



To	Hon David Seymour, Minister for Regulation		
Title	Feedback from departmental consultation on the draft Regulatory Standards Bill Cabinet paper and discussion document	Number	MFR2024-145
Date	25 October 2024	Priority:	High
Action Sought	Consider the proposed amendments to the Cabinet paper and discussion document	Due Date	29 October 2024
Contact Person	Pip van der Scheer, Manager	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. The draft Regulatory Standards Bill Cabinet paper and discussion document (along with the draft interim Regulatory Impact Statement and draft preliminary Treaty Impact Analysis) were sent out to a broad range of departments as part of departmental consultation. You also discussed the proposal with the Attorney-General on 22 October.
2. A summary of issues raised by departments in their feedback, and our proposed response is attached as **Annex 1**. Proposed changes as a result of this feedback and your meeting with the Attorