to regularly review their legislation for consistency, and the outcomes of any completed reviews could also create greater transparency than the status quo.	++ While this option takes a similar approach to Option 2, it could be more effective in improving transparency than that option, as it would require assessment of consistency (and subsequent publication of that assessment) at an earlier stage in the policy process, through the assessment of regulatory proposals at the time of Cabinet decisions, as well as prior to introduction to the House. This would make it clearer where Ministers have decided to proceed with policy proposals even where they have been assessed as being inconsistent with the principles. Obligations for agencies to plan for and to review existing regulation could also be more effective at increasing transparency compared to Option 2, as the proposal requires agencies to develop and communicate specific plans and then report against them. This assessment of consistency is also proposed to focus more broadly on regulation (compared with legislation) including assessment of the effective operation of regulatory systems. Transparency of compliance for existing regulation may also be improved by the requirement for the responsible Minister to provide justification, where non-compliance is not being remedied.	++ This option could have similar levels of effectiveness in improving transparency as Option 2 – however, process requirements for assessment of consistency would be set out in secondary rather than primary legislation and/or supporting guidance. Similarly to Option 2, obligations for agencies to develop and report on plans to review their existing regulation could improve transparency of the consistency of existing legislation with the principles.

Cost	0	- - This option has the greatest cost compared to the status quo, of the options considered. The certification mechanisms proposed in this option are more stringent, including the requirement for certification of all legislation within ten years after the Bill would come into force. 9(2)(h)	- - This option would also be potentially significantly more costly relative to 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 Bill (e.g. developing plans and undertaking periodic reviews of existing legislation). 9(2)(h)	- This option would be more costly relative to the status quo. Government agencies would incur additional costs associated with certifying legislation for compliance with principles set out in government notices, however under this option there is the potential for implementation to be phased. As in Option 3, there would also be costs associated with regulatory stewardship obligations contained in the Bill (e.g. developing plans and undertaking review of existing legislation).
Overall assessment	0	- - Overall, this option would be worse compared to the status quo	Variable This option has both benefits and disadvantages relative to the status quo, resulting in a mixed/variable assessment overall. The Ministry notes that the resulting impact would highly depend on the way that its provisions are implemented, including the amount of buy-in from Ministers and Government agencies.	+ Overall, this option would be likely better than the status quo.

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

The Ministry recommends Option 4 overall

75. While supporting the overall objectives that the Regulatory Standards Bill seeks to achieve, and noting that there are merits in Option 3 (the proposal presented in the discussion document), the Ministry's preferred approach is **Option 4** as the disclosure statement regime under Part 4 of the Legislation Act will achieve many of the same benefits for increasing regulatory quality without generating the same risks as including principles in primary legislation. Specifically, existing provisions under the Legislation Act 2019 would enable the setting of regulatory responsibility principles (per section 107) and mechanisms for ensuring consistency with those principles (per section 110).

76. Additionally, by issuing regulatory standards via a government notice that requires approval by the House of Representatives, Option 4 provides for regulatory standards to be set out in a manner that is more likely to garner broader buy-in over the longer-term, strengthening the clarity and durability of the proposal. At the same time, using a government notice as a vehicle for setting standards provides sufficient agility for the principles to evolve over time, 9(2)(h)

77. The Ministry considers that Option 4, as with Option 3, could create greater impetus for the stewardship of existing regulation through the new duty on agencies for regular review, maintenance and improvement of the legislation they administer, and the requirements to develop and publicly report against plans to review their stock of legislation. The latter requirement should also improve transparency for the public, regulated parties and other interested stakeholders, and could support better dialogue on the nature and relative priority of issues with existing regulation.

78. The Ministry notes that there are upfront and ongoing costs associated with this new duty, however considers that the long-term gains from increased regulatory quality derived from the ex-post review of regulation can be immense, particularly where proactive stewardship of regulation can avoid regulatory failure or chronic regulatory under-performance. In addition, the proposed approach aims to give agencies significant flexibility to plan and undertake reviews in a way that is most suitable for their context, as it does not mandate a certain number of reviews or require regulatory systems to be reviewed within a specific time.

79. On the regulatory review powers for the Ministry for Regulation, Option 4 comprises a package of preferable information-gathering powers that can support the effective and efficient conduct of reviews while supporting existing vertical lines of accountability. The inclusion of an approval process from the Prime Minister or responsible Minister ahead of requesting information from wider State services would provide a safeguard that supports existing vertical lines of accountability, protects both the Ministry for Regulation and the relevant State service from any criticism that statutory independence is being compromised, and ensures the information request is justified in the public interest.

What are the marginal costs and benefits of the option?

Limitations to cost-benefit analysis

80. There are significant limitations and caveats around the quality of the cost-benefit analysis, given the policy context of the proposed Regulatory Standards Bill. The marginal impacts of the Bill (under either Option 3 or 4) on the quality of regulation are uncertain as they depend on the strength of the incentives that increased transparency bring - relative to other incentives and constraints - for each individual regulatory proposal and regulatory system.

81. 9(2)(h) There may also be costs arising from the application of the principles to policy initiatives which are also too uncertain to estimate, for example costs associated with more consultation, or costs arising from providing compensation for any impairment of property.

82. The Ministry further notes that additional decisions will be required to determine the types of regulation which would be *excluded* for assessment against principles of the Bill under Option 3 (such as legislation of an administrative or technical nature).[19] Policy decisions around the scope of consistency assessments would have a material impact on the marginal costs and benefits.

83. Further limitations are as explained in the "Limitations and Constraints to Analysis" section of the interim RIS.

Approach to cost-benefit analysis

84. With the above caveats in mind, the cost-benefit table has been developed based on pursuing **Option 3**, which is the proposed approach to the Bill taken forward in the discussion document.

85. Comparatively, the Ministry considers that the marginal costs of Option 4 would be lower, and that Option 2 would be materially more costly due to its certification mechanisms being more stringent and prescriptive, as well as the retrospective application for certification against all legislation ten years after the Bill would come into force. 9(2)(h)

[19] Several types of primary and secondary legislation in New Zealand are considered administrative or technical rather than representing changes in policy direction. These include legislative stewardship vehicles such as Revision Bills or Regulatory Systems Amendment Bills.

