



To	Hon David Seymour, Minister for Regulation		
Title	Agreeing to a consultation approach on the Regulatory Standards Bill	Number	MFR2024- 064
Date	13 September 2024	Priority:	High
Action Sought	Agree to the recommended actions	Due Date	16 September 2024
Contact Person	Pip van der Scheer, Manager	Phone	9(2)(a)
Contact Person	Laura Fair, Principal Advisor	Phone	9(2)(a)
Attachments	Annex 1: Proposed stakeholders for targeted consultation and engagement	Security Level	IN CONFIDENCE

Executive Summary

1. The ACT-National Coalition agreement committed 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.
2. Now that you are at the point of making final decisions on the high-level proposals for a new Regulatory Standards Bill to take forward to Ministerial consultation, we think it is timely to consider an approach for public engagement and consultation.
3. We recommend undertaking targeted engagement via a discussion document which includes drafted principles of responsible regulation and associated clauses, along with indications of other preferred policy positions.
4. We also recommend engagement be targeted to address the anticipated broad range of stakeholder interest in these proposals, alongside wider public engagement over a six-week period. Further, that early and ongoing engagement with Māori occur throughout the policy development and legislative process to meet good practice and to comply with the Crown's Treaty of Waitangi (Treaty) obligations.
5. This approach takes into consideration the constitutional significance of the Bill and varied interests of different stakeholders, spanning from those interested in the technical detail of the principles in the Bill, to those that are interested in the overarching intent and wider constitutional implications.
6. The proposed approach also takes into consideration your desire to introduce the Bill early in the first term of parliament, noting that the timeframe to complete engagement prior to end of the sitting year is challenging and would only be possible in a best-case scenario. This includes receiving confirmation of the refined proposal for inclusion in the discussion document and associated Cabinet Paper in the coming weeks, following Ministerial consultation.



Recommended Action

We recommend that you:

- a **note** that there a number of public sector guidelines that set out best practice for consultation to inform decision-making on policy proposals, including Cabinet’s impact analysis requirements and LDAC Legislation Guidelines *Noted*

- b **note** that your decisions to date on the principles of responsible regulation include retaining a principle relating to good law-making which includes ‘consulting the persons or representatives of the persons that the Government considers will be substantially affected by the legislation.’ *Noted*

- c 9(2)(h) [REDACTED] [REDACTED] [REDACTED] *Noted*

- d **note** that the proposed approach to consultation contained in this briefing takes into account the above factors *Noted*

- e **agree** that public consultation should occur through targeted and public engagement via a discussion document which includes drafted principles of responsible regulation and associated clauses, along with indications of other preferred policy positions *Agree / Disagree*

- f **agree** that early and ongoing engagement with Māori occur throughout the policy development and legislative process, including engagement with Māori experts prior to wider public engagement *Agree / Disagree*

- g **provide** feedback, if any, on the list of targeted stakeholders in **Annex 1** *Yes/No*

- h **authorise** the Ministry to seek agreement from the Attorney-General for a partial exposure draft covering principles of responsible regulation and associated clauses of the Bill *Yes/No*




- i **note** that we have provided an indicative approach and timeframe to progress and conclude consultation by 20 December 2024 *Noted*

- j **note** that in order to conclude public consultation by the end of the sitting year, confirmation of the refined proposal for inclusion in the discussion document and associated Cabinet Paper (following Ministerial consultation) is needed by 26 September, and Cabinet needs to approve the release of the discussion document no later than 12 November. *Noted*

- k **agree** that this briefing will not be made public until proactive release of the final Cabinet paper, to ensure that you have sufficient time to consider and make decisions on the Bill. *Yes/No*

9(2)(a)



Pip van der Scheer

Manager

Ministry for Regulation

Date: 13 September 2024

Hon David Seymour

Minister for Regulation

Date:



Purpose of briefing

7. This briefing seeks your agreement to undertake targeted stakeholder and public engagement on the Regulatory Standards Bill via a discussion document which includes pre-drafted principles of responsible regulation and associated clauses, along with indications of other preferred policy positions. It also provides provisional timelines for your consideration.

Background and context

8. In August 2024, we provided an aide-memoire noting the factors that would inform timelines for progressing the updated Regulatory Standards Bill [MFR2024-092 refers], and that we would provide advice on consultation and engagement options and the associated timing implications.
9. In recent discussions with officials, your office has suggested consultation on both a discussion document and the drafted principles of responsible regulation.
10. Decisions should now be taken on the overarching approach for consultation, including the content engaged on, who is engaged with, and the timeframes.
11. The purpose of consultation is generally to ensure that an informed decision is made and that the perspectives and interests of affected parties are taken into account. In the Treaty of Waitangi/Te Tiriti o Waitangi (Treaty) context, the purpose is also to facilitate active engagement of Māori, protection of interests, as well as a more general understanding of Māori perspectives, in order to comply with Treaty obligations.
12. Various guidelines set out best practice for consultation to inform decision-making on policy proposals. These include Cabinet's impact analysis requirements, Legislation Design and Advisory Committee Legislation Guidelines, the Policy Project's Policy Quality Framework, Te Arawhiti Guidelines on engagement with Māori, and Crown Law Office's guide to good decision-making and the law in New Zealand. The Courts and Waitangi Tribunal have also found duties to consult as part of the principles of the Treaty, and New Zealand's international agreements also impose some duties to consult.
13. Further, decisions taken to date on the principles of responsible regulation include retaining a principle relating to good law-making which includes *consulting the persons or representatives of the persons that the Government considers will be substantially affected by the legislation*.

