



To	Hon David Seymour, Minister for Regulation		
Title	Draft Regulatory Standards Bill Cabinet paper and discussion document for Ministerial consultation	Number	MFR2024-130
Date	11 October 2024	Priority:	High
Action Sought	Provide feedback to officials on the attached draft Cabinet paper and discussion document Commence Ministerial consultation on the papers on 16 October.	Due Date	15 October 2024
Contact Person	Andrew Royle, Deputy Chief Executive Policy	Phone	9(2)(a)
Contact Person	Elisa Eckford, Principal Advisor	Phone	9(2)(a)
Attachments	Yes (Annexes 1-3)	Security Level	IN CONFIDENCE

Executive summary

1. This briefing provides you with a draft Cabinet paper seeking agreement to release the discussion document *Have your say on the Regulatory Standards Bill*. Both documents are attached to this briefing as **Annex 1 and Annex 2** respectively, for your review.
2. Following any feedback from you on the draft Cabinet paper and discussion document by Tuesday 15 October, we will update the documents ready to circulate for agency and Ministerial consultation to begin on Wednesday 16 October. We have based this on a requirement for a one-week Ministerial consultation period for Coalition commitments, as advised by your office.
3. As previously advised, the timeframes for meeting an early November start date for public consultation are very tight. If significant changes are required to the Cabinet paper or discussion document through Ministerial or agency consultation, it is unlikely that the papers will be ready to lodge for EXP Cabinet Committee on 31 October to meet this consultation start date. We have factored your meeting with the Attorney-General into the timing.
4. Following discuss with your office, the current approach in both the Cabinet paper and discussion document is to present the Regulatory Standards Board as the proposed recourse mechanism, rather than both the Board and the courts being proposed as alternative mechanisms. If you would prefer both options to be put up, we can reflect this in both the Cabinet paper and the discussion document – however, this is likely to have an impact on timeframes, which rely on a quick turnaround in between Cabinet Committee discussion of the paper and the release of the discussion document.
5. Crown Law Office (CLO) advice on the proposed approach to a Bill is attached at **Annex 3** of this paper, and a CLO summary of this advice is attached as an appendix to the draft Cabinet paper. Included in this briefing is a summary that CLO has prepared of its position, which



takes into account its discussion with Jack Hodder. We have provided this summary to Jack Hodder to get his written views in response.

6. We are currently finalising our interim Regulatory Impact Statement (RIS) and preliminary Treaty Impact Analysis, and these will be provided to you for your information early next week.

Recommended action

7. We recommend that you:
- a **agree** to provide officials with your feedback on the draft Regulatory Standards Bill Cabinet paper and discussion document by Tuesday 15 October *Agree / Disagree*
 - b **agree**, subject to your approval of the papers, to commence Ministerial consultation on the draft Cabinet paper and discussion document by Wednesday 16 October, based off a requirement for a one-week Ministerial consultation period for Coalition commitments, as advised by your office *Agree / Disagree*
 - c **note** that officials will commence agency consultation on the draft Cabinet paper and discussion document on Wednesday 16 October *Noted*
 - d **agree** that the Ministry for Regulation proactively release this briefing at the same time as the Cabinet paper, related Cabinet Minute and substantive advice (including briefings) related to the Regulatory Standards Bill, with appropriate redactions, in accordance with the Government's proactive release policy *Agree / Disagree*

9(2)(a)



Andrew Royle

Deputy Chief Executive Policy

Ministry for Regulation

Date: 11 October 2024

Hon David Seymour

Minister for Regulation

Date:



Purpose of report

8. This report provides you with a draft Cabinet paper and discussion document for your review, and for consultation with your Ministerial colleagues.

Draft Cabinet paper and discussion document

9. A draft Cabinet paper seeking Cabinet agreement to release a discussion document on the proposed Regulatory Standards Bill as a basis for public consultation is attached as **Annex 1**. A draft discussion document *Have your say on the Regulatory Standards Bill* is attached as **Annex 2**.
10. The discussion document sets out your proposal to introduce a Regulatory Standards Bill and includes contextual information and a range of questions to prompt public feedback.
11. As discussed with your office, the current approach in both the Cabinet paper and discussion document is to present the Regulatory Standards Board as the proposed recourse mechanism, rather than both the Board and the courts being proposed as alternative mechanisms. If you would prefer both options to be put up, we can reflect this in both the Cabinet paper and the discussion document – however, this is likely to have an impact on timeframes, which rely on a quick turnaround in between Cabinet Committee discussion of the paper and the release of the discussion document (see the current timeline set out below).