86. At this point of the policy process, the Ministry's analysis indicates that **direct impacts** of the Bill predominantly fall within the machinery of the New Zealand Government. The consistency mechanisms for assessing legislation against regulatory responsibility principles would sit within the responsibilities of government agencies – primarily public service agencies that would be subject to the requirements in relation to the legislation they directly administer, then wider state services in relation to regulatory stewardship obligations for the operation and review of regulatory systems.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of Option 3 compared to taking no action			
Ministry for Regulation (as administering agency)	Costs to the Ministry involve: • Drafting / issuing guidance on the application and interpretation of principles • Providing training and guidance to agencies on new requirements • Reviewing agency consistency statements and stewardship reports • Preparation of periodic agency compliance report	Medium – the Ministry for Regulation may require additional resourcing in order to carry out some of these functions Preliminary estimation by the Ministry suggests approximately $1 million per annum in FTE costs.	Medium
Other government agencies	Costs to other agencies involve: • Producing and publishing consistency statements for new legislation • 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 if requested The preliminary estimate assumes regulatory systems are reviewed every five years on average – there are about 200 regulatory systems, which means about 40 systems being reviewed annually. It assumes additional stewardship activity for each system will require about 2-4 FTE across all	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 systems; particularly for agencies that are less advanced in their regulatory stewardship work. Preliminary estimate is $17.8 million - $31.8 million per annum total, across the public service.[20]	Medium

[20] This early estimate is under review and will be refined by the Ministry for Regulation over coming months, ahead of final policy decisions.

	functions, given the low base of stewardship activity currently. This estimate also includes $3 million per annum across the public service for producing consistency statements for new legislation – this assumes the current average of around 100 bills and 400 new secondary legislation drafted by PCO per year.		
Crown	9(2)(h) [redacted]	9(2)(h) [redacted]	Low
Judiciary / Legal Practitioners	9(2)(h) [redacted]	9(2)(h) [redacted]	Low
Wider public	Some indirect transactional costs – e.g. some parties may face additional costs from changes resulting from reviews of existing legislation	Variable depending on the regulatory system members of the public interact with	Low
Total monetised costs	Estimate includes costs to Ministry for Regulation and other government agencies only and are still being refined to support the final RIS and policy decisions.	Variable but likely to be higher compared to taking no action. Preliminary estimate is $18.8 million - $32.8 million per annum.	Low
Non-monetised costs		Likely higher compared to taking no action	Low
Additional benefits of Option 3 compared to taking no action			
Ministry for Regulation (as administering agency)	Greater ability to assess the effectiveness of other government agencies in 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).	Medium to high	Medium
Other government agencies	If requirements for more regular review of legislation result in more up to date legislation, then	Variable relative to the status quo depending on the agency's existing regulatory practices and	Medium

	this could make it easier for government agencies to do their jobs.	whether regular review leads to changes to legislation.	
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
Wider 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.	Variable depending on the positive impact of changes, e.g. avoidance of regulatory failure can result in significant benefits where it avoids hefty costs or injury to the person	Low
Total monetised benefits		Uncertain	Low
Non-monetised benefits		Likely higher compared to taking no action	Low

Section 2B: Deciding upon an option to address the policy problem – recourse mechanism

88. Section 2B analyses the high-level options for a recourse mechanism to enable independent consideration of the consistency of existing regulation with the principles, primarily in response to stakeholder concerns. This is proposed as an additional mechanism to enhance transparency of whether existing regulation meets or does not meet regulatory standards, was included in the 2021 Bill as a function undertaken by the courts, and is currently included in the discussion document as a function undertaken by a Ministerially-appointed Regulatory Standards Board situated within the Executive.

What scope will options be considered within?

89. Section 2B assesses high-level options for a recourse mechanism because the discussion document includes a proposal to establish a Regulatory Standards Board for this purpose.

90. As this interim RIS is produced at an interim point of the policy process, options in this section will be analysed at a high-level, focussing on the *branch of Government that a recourse mechanism should be situated in* – i.e. the Executive, Parliament, or Judiciary. This interim RIS does not consider in any detail whether the intended objectives of the proposal could be achieved under the status quo and does not assess specific recourse mechanisms against each other.

91. The discussion document includes a range of questions around recourse mechanisms for public input through the consultation process. The feedback from consultation will inform the Ministry's policy development process, and direction for more detailed design choices. The Ministry will provide more comprehensive analysis on the merits of the status quo and specific recourse mechanisms in the final RIS on the Bill.

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

92. Five criteria will be used to compare options to the status quo:
    - accessibility
    - increased compliance with good practice
    - alignment with the constitutional role of the branch of government
    - timeliness
    - costs

What options are being considered?

Option 1 – Status Quo

93. There are a range of methods through which individuals and businesses can currently raise complaints, including in relation to aspects of regulation. Those institutions, and the scope of their functions, are outlined overleaf.

94. The Ministry for Regulation's new function for regulatory reviews will provide an additional avenue for individuals and businesses to raise complaints about regulation, or the operation of specific regulatory regimes. The Ministry is in the process of developing a publicly facing engagement hub which would allow complainants to

directly submit complaints. Members of the public will also continue to be able to make submissions on areas where there is an existing regulatory review underway as part of the public consultation process.

Recourse mechanism	Design features			
	What types of issues does the mechanism consider?	Who can raise a complaint?	Does the organisation have discretion to not hear complaints?	What remedies/recourse are available?
Regulations Review Committee	Secondary legislation	Anyone	Yes, the complaint must be placed before the Committee but the Committee may agree by unanimous resolution not to proceed with a complaint	Recommendation powers Report on any matter relating to secondary legislation including complaints about secondary legislation to the House; the House may amend or revoke the secondary legislation Government response required to RRC report within 60 working days
Parliamentary petitions	Wide remit – both primary and secondary legislation	Anyone	No, if petition meets requirements; however, petitions can be combined or referred to a more appropriate body	Recommendation powers Committee's reports are published to Parliament, or referred to Select Committee or the relevant Minister
Ombudsman	Decisions, and processes for decisions under primary and secondary legislation, but not quality of legislation	Complaints can be refused where the complainant has insufficient personal interest	Yes, on specific grounds (trivial, frivolous, insufficient personal interest, where investigation is unnecessary)	Recommendation powers Report concerns to Ministry or table recommendations to Cabinet Issue recommendations and can require agencies to respond
Raising with Ministers / agencies	Any matter	Anyone	Yes, though likely to hear complaint and respond via letter or meeting	Recommendation and amendment powers Complaints can inform future work programme or particular response to complaint If inquiry is established, powers under the Inquiries Act apply
Independent Commissions **(e.g. Health and Disability Commissioner, Privacy Commissioner)**	Depends on the scope of the entity, but generally focused on oversight of a body or an area of practice and investigation of matters within the scope of their functions; can cover quality of legislation within their scope and often have investigatory powers of a commission of inquiry	Depends on the entity	Depends on the entity, but most have specified process grounds to decline, or where the complaint is trivial; some entities have fairly broad powers to decline, e.g. the Privacy Commissioner	Powers depend on the Commission, e.g. the Privacy Commissioner has compensatory powers, compared to the Independent Police Conduct Authority where its powers are primarily recommendations
Tribunals **(e.g. Employment Relations Authority, Immigration & Protection Tribunal)**	Depends on the tribunal – includes reviewing government agency decisions or resolving civil disputes between parties by applying the law to the facts as determined by the tribunal; does not cover quality of legislation	Depends on the tribunal	Depends on the legislation governing the tribunal – some require a review before a claim can be lodged, e.g. for the Human Rights Review Tribunal, claims must be lodged with the relevant Commissioner first	Depends on the tribunal – each tribunal has its own powers set out in the relevant legislation Some can make recommendations which require consideration of decision (e.g. immigration), reinstate employees where unjustifiably dismissed (e.g. Employment Relations Authority), award damages/compensation Generally, tribunal decisions can be appealed to courts
Judicial Review	Focused on the way the decision is made; does not cover quality of legislation	Applicant must be directly affected or have legitimate concern	No	Declaratory / compensatory powers Quash decision Prohibit or order action Declaration

Option 2 – Strengthening recourse mechanisms within Parliament

95. This option would involve strengthening, or adding, a recourse mechanism within the New Zealand Parliament. Standing Orders currently provide that the Regulations Review Committee may consider complaints relating to the operation of secondary legislation. Standing Orders 326-328 set out the functions of the Regulations Review Committee, the grounds for drawing secondary legislation to the attention of the House, and complaints procedure.