The nature and extent of interest in the Bill

14. There have been consistently high levels of public interest in the different iterations of the Regulatory Standards Bill, with the Select Committee process in 2011 identifying varied views across different stakeholder groups. Feedback included strong views around the selection and formulation of some of the stated principles of responsible regulation, along with the interpretative and declarative roles proposed to be given to the Courts. In particular, legal practitioners (including industry bodies, academics, and practicing



counsel) had expressed significant concern around the constitutional implications of the Bill.

15. Given that the Bill references fundamental principles relating to New Zealand’s constitution, and the rights and liberties of New Zealanders, we anticipate it will have some degree of impact on all New Zealanders.

Māori rights and interests and the role of the Crown in engagement with Māori

16. We also anticipate that the Bill will be of specific interest for Māori due to its constitutional significance and the Treaty concepts of kāwanatanga and tino rangatiratanga being central to the process of the law-making. As a result, we expect Māori will consider fundamental Treaty rights to be engaged. We are also aware that New Zealand’s constitutional regime is under current consideration in the Waitangi Tribunal’s Constitutional Kaupapa Inquiry (Wai 3300).
17. The Waitangi Tribunal has treated the standard for Crown engagement with Māori as a spectrum or sliding scale, depending on the nature and extent of the Treaty partners’ respective interests in the issue at hand.
18. The Office for Māori Crown Relations – Te Arawhiti has issued guidelines for how agencies should consider Treaty implications in policy development and implementation, alongside a range of guidance on how engagement with Māori should be approached. The guidance notes that the way the Treaty is recognised in policy should “be the product of genuine engagement with relevant iwi/Māori groups, analysis and debate”¹ and “[e]arly engagement with affected iwi Māori is crucial for informing development of policy that provides for the Treaty”.²

19. 9(2)(h) [Redacted]

20. 9(2)(h) [Redacted]

Process to progress consultation and engagement on the Bill

21. While the public had the opportunity to comment on the 2011 Bill during the Select Committee process, there has been no targeted or public engagement on the updated Bill. We are of the view that consultation prior to seeking Cabinet policy approvals to draft allows the greatest scope for the Ministry to meet best practice for effective public

¹ Te Arawhiti, ‘Providing for the Treaty of Waitangi in Legislation and Supporting Policy Design: Questions for Policy-makers’, March 2022, p 4.

² Te Arawhiti, ‘Providing for the Treaty of Waitangi in Legislation and Supporting Policy Design: Questions for Policy-makers’, March 2022, p 7.



consultation and decision making in government. It also provides for nation-wide engagement with iwi/Māori as part of the Treaty principle that both the Crown and Māori have a positive duty to act reasonably, honourably and in good faith.

- 22. We recommend a six-week consultation process via a discussion document which includes drafted principles of responsible regulation and associated clauses, along with indications of other preferred policy positions.
- 23. Any decision to limit or truncate consultation processes may mean that the Bill does not meet Cabinet's expectations, and the Bill may be perceived as being inconsistent with good law-making standards proposed for inclusion in the Bill. It may also increase the risk of poorly informed policy decisions and that the Bill may not be enduring law.

Consultation via a discussion document and partial exposure draft

- 24. Discussion documents are an important part of the policy engagement process to support effective consultation and they come in different formats that serve different purposes.
- 25. Given that the Bill has already been agreed to be progressed as part of the Coalition Agreement between the New Zealand National Party and ACT New Zealand, we think the discussion document should focus on the drafted principles of responsible regulation and associated clauses, along with indications of other preferred policy positions. We consider that this approach will carefully balance general interests in the Bill and its constitutional nature, alongside those interests in the actual wording of the principles given their novel and technical nature.
- 26. Having a narrower discussion document of this type would mean that an interim Regulatory Impact Statement (RIS) would need to be prepared to support Cabinet decisions to release the discussion document. The publication of drafted principles and associated clauses would also be subject to approval from the Attorney-General to release a partial exposure draft.
- 27. As a matter of process, the RIS would be published alongside the document and could therefore be an additional aide for those seeking to understand how the various policy positions have been reached.
- 28. While we note that this approach carries a perception risk that policy proposals have already been agreed, we think that careful communication will help aid understanding that the intent of consultation is to be meaningful through helping to further inform policy development prior to seeking Cabinet approvals to draft the Bill.