Crown Law Office advice

12. Crown Law Office (CLO) advice on your proposed approach to a Bill is included in **Annex 3** of this paper. A summary of that advice is attached as an appendix to the draft Cabinet paper.
13. Last week we met with CLO and Jack Hodder to discuss the CLO position on legal risks in the Regulatory Standards Bill proposals and identify areas of disagreement. CLO has prepared a summary of its position, which takes into account the discussion with Jack Hodder, and which we have provided to Jack to get his written views in response. **9(2)(h)**

[Redacted text]

14. **9(2)(h)**

[Redacted text]

■ [Redacted text]

■ [Redacted text]



9(2)(h)

Interim Regulatory Impact Statement

15. We are currently finalising our interim Regulatory Impact Statement (RIS) and will provide this to you for your information early next week.
16. The draft interim RIS provides analysis on a wider range of options in relation to the regulatory responsibility principles, accompanying consistency mechanisms, and recourse mechanisms, and is required to accompany a discussion document that narrows the set of options considered (MFR2024-064 refers).
17. In relation to regulatory responsibility principles and accompanying consistency mechanisms, the interim RIS identifies the Ministry's preferred approach as building on the Disclosure Statement regime (through Part 4 of the Legislation Act 2019 coming into force), plus new legislative provisions to support regulatory stewardship and the review and reporting roles of the Ministry.
18. In relation to recourse mechanisms, the interim RIS identifies the Ministry's preferred high-level approach as a mechanism situated in either the Parliamentary or Executive branches of Government. The Ministry notes that 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.
19. Independent quality assurance of the interim RIS is underway with the independent panel's final assessment to be included in the Cabinet paper presented to EXP on 5 November. The interim RIS will be published on the Ministry's website alongside the discussion document when public consultation commences.

Preliminary Treaty Impact Analysis

20. We are also currently finalising the Ministry's draft preliminary Treaty Impact Analysis (TIA) and will provide this to you for your information early next week.
21. The purpose of the TIA is to provide an indication of the possible Treaty of Waitangi 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 and is informed by advice from CLO.
22. The preliminary analysis serves as an initial early review of policy proposals by officials and is provisional, subject to feedback from consultation on the public discussion document.
23. 9(2)(h)
24. 9(2)(h)



9(2)(h)

Refinements to scope of regulatory review information gathering powers

25. In response to our advice on information gathering powers for regulatory reviews (briefing MFR2024-078 refers), you directed us to provide in the proposed Bill powers for the Ministry's Chief Executive to require information directly from public service agencies, wider State services, local government, and third-party service providers.
26. In further detailed design of this power, we identified that there are some bodies that undertake significant statutory regulatory functions that would not be included within the scope of the power as proposed. Using the 'State services' definition in the Public Service Act 2020 was a useful starting point as a proxy for entities that perform statutory regulatory functions, but excludes important bodies that exercise regulatory functions, such as occupational licensing bodies. It also includes parties that are technically 'State services' for the purposes of the Public Service Act but where the justification for inclusion in regulatory review information gathering powers is very weak, such as kindergarten teachers.
27. This prompted us to review the scope of the information gathering power to ensure it effectively captures entities that exercise regulatory functions, including local government and third-party service providers in line with your direction. As a result, we have included the following refined scope in the draft Cabinet paper and discussion document which we think better meets your objectives for a comprehensive scope (noting that Parliamentary Counsel Office will advise on precise drafting to be included in the Bill):
 - 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.

Timeframes

28. As previously advised, the timeframes for meeting an early November start date for public consultation are very tight. If significant changes are required to the Cabinet paper or discussion document through Ministerial or agency consultation, it is unlikely that this deadline will be met.
29. To meet your preference to commence public consultation in early November, departmental consultation and Minister consultation processes will need to be undertaken simultaneously. We have based this timing on a requirement for a one-week Ministerial consultation period for Coalition commitments, as advised by your office. We have factored your meeting with the Attorney-General into the timing.



30. We note that, even with this overlap, there will be very limited time for any changes to be made to the papers to incorporate feedback from Ministerial and agency consultation before the papers are due to be submitted to Cabinet Office on Thursday 31 October. The timeline below sets out the steps from here and deadlines.

Timeline

Step	Date
Feedback on Cabinet paper and discussion document provided to Ministry	Tuesday 15 October
Agency consultation	Wednesday 16 October to Wednesday 23 October
Ministerial consultation	Wednesday 16 October to Wednesday 23 October
Minister meeting with Attorney-General	Tuesday 22 October
Updated Cabinet paper and discussion document provided to Minister	Friday 25 October
LABOUR DAY	Monday 28 October
Feedback on updated Cabinet paper and discussion document provided to Ministry	Tuesday 29 October
Final Cabinet paper and discussion document provided to Minister	Wednesday 30 October
Cabinet paper and discussion document lodged with Cabinet Office	10am Thursday 31 October
EXP Cabinet Committee meeting	Tuesday 5 November
Cabinet meeting	Monday 11 November
Public consultation begins	Tuesday 12 November

Next steps

31. Following any feedback from you on the draft Cabinet paper and discussion document by Tuesday 15 October, we will update the documents ready to circulate for agency and Ministerial consultation.