Expanding the scope of the Regulations Review Committee or establishing a new legislation committee to consider primary legislation complaints

96. An amended Parliamentary recourse mechanism could involve expanding the scope of the Regulations Review Committee to examine complaints relating to primary legislation on substantially similar grounds to the current criteria set out in Standing Order 327(2). There is some alignment between some of the grounds and the proposed regulatory responsibility principles for inclusion in the Bill (Option 4 in Section 2A), such as "trespassing unduly on personal rights and liberties".

97. Alternatively, a new Select Committee could be created focusing on scrutinising legislative quality issues including examining complaints relating to primary legislation. The 2023 Standing Orders Review Committee recommended that consideration should be given to the creation of such a committee in the next three-yearly Standing Orders review.

98. The Ministry notes that any decision to expand the functions of the Regulations Review Committee or create a new committee would require amending Standing Orders, which would be at the discretion of Parliament rather than the Executive.[21]

Establishing a new Parliamentary Officer

99. Officers of Parliament are appointed by the Governor-General on the recommendation of the House. They work in an independent "watchdog" capacity, and help Parliament hold the Government of the day to account. Their powers enable them to further scrutinise the Government on behalf of the House of Representatives. There are currently three Officers of Parliament – the Ombudsman, the Controller and Auditor-General, and the Parliamentary Commissioner for the Environment.

100. Functions for a new Officer of Parliament to support regulatory scrutiny could include auditing the quality of disclosures made to Parliament and the quality of legislation provided to it, as well as dealing with complaints about legislation or consistency with legislative standards. This may provide for a more systematic review of complaints relative to the existing functions of the Regulations Review Committee. Special processes could be developed to enable any recommendations to be implemented, and these would need to be worked through with the Office of the Clerk. The establishment of a Parliamentary Officer could be authorised through a Bill rather than through amendments to Standing Orders.

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[21] However, the Minister may bring a matter to the attention of the Standing Orders Committee for their consideration, for example, through a letter to the Speaker to request the Committee to consider whether to make procedural changes.

Option 3 – Providing for a recourse mechanism within the Executive

101. Under this option, the recourse mechanism would form part of the Executive, either through expanding the existing functions of the Ministry for Regulation or creating a new institution. There are also choices around the degree of separation/independence between the Minister and the proposed institution. The Ministry has identified two main sub-options for a recourse mechanism within the Executive – a statutory officer (internal to the organisation) and a Ministerially-appointed Board (external to the organisation).

A statutory officer within the Ministry for Regulation

102. A statutory officer could be appointed within the Ministry for Regulation, with the scope of its functions similar to the roles of the Chief Archivist (within the Department of Internal Affairs), Surveyor-General (within Land Information New Zealand), or Director of Land Transport (within the Ministry of Transport). There could also be a direct reporting line to the Minister for Regulation for the purposes of the officer exercising their independent functions (similar to the Commissioner of Crown Lands and the Valuer-General). The role would be situated within the Ministry, but with a requirement to act independently when required by the Act.

Ministerially appointed Board outside of the Ministry for Regulation (the option proposed in the discussion document)

103. As an alternative to a role set up within the Ministry for Regulation, a Ministerially appointed Board could be established in the Executive branch of government. This option would provide a degree of separation from the Ministry itself.

104. The discussion document sets out the proposal for a Regulatory Standards Board to consider the consistency of regulation with standards, primarily in response to complaints. The proposal sets out that the Board would be established as an independent statutory Board comprising of members appointed by the Minister for Regulation and would require members to have a range of skills including legal and economic expertise. 9(2)(h)

Option 4 – Providing for a recourse mechanism within the Judiciary

Courts

105. The 2011/2021 Bills provided for the courts to grant declarations of incompatibility where primary or secondary legislation is inconsistent with the regulatory principles. This new role would be limited to the making of declarations of incompatibility with the specified principles of the Bill and would explicitly exclude any power to make injunctive or compensatory orders.

106. Initially, this would only apply to legislation passed after the Act comes into force. Following a transition period of 10 years, the jurisdiction would then extend to all legislation (including Acts), irrespective of when it was enacted.

107. The intent of this option was to incentivise Ministers and agencies to comply with the principles to avoid declarations of incompatibility where the courts deem that the principles have been breached. 9(2)(h) [redacted] This is likely to result in significantly more risk averse behaviour on the part of government agencies and Ministers, compared to situating the recourse mechanism elsewhere.

Specialist Tribunal

108. Tribunals are a relatively flexible mechanism with their jurisdiction and powers prescribed in statute. Some tribunals, such as the Human Rights Review Tribunal, can make declarations of inconsistency, though this is an unusual feature for a Tribunal. Compared to the judicial review function of the courts, the risks and costs of an adjudicative tribunal may be similar, given the quasi-judicial nature of tribunals.

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

	Option 1 – Status Quo	Option 2 – Strengthened recourse mechanism within Parliament	Option 3 – New recourse mechanism within the Executive	Option 4 – Recourse mechanism within the Judiciary
Accessibility	0	+ Expanding the scope of the RRC may increase accessibility for complaints about primary legislation, by providing a dedicated mechanism which is already established and therefore has some certainty of process. Conversely, this would be a substantial new role for the RRC, which may require additional resourcing in order not to result in delays and therefore reduce accessibility to recourse. This would depend on the number of complaints. If a separate Legislation Committee were to be established, this could increase accessibility to recourse for primary legislation complaints. Having separate committees for primary and secondary legislation may make recourse less accessible to the public as it adds complexity to the process. This may be mitigated by design and implementation decisions.	Variable depending on design Creating a new recourse mechanism may increase accessibility, compared to the status quo, as there will be a specific and dedicated avenue for complaints about both primary and secondary legislation. The accessibility of any new mechanism will depend on the detailed design choices and implementation.	- A judiciary-based recourse mechanism is likely to increase the cost of making a complaint. There is more formality with court processes. This could limit the types of individuals and businesses that can access the scheme. A specific tribunal would allow for a less formal process, less costs for complainants and therefore enable a broader range of individuals and businesses to access the scheme.
Increased compliance with good regulatory practice	0	Variable It is unclear whether expanding the role of the RRC to include primary legislation and its operation would result in increased compliance with good regulatory practice. The RRC may report to the House on complaints and so with an expanded scope could provide a more certain recourse for primary legislation complaints. Over a longer term, expanding the scope of the RRC or implementing a separate Legislation Committee could strengthen Parliamentary scrutiny of Executive decision-making. There may be an increase in risk-averse behaviour on the part of Ministers and government departments when developing and pursuing policy options, given the potential for a higher level of scrutiny. This is less so than with Options 2 and 3, but the risk is still present.	+ Creating any new model situated in the Executive could lead to increased compliance compared to the status quo as there will be dedicated capacity and capability to take forward complaints. The level of impact would depend on the functions and powers of the mechanism, and the strength of competing incentives. Where the Board is either providing scrutiny over legislation's consistency with the principles, or of government's assessments of consistency with the principles, this is likely to result in more risk averse behaviour (on the part of government agencies, compared to Options 1 and 2).	- It is unclear how effective the courts would be as a monitoring/quality assurance mechanism – as involvement would only be triggered in relation to specific proceedings, and the legislation relevant to those proceedings assessed for compatibility with the principles. A broader, more integrated role could likely be played by a specific tribunal, which would solely be focused on regulatory standards complaints. There is likely to be a significant inhibitive effect on government's development of regulatory proposals, due to the prospect being drawn into a court process and its costs leading to more risk-averse behaviour relative to Options 1, 2 and 3. Some principles proposed are open to trade-offs, and the judgment exercised in the interpretation and how these should be applied is more appropriately made by the Executive. 9(2)(h) [redacted]