Targeted stakeholder and public engagement

- 29. In order to meet the anticipated broad range of interests in the Bill, we propose both targeted engagement with key stakeholders alongside general public engagement.
- 30. As discussed earlier in this paper, it is expected that the Bill will be an area of significance for Māori. 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



31. To ensure consistency with good practice around engagement with Māori, including The Office for Māori Crown Relations – Te Arawhiti Guidelines, we also recommend the development of a Māori engagement strategy on the new Bill. The strategy would outline an approach to working collaboratively with Māori throughout the policy development and legislative drafting process. This would include early engagement with a small group of Māori, Treaty, legal and constitutional experts prior to wider public engagement, so far as is practicable in the time available. This may be able to extend to the National Iwi Chairs forum subject to their availability.
32. **Annex 1** provides an indicative list of stakeholder groups that we propose to target engagement with. We welcome your views on any additional stakeholder(s) for inclusion in the group.
33. The Ministry would perform consultation and engagement functions via our newly established engagement hub, alongside face-to-face workshops and public meetings during the consultation period. We would also work with your office to discuss the communications plan and details for any wider promotion of engagement on the Bill.
34. Following the conclusion of consultation, we would then analyse all submissions and provide feedback to inform the development of policy recommendations for the Bill.

Timeline for progressing consultation

35. In our recent aide-mémoire on progressing the updated Regulatory Standards Bill [MFR2024-092 refers] we signalled that Cabinet's final decisions on the policy for the Bill, and the decision to issue drafting instructions, could be sought around five months following your decisions on key elements of the Bill (assuming public consultation is undertaken via a discussion document). It would then likely take another two to three months for drafting and to seek approval for introduction of the Bill.
36. If decisions are reached on core policy elements of the Bill within the next two weeks, then there may be an opportunity to progress and conclude public consultation prior to the end of the sitting year.
37. An indicative timeline is provided below for your feedback, which includes potential time savings, including shortened consultation with agencies and your Ministerial colleagues, which carries risks. In order to conclude the public consultation process by the end of 2024, Cabinet must agree to release the discussion document in early November.
38. Should you wish to pursue this timeframe then we would report back seeking your confirmation of the draft discussion document and associated Cabinet approvals within the next four weeks. We would then intend to lodge the Cabinet paper, the accompanying interim RIS and draft discussion document for consideration at Cabinet Expenditure and Regulatory Review (EXP) Committee in late October.
39. Subject to Cabinet approval to proceed with consultation, we further propose that targeted and public consultation begin in early-November and conclude prior to the end of the sitting year. We would then seek to return to Cabinet with final policy proposals by February 2025 with the intention to commence drafting and then seek further agreement to introduce the Bill in April-May.

The proposed approach involves some trade-offs and will require close co-ordination



40. The proposed approach is designed to effectively deliver your priorities within this parliamentary term, however the timeframes are exceptionally constrained with trade-offs and potential risks. The proposed approach relies on some streamlined or truncated processes and creates risk that some processes do not meet best practice.
41. To meet the proposed timeframes during every phase will require close coordination with you and your office to ensure timely decisions and Cabinet consideration.
42. We will provide updates on the timelines at your meetings with officials and discuss any emerging issues and their impact on timeframes with you at an early stage.

Table 1: Indicative timelines to progress consultation and engagement on the Bill

Timing	Stage
26 September	Key elements of the Bill agreed for inclusion in discussion document and Cabinet paper following Ministerial consultation
10 October	Draft discussion document and Cabinet paper provided for Minister feedback and approval
14-25 October	Agency and Ministerial consultation
31 October	Paper lodged with EXP Committee, along with interim RIS.
5 November	EXP Committee consideration
11 November	Cabinet consideration
	Discussion document publicly released and consultation opens
19 December	Public consultation ends

Next steps

43. Subject to your feedback, we will progress work on the draft discussion document and Cabinet paper for your consideration in early October.



Annex 1: Indicative list of stakeholders for targeted engagement

The list below is an indicative group of stakeholders we would seek to engage with on the policy proposals for the Regulatory Standards Bill.

- Key regulatory or legal contacts in public sector agencies
- Members of other branches of government (MPs)
- Former Regulatory Responsibility Taskforce members
- Business New Zealand (BusinessNZ)
- Property Council New Zealand (PCNZ)
- Local Government New Zealand (LGNZ)
- The National Iwi Chairs Forum (NICF)
- New Zealand Society of Local Government Managers (SOLGM)
- Māori Public Sector Network
- Legal communities. A variety of external public and constitutional law experts, including Government Legal Network, New Zealand Law Society (including Te Hunga Rōia Māori o Aotearoa/the Māori Law Society), Universities, Society committees, members of the judiciary, lawyers from major law firms
- Te Tai Kaha - The New Zealand Māori Council (NZMC) including Member Organisations Federation of Māori Authorities (FOMA) - Ngā Kaiārahi o te Mana o te Wai Māori (formerly Kāhui Wai Māori)