				9(2)(h)
Alignment with constitutional role in the branch of government	0	+ Examining complaints about legislation falls within the primary roles of Parliament to legislate and maintain public trust in government by holding the Executive to account. Parliament can therefore make value judgements or reflect public concerns about existing or proposed legislation in line with its current constitutional role and other responsibilities. Some existing recourse mechanisms (such as the RRC) are situated in Parliament.	Variable depending on design The various proposed approaches for this option largely align with the Executive's constitutional role of administering the law. Having a statutory officer within a government agency is a model that has several precedents. The Board model gives the proposed recourse mechanism a higher degree of independence from government, although the extent of this is not yet clear and subject to further detailed design decisions. 9(2)(h)	- 9(2)(h)
Timeliness	0	Variable depending on design Without additional resourcing, expanding the role of the RRC may result in less timely responses to complaints, as it may be a substantial addition to the Committee's workload. A separate Parliamentary mechanism reviewing primary legislation may improve timeliness as it would have a narrower scope, and specific purpose and resourcing.	+ All models proposed would be newly established recourse mechanisms, with specific scope, resourcing, capacity and capability to review complaints about regulation. This is likely to result in more timely consideration of complaints than the status quo where a person may raise a complaint in a channel which has a multitude of other responsibilities and functions (such as a responsible Minister or agency). 9(2)(h)	- There may be significant waiting time for complaints to be considered and for a response or outcome, in part due to the higher level of formality for court processes. If a specialist tribunal model was established, this may result in more timely consideration of complaints, assessments and outcomes, compared to the courts.
Costs	0	- As the RRC has an existing mandate to review complaints in relation to secondary legislation, it could be efficient to strengthen or scale up the role of the RRC as it provides existing architecture. Conversely, this could be a substantial new role for the RRC with practical cost considerations around how it the role would be expanded. It could create substantially more work,	- A new recourse mechanism within the Executive ranges from significant to more modest extra costs (for instance, if a statutory officer is appointed). Costs will be highly dependent on the volume of complaints and how they are dealt with. Estimations for a Regulatory Standards Board could be around $1.8m per annum based on 20 findings a year.	- - Establishing a separate adjudicative, regulatory-focused tribunal will involve significant cost. This cost may or may not be justified depending on the volume of complaints. There is also the potential for significant increased costs if the courts are involved in assessing consistency of legislation, which would have flow-on impacts to the public as it may limit other work agencies can carry out.

		resulting in higher resourcing requirements and costs. This would depend on the number of complaints. Setting up a dedicated committee to review primary legislation complaints only is likely to be more costly.	9(2)(h)	9(2)(h)
Overall assessment	0	Variable depending on detailed design	Variable depending on detailed design	- -

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

109. The Ministry does not have sufficient information to inform a decision on whether it supports an additional recourse mechanism or its preferred recourse mechanism at this point of the policy process. At a high level, and in accordance with the multi-criteria analysis, the Ministry considers that if an additional recourse mechanism is preferred, it should be situated within either the **Parliamentary** or **Executive** branches of Government. The Ministry notes that a Parliamentary mechanism may align more closely with the stated objectives based on preliminary analysis, however some Parliamentary mechanisms (e.g. where amendments to Standing Orders are required) may be more appropriately determined by Parliament itself. Further work is needed to identify the relative costs and benefits of specific recourse mechanisms within Parliament and/or the Executive. This analysis will be informed by feedback provided through the public consultation process, as well as further design work undertaken by the Ministry.

110. However, the Ministry has sufficient evidence to conclude that the recourse mechanism should not sit within the Judiciary branch of Government. 9(2)(h)

111. This in turn may result in a significant inhibitive effect on government agencies and Ministers in the policy options analysed and pursued. The increased resourcing requirements to participate in a court process scrutinising decisions and compliance would be certain to eventuate where a recourse mechanism is established within the Judiciary, which makes the realisation of this risk comparatively certain. While any new recourse mechanism is likely to have some impact to this effect, the risk of this is significantly lessened if a recourse mechanism is situated within Parliament as the mechanism will be unlikely to be judicially reviewable. 9(2)(h)

The judgments of the application of the principles may be more appropriately conducted by the Executive.

112. Therefore, the Ministry does not support the use of the courts as a recourse mechanism and is unlikely to support the introduction of a new specialist tribunal. The Ministry's analysis of the relative costs and benefits of establishing a new recourse mechanism within the Judiciary indicates that there would be higher costs, both monetised and non-monetised, for most affected parties, compared to situating the mechanism within either Parliament or the Executive. This includes costs to members of the public in participating in the process (either through the time taken to represent themselves in a court process, or a direct cost of hiring legal representation), government agencies where there would be significant time, resourcing and monetary costs for legal analysis and representation to defend the legislation or law-making process under review, and to the Judiciary itself in establishing and maintaining

ongoing operations of the recourse mechanism. The benefits of situating a recourse mechanism in the Judiciary are considered to be similar to situating the recourse mechanism in another branch of Government.

What are the marginal costs and benefits of the option?

113. Given that the Ministry is not identifying a preferred option at this point, the marginal costs and benefits table focusses on the generic costs and benefits of introducing an additional recourse mechanism relative to the current status quo. Where a certain cost or benefit is specific to a particular mechanism (e.g. costs of pursuing litigation), this is identified in the cost benefit table.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs compared to taking no action			
Ministry for Regulation	Secretariat costs where the mechanism is situated internally to the Ministry (e.g. a Statutory Officer or Board)	Current estimate is $1-2 million per annum for the Ministry's secretariat function	Medium
Other government agencies (including in-house legal practitioners)	Costs of providing advice or evidence where a complaint is made about a regulatory system they administer Costs of providing agency response 9(2)(h) [redacted]	9(2)(h) [redacted]	Medium
Parliament	Where an extended recourse mechanism is situated within Parliament, additional costs are required for establishment and/or ongoing operation	Variable depending on detailed design	Medium
Judiciary	Where a recourse mechanism is situated within the judiciary, additional costs are required for establishment and ongoing operation Where a recourse mechanism is situated within the judiciary, additional time and resourcing is required to support litigation, which may have flow-on effects to the efficiency of administrating non-regulatory cases Opportunity costs associated with progressing non-regulatory cases which may mean comprising timely resolution of justice where other cases are at higher stake	Variable depending on the volume of complaints, higher if a specialist tribunal is proposed to be established	Medium
Lawyers / Legal Practitioners outside of the public sector	Administrative and financial costs associated with potentially increased caseload from legal enquiries	9(2)(h) [redacted]	Medium

		9(2)(h) [redacted]	
Members of the public	Additional time and cost associated with seeking the appropriate recourse mechanism to pursue a complaint	9(2)(h) [redacted]	Low
Total monetised costs		Variable depending on detailed design	Low
Non-monetised costs		Variable depending on detailed design, likely to be relatively higher with a judicial mechanism	Low
Additional benefits compared to taking no action			
Ministry for Regulation	Information gathered through findings made from the recourse mechanism can help the Ministry gain insight into regulatory issues, which can inform its future work programme		Low
Other government agencies	Government agencies can gain greater visibility of the impacts (including unforeseen impacts or unintended consequences of regulation) where these issues are surfaced through an additional recourse mechanism.	Variable	Low
Parliament	Where a recourse mechanism is situated within Parliament, greater visibility of impacts associated with regulation (including unforeseen impacts or unintended consequences) being surfaced Where a recourse mechanism is situated within Parliament, in the longer-term, MPs can be more empowered to identify these issues from the outset of legislation being introduced into the House, providing an “early intervention” mechanism towards the long-term improvement of regulatory quality Where a recourse mechanism is situated within Parliament, greater accountability towards ensuring adequate “checks and balances” between Parliament and the Executive		Low
Lawyers / Legal Practitioners outside of the public sector	Increased opportunities to provide access to justice for members of the public		Medium
Members of the public	Increased access to complaints processes, particularly where there is no specified process within the status quo		Medium

	Increased transparency which has the potential to result in increased trust in government Ability to gain greater understanding of the machinery of government		
Total monetised benefits		Variable depending on detailed design choices	Low
Non-monetised benefits		Variable depending on detailed design choices	Low

Section 3: Delivering an option

How will the new arrangements be implemented?

114. The approach for implementing the Bill would depend on the final policy choices as to the principles expressed in the Bill, the associated consistency mechanisms, and the selected recourse mechanism. Feedback received as part of the public consultation process will inform ongoing policy development in relation to those components of the Bill.

115. The Ministry will set out the implementation arrangements for the Bill in the final RIS to support Cabinet's final decisions on the Bill.

How will the new arrangements be monitored, evaluated, and reviewed?

116. The Bill will be administered by the Ministry for Regulation and form part of the Regulatory Management System.

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

Annex One: Revised wording of the proposed principles

The proposed principles are set out below, as well as in Discussion Area One of the accompanying discussion document.

Legislative design principles

Rule of law

- The importance of maintaining consistency with the following aspects of the rule of law:
    - the law should be clear and accessible
    - the law should not adversely affect rights and liberties, or impose obligations, retrospectively
    - every person is equal before the law
    - there should be an independent, impartial judiciary
    - issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion.

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.

Taking of property

- Legislation should not take or impair, or authorise the taking or impairing of, property without the consent of the owner unless:
    - there is good justification for the taking or impairment
    - fair compensation for the taking or impairment is provided to the owner
    - compensation is provided to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment.

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 costs of efficiently 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:
    - 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
    - the costs of efficiently achieving the objective or providing the function

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

Good law-making

- The importance of consulting, to the extent practicable, the persons or representatives of the persons that the government considers will be substantially affected by the legislation.
- The importance of carefully evaluating:
  - the issue concerned
  - the effectiveness of any relevant existing legislation and common law
  - whether the public interest requires that the issue be addressed
  - any options (including non-legislative options) that are reasonably available for addressing the issue
  - 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.

Regulatory stewardship

- Legislation should continue to be the most effective, efficient, and proportionate response to the issue concerned that is available.
- The system should continue to be fit for purpose for the people, area, market, or other thing that is regulated
- Unnecessary regulatory burdens and undue compliance costs should be eliminated or minimised
- Any regulator should have the capacity and the capability to perform its functions effectively
- Any conflicts or adverse interactions with other regulatory systems should be eliminated or minimised
- The importance of monitoring, reviewing, and reporting on the performance of the system.

Annex 4: Preliminary Treaty Impact Analysis for the proposed Regulatory Standards Bill

1. The Ministry for Regulation is undertaking a preliminary, high-level Treaty Impact Analysis (TIA) for policy proposals that would be contained in a Regulatory Standards Bill (the Bill). The purpose of this analysis is to provide an indication of the possible Treaty impacts of the policy proposals, the nature of Māori rights and interests, and implications for Treaty settlements. It follows guidance for policy makers set out in Cabinet Circular CO (19)5[1] and is informed by advice from the Crown Law Office.

2. While public consultation has been undertaken for previous iterations of the Bill, this is the first time the proposed features in this particular version of the Bill are proposed for engagement through the public release of a discussion document, along with targeted stakeholder consultation.

3. This preliminary analysis serves as an initial early review of policy proposals by officials, and will be further refined following proposed consultation on a public discussion document. We note, however, that the nature and extent of feedback to support this analysis will likely be impacted by a ministerial decision to include some targeted engagement with specific Māori stakeholders within a general engagement strategy, rather than undertaking a broad Māori engagement strategy.

4. The Preliminary Treaty Impact Analysis covers:

   - identification of Treaty of Waitangi/te Tiriti o Waitangi principles relevant to the proposal;
   - assessment of the proposed principles of responsible regulation against Treaty of Waitangi/te Tiriti o Waitangi principles;
   - assessment of the proposed recourse mechanism against Treaty of Waitangi/te Tiriti o Waitangi principles;
   - assessment of implications of the proposal for Treaty of Waitangi/te Tiriti o Waitangi settlement commitments;
   - the relevance of current and upcoming matters before the Waitangi Tribunal and the Constitutional Kaupapa inquiry.

Summary of analysis

5. The Treaty of Waitangi/te Tiriti o Waitangi (referred to as 'the Treaty/te Tiriti' for the purposes of this document) is recognised as a founding document of government in

[1] Cabinet Office, *Cabinet Office Circular CO (19) 5 Te Tiriti o Waitangi/Treaty of Waitangi Guidance 2019*.

New Zealand[2] and of 'vital constitutional importance.'[3] The provisions that are proposed to be contained in the Bill focus on the setting and application of selected standards for good law-making, legislative design, and regulatory stewardship. 9(2)(h)

6. 9(2)(h)

7. Of significance is that the proposals do not include a principle related to the Treaty/te Tiriti and its role as part of good law-making, meaning that the Bill is effectively silent about how the Crown will meet its duties under the Treaty/te Tiriti in this space. While this does not prohibit the Crown complying with the Bill in a manner consistent with the Treaty/te Tiriti, we anticipate that the absence of this explicit reference may be seen as politically significant for Māori and could be perceived as an attempt by the Crown to limit the established role of the Treaty/te Tiriti as part of law-making.

8. 9(2)(h)

9. With regard to Treaty/te Tiriti settlements, the proposals would exclude legislation that gives effect to or is otherwise related to, full and final Treaty/te Tiriti settlements. This may provide certainty for claimant groups on the impact of the Bill on current and future settlements.

10. 9(2)(h)

[2] Cabinet Office, Cabinet Manual 2023 (Wellington: Department of Prime Minister and Cabinet, 2023), Appendix A, p 155.

[3] Legislation Design and Advisory Committee *Legislation Guidelines 2021* Edition, p 24.

Relevant Treaty of Waitangi/te Tiriti o Waitangi principles

11. Treaty/te Tiriti principles have evolved over years of jurisprudence by the courts and the Waitangi Tribunal with a view to reflecting the spirit and intent of the Treaty/te Tiriti as a whole and the mutual obligations and responsibilities of the parties.[4]

12. Some of the core principles that have emerged through this process are:

- **Partnership** – under which the Crown and Māori both have a positive duty to act fairly, honourably, reasonably, and in good faith towards one another.[5]
- **Active Protection** – which places upon the Crown a positive duty to take reasonable steps to protect Māori interests, rangatiratanga, and taonga.[6]
- **Redress** – which requires the Crown to redress the wrongs it has perpetuated against its Treaty/te Tiriti partner.[7]

13. We have also identified three further Treaty/te Tiriti concepts of particular relevance in the context of this preliminary analysis:

- **Kāwanatanga** – which stems from Article 1 of the Treaty/te Tiriti that the Government gained the right to govern in return for the Crown's guarantee that Māori tino rangatiratanga over lands, people and taonga would be protected.
- **Tino rangatiratanga** - which recognises Māori autonomy and self-determination, as guaranteed in Article 2 of the Treaty/te Tiriti. Waitangi Tribunal reports have consistently affirmed that tino rangatiratanga is an equivalent term to autonomy or self government.[8]
- **Equity** - which derives from Article 3 of the Treaty/te Tiriti, and confirms that Māori have the rights and privileges of British subjects (in the modern context, the same as all other New Zealand citizens).[9] The Waitangi Tribunal has asserted that the principle requires "the Crown to act fairly to both settlers and Māori and to ensure that settlers' interests were not prioritised to the disadvantage of Māori.

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[4] *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513 (PC) *(Broadcasting Assets case)*.

[5] *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 at p 655 *(Lands case)*.

[6] *Broadcasting Assets* case, at p 517.

[7] The Courts and the Tribunal have both acknowledged the principle of redress and that past wrongs give right to a right of redress : Te Puni Kōkiri *He Tirohanga* ō *Kawa ki te Tiriti o Waitangi*, Wellington, 2001, p 100.

[8] Waitangi Tribunal, *Tauranga Moana, 1886–2006 : Report on the Post-Raupatu Claims*, Wai 215, 2 vols (Wellington : Legislation Direct, 2010), vol 1, pp 22–23; Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report*, Wai 2490 (Wellington : Legislation Direct, 2015), p 23; Waitangi Tribunal, *Te Whanau o Waipareira Report*, Wai 414 (Wellington : GP Publications, 1998), p 215.

[9] Waitangi Tribunal, *Kāinga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness*, Wai 2750 (Wellington: Legislation Direct, 2023), p 33.

Where disadvantage did occur, the principle of equity, along with those of active protection and redress, required that there be active intervention to restore the balance."[10]

Assessment of principles of responsible regulation in relation to Treaty of Waitangi/te Tiriti o Waitangi principles

14. The Bill includes principles of responsible regulation that the Government be required to consider when developing legislative proposals or exercising stewardship over regulatory systems. There are a range of principles in the Bill that will likely have implications for Māori rights and interests, including (but not limited to) principles related to the taking of property, liberties, equality before the law, and good law-making. These are discussed in further detail below.

15. Generally, because the Bill does not explicitly refer to the Treaty/te Tiriti or its principles, there may be uncertainty for how law-makers will be required to consider Māori cultural values and collective rights as tangata whenua (as opposed to individual rights) across the different principles and uphold tino rangatiratanga under Article 2.

Absence of a principle relating to the Treaty/te Tiriti

16. In addition to not referring to the Treaty/te Tiriti, the proposal does not include a principle relating to the Treaty/te Tiriti in relation to the development (or stewardship) of regulation.

17. The Courts and the Waitangi Tribunal have given significant consideration to the balancing of the concepts of kawanatanga and tino rangatiratanga.[11] The Waitangi Tribunal has recently noted its view that these concepts create a duty on the Crown to foster tino rangatiratanga, not to undermine it, and to ensure that its laws and policies adequately give effect to Treaty/te Tiriti rights and guarantees. [12]

18. 9(2)(h)

19. Further, the Crown has an obligation to actively protect the rights and interests of Māori under the Treaty/te Tiriti. The intent of the proposals is to set clear standards for regulatory quality and publicly hold responsible Ministers and departments to

[10] Waitangi Tribunal, *Tino Rangatiratanga me te Kaawanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry,* vol 1, (Wai 1040), (Wellington: Legislation Direct 2022), p 52

[11] Te Puni Kōkiri *He Tirohanga ō Kawa ki te Tiriti o Waitangi*, Wellington, 2001, p 49.

[12] Waitangi Tribunal, *Tino Rangatiratanga me te Kaawanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry*, vol 1, (Wai 1040), (Wellington: Legislation Direct 2022), p 69.

account in relation to them. 9(2)(h)

20. The absence of a principle relating to the Treaty/te Tiriti may be seen as implying that it is of lesser importance, with no obligation for Ministers to disclose and justify inconsistencies with the Treaty/te Tiriti as part of law-making.

21. 9(2)(h)

22. 9(2)(h)

Taking of property

23. The proposed principle relating to taking of property is:

> Legislation should not take or impair, or authorise the taking or impairing of, property without the consent of the owner unless:
>
> - there is good justification for the taking or impairment
> - fair compensation for the taking or impairment is provided to the owner
> - compensation is provided to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment.

24. New Zealand does not have set down in legislation a general protection of property rights from expropriation. 9(2)(h) This may also encourage the seeking of protection for Māori rights to own and use property currently recognised under legislation (such as the Marine and Coastal Area (Takutai Moana) Act 2011) when that legislation is reviewed in the future.

25. 9(2)(h)

26. Given the Bill does not explicitly refer to the Treaty/te Tiriti or tino rangatiratanga, there may be uncertainty as to how law-makers would be required to consider Māori cultural values and systems of law relating to property, including tikanga. This critique also applies to how the Bill would protect the rights and wellbeing of whānau, hapū and iwi, (including future generations) or the environment. Finally, the Bill is not clear how the proposed principles could apply to protected Maori land.

Liberties

27. The proposed principle relating to liberties is:

> 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.

28. New Zealand does not have set down in legislation a description of "liberties" or a statutory recognition of liberties in this form. Providing for liberties in the Bill could be interpreted as not only aligning with Article 2 of the Treaty/te Tiriti, but also actively supporting the strengthening of Māori rights.

29. 9(2)(h)

30. 9(2)(h)

31. 9(2)(h)

The rule of law

32. The proposed principle relating to the rule of law is:

The importance of maintaining consistency with the following aspects of the rule of law:

- the law should be clear and accessible
- the law should not adversely affect rights and liberties, or impose obligations, retrospectively
- every person is equal before the law
- there should be an independent, impartial judiciary
- issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion.

33. New Zealand currently has no equivalent formal statutory recognition for observing the right to equality before the law. While this principle appears to be focused on equality in the administration of the law, the Bill does not clearly delineate whether its interpretation favours equality in the administration of the law, or substantive equality:

   - Equality in the administration of the law emphasises that all individuals, including Māori, should be treated the same under legal frameworks, ensuring uniformity in legal processes and protections and upholding Article 3 (for example, voting rights legislation).

   - Substantive equality aims for equitable outcomes rather than just equal treatment, and would therefore acknowledge unique disparities faced by Māori. This could be seen to uphold the Crown's obligations under Article 2 and the concepts to actively support Māori self-determination under the Treaty/te Tiriti principles of active protection and equity. It would also align with the recognition in Cabinet Office Circular CO (24)5[13] that where there is good evidence there is a disparity in outcomes for Māori populations, services targeted to Māori populations may well be appropriate.

34. This means the Treaty/te Tiriti impacts of the proposed principle will depend upon which of those two interpretations of 'equality' is the most relevant in particular circumstances. 9(2)(h)

35. 9(2)(h)

[13] Cabinet Office, *Cabinet Office Circular CO (24) 5 Needs based service provision Guidance* 2024.

9(2)(h)

Good law-making

36. The proposed principle relating to good law-making is:

    The importance of consulting, to the extent practicable, the persons or representatives of the persons that the Government considers will be substantially affected by the legislation.

    The importance of carefully evaluating:

    - the issue concerned
    - the effectiveness of any relevant existing legislation and common law
    - whether the public interest requires that the issue be addressed
    - any options (including non-legislative options) that are reasonably available for addressing the issue
    - 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.

37. The Treaty/te Tiriti principles create an expectation of properly informed and good faith decision making, and that of partnership generally, which indicates that the Crown should take reasonable steps to make informed decisions on matters that affect Māori interests.

38. 9(2)(h)

Regulatory stewardship

39. The proposed principles relating to regulatory stewardship are:

    Legislation should continue to be the most effective, efficient, and proportionate response to the issue concerned that is available.

    The system should continue to be fit for purpose for the people, area, market, or other thing that is regulated

    Unnecessary regulatory burdens and undue compliance costs should be eliminated or minimised

    Any regulator should have the capacity and the capability to perform its functions effectively

    Any conflicts or adverse interactions with other regulatory systems should be eliminated or minimised

The importance of monitoring, reviewing, and reporting on the performance of the system.

40. There are currently relatively few formal checks and balances in place in relation to the performance of existing regulation, or monitoring of department's stewardship of their regulatory systems.

41. The proposed principle relating to regulatory stewardship would recognise and provide for these oversight arrangements in legislation. 9(2)(h)

42. 9(2)(h)

Assessment of potential impacts of proposed recourse mechanism

43. The proposed Bill would establish a Regulatory Standards Board in the Executive branch of government to consider the consistency of regulation with the principles of responsible regulation in response to complaints.

44. Such a recourse mechanism could enable Māori to raise concerns about regulation that may adversely affect Māori rights and interests under the Treaty/te Tiriti. The process of providing another avenue to raise these concerns may support the Treaty/te Tiriti principle of active protection.

45. However, given that the Board would only be able to make non-binding recommendations, it is likely to have limited impact in relation to the principle of redress.

46. Further, because the proposals do not set out the detailed design of the Board at this stage, it is unclear how the skills and experience of the Board will be representative of Māori perspectives or Treaty/te Tiriti rights and obligations under Article 2, along with the principles of active protection and partnership. There may also be uncertainty for how the Board will support the capability and capacity of Māori to participate in recourse under the principle of redress.

Assessment of implications of the proposals for Treaty of Waitangi/te Tiriti o Waitangi settlement commitments

47. The impact on Treaty/te Tiriti settlement commitments are detailed below:
    - The proposals would exclude legislation that gives effect to or is otherwise related to, full and final Treaty/te Tiriti settlements. This may provide certainty to post settlement governance entities and negotiating groups around the impact of the Bill on current and future settlements.

- Requiring the government to transparently assess the consistency of existing regulation with the principles of responsible regulation may result in uncertainty around the durability of redress negotiated in the context of various types of legislation. For example, in the context of the Resource Management Act 1991 or Conservation Act 1987.
- 9(2)(h)

Current and upcoming matters before the Waitangi Tribunal and the Constitutional Kaupapa inquiry

48. The Bill may be relevant to current and upcoming matters before the Waitangi Tribunal, including the Constitutional Kaupapa inquiry (Wai 3300) which pertains to claims that include grievances relating to the constitution and self government.[14]

49. The Waitangi Tribunal has made an indication that some of the central themes of the inquiry will likely include tino rangatiratanga, mana motuhake, autonomy, and self-governance; kāwanatanga, constitutional legitimacy and sovereignty; parliamentary sovereignty and systems; tikanga tuku iho me ngā ture pākehā; national models of Māori self-government; and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi.

50. 9(2)(h)

The Office for Māori Crown Relations – Te Arawhiti

51. The feedback from the Office for Māori Crown Relations - Te Arawhiti has been incorporated throughout this paper with further comments detailed below:
    - Many of the potential impacts of the Bill on Māori rights and interests and the Māori-Crown relationship could be mitigated by ensuring that good faith engagement with appropriate Māori groups occurs prior to policy decisions being made on either new regulations or legislation, or reviews of existing regulations and legislation undertaken under the Bill; also through ensuring the engagement that occurred was consistent with the consultation principle.

[14] https://www.justice.govt.nz/justice-sector-policy/tomokia-nga-tatau-o-matangireia-constitutional-kaupapa-inquiry-wai-3300 (accessed 6 October 2024)

- Whether engagement will be successful in mitigating risks will depend in part upon whether the relevant Māori group accepts the principles contained in the Bill as genuinely representing good law-making and supporting appropriate approaches to achieving economic efficiency.

- The fact that the Bill arises from an undertaking in a coalition agreement to pass a Regulatory Standards Act as soon as practicable may impact the level at which Māori engage on the discussion document.

Annex 5: Summary of substantive agency feedback

Area of feedback	Agencies raising issue	Summary of issues raised by agencies
Support for aspects of the proposal	Ministry for the Environment, Department of Internal Affairs, the Treasury, Ministry of Business, Innovation and Employment, Ministry for Culture and Heritage, Ministry of Social Development, Ministry of Education, Ministry of Foreign Affairs and Trade, Office of the Clerk, Ministry of Defence, Ministry of Justice	Several agencies commented that they support the overall aim of improving the quality of New Zealand's regulation/legislation. Ministry of Education supported the idea of the Ministry for Regulation having more oversight of quality assurance processes in relation to regulation and thought its reporting on a whole of system basis could be useful. Ministry of Justice supported exclusion of the courts in providing recourse.
Rationale for and scope of proposal	Department of Internal Affairs, Ministry of Business, Innovation and Employment, Ministry of Education, New Zealand Customs Service, Cancer control agency, Ministry of Health, Ministry of Social Development, Ministry for the Environment, Ministry of Social Development, Ministry of Housing and Urban Development, Office of the Clerk, Ministry of Foreign Affairs and Trade, Reserve Bank of New Zealand	Lack of analysis of why current administrative requirements are not sufficient to ensure quality of regulation. Lack of analysis extends to not informing Ministers of alternative options. There should be more consideration of benefits broader than economic growth. Other options should be considered that have lower legal and other risks. The Cabinet paper and discussion document should explicitly recognise the linkage between the short parliamentary term and the time-pressure it creates for policy-making and the legislative process. There should be mention of the free trade agreements New Zealand needs to comply with and the regulatory requirements that these impose. The definition of 'regulation' in the discussion document is very broad and could capture government education programmes.
Implications for agencies	Ministry of Justice, Ministry of Business, Innovation and Employment, Ministry for the Environment, Department of Internal Affairs, Ministry of Transport, Ministry of Health, LINZ, Ministry of Social Development, Ministry of Education, Ministry of Foreign Affairs and Trade, New Zealand Customs Service, Department of Department of Corrections, Ministry of Defence, the Treasury	Agencies are not resourced and/or don't have the capability to carry out regular reviews of legislation, and the Cabinet paper should be more explicit about the trade-off between this activity and other priority work in the absence of new funding. Agencies with large amount of legislation would be disproportionately affected, and the proposals do not consider scarcity of PCO drafting resource and House time. The proposal would also add to the time it takes to progress regulatory change and to the complexity of the process, which is not addressed in the Cabinet paper. The Treasury advised that the identified financial costs should be reflected explicitly in the Cabinet paper, and noted its view that there are unlikely to be any cost savings associated with the proposal over time.
Proposed principles and supporting guidance	Ministry of Justice, Ministry of Health, the Treasury, Department of Internal Affairs, Department of Department of Corrections, Ministry for the Environment, Ministry of Defence, Ministry of Housing and Urban Development	9(2)(h) [redacted]
Provision for a Treaty principle	Te Arawhiti, Ministry of Health, Ministry of Education, Ministry for Culture and Heritage, New Zealand Customs Service	The Cabinet paper/discussion document does not provide a clear rationale for exclusion of a Treaty principle. Exclusion of a Treaty principle could create ambiguity for law makers. Exclusion of a Treaty principle could affect the Ministry of Health's regulation-making powers in areas with significant health inequities for Māori.

Area of feedback	Agencies raising issue	Summary of issues raised by agencies
Treatment of Treaty settlement-related legislation	Te Arawhiti, Ministry for the Environment	The Cabinet Paper should specifically address the issue of whether regulation that is related or substantive to a Treaty settlement should always be exempt from all or parts of the Proposed Bill
Regulatory Standards Board	Ministry for the Environment, the Treasury, New Zealand Customs Service, Ministry of Social Development, Department of Internal Affairs. Ministry of Education, Ministry of Foreign Affairs and Trade, New Zealand Customs Service, Ministry of Housing and Urban Development, Public Service Commission	It is unclear how the proposed board's functions would align with similar review functions undertaken elsewhere (e.g. by the Regulations Review Committee). There is a risk the Board will consider complaints from people who simply do not like the regulation, and guidance should provide for restrictions on misuse of the complaints process. More information should be given on the make-up of the Board, and there is a risk it may not be independent. Membership of the Board should include expertise in relation to the Treaty and Māori rights and interests. It is unclear how reviews will take account of broader economic goals or implementation of regulation. Consideration should be given to how the performance of the board would be monitored and assessed
Review of existing regulation	Ministry of Business, Innovation and Employment, Ministry for the Environment, Ministry of Education, Ministry of Foreign Affairs and Trade	Agencies supported proposals to provide agencies with significant flexibility to plan and carry out reviews. Accountability for developing and implementing a plan for review of legislation should sit with Ministers rather than agencies, as they set the policy work agenda and LEG programme
Proposed new powers	Ministry of Health, Public Service Commission, Ministry of Education, National Emergency Management Agency, Ministry of Housing and Urban Development	Information-gathering powers may not be required in the context of agency cooperation and the OIA, and should be subject to safeguards. Proposal to enable MfR to require information from all entities that perform statutory regulatory functions (including local government) could have a potential administrative burden on CDEM Groups that may be disproportionate to the scale of their role. Regulatory review initiation/information gathering powers should require mutual agreement e.g. via Order in Council. Public Service Commission is concerned that the new review requirements for agencies cut across its responsibilities, and wants other options to be looked at including standards under the Public Service Act, use of the ministerial expectations process, or a Cabinet circular.
Human Rights implications	Te Arawhiti	The current wording is confusing in relation to whether further analysis of human rights implications is needed
Preliminary Treaty impact analysis (TIA)	Ministry for the Environment	The TIA should be reflected more in the body of the Cabinet paper
Discussion document	Department of Internal Affairs, Te Arawhiti, Office of the Clerk, Ministry of Business, Innovation and Employment, Ministry for the Environment, Ministry of Housing and Urban Development, Ministry of Defence, Public Service Commission, New Zealand Customs Service	The discussion document is not appropriate to the nature and significance of the issues, should consider a range of options and benefits, rather than just putting forward one option, and is not likely accessible to laypersons. The problem definition in the discussion document is weak. There is a lack of balance in some questions, and the background section should talk about some of the strengths of New Zealand's regulatory performance as well as the weaknesses. The discussion document should refer to consultation on a 'draft' Regulatory Standards Bill, and could refer to the role of the Treaty Provisions Oversight Group in helping ensure that legislation introduced into the House is of high quality.
Implementation of the proposal	The Treasury, Department of Internal Affairs, Department of Department of Corrections, Ministry of Social Development, New Zealand Customs Service, Cancer Control Agency	There should be more details provided on implementation of the proposal. Significant transition time will be needed for agencies to prepare for implementation. The Cabinet paper should clarify what plans the Ministry has to support implementation, monitoring and maintenance of the new legislation or whether agencies would be expected to address any consequences individually.
Consultation process	Te Arawhiti, Ministry for the Environment, Department of Internal Affairs, Inland Revenue	Lack of referral to planned targeted engagement with some Māori organisations. Targeted engagement could be extended to consumer groups, NGO sectors and Māori organisations. Consultation should include sufficient time for Māori to engage. 9(2)(g)(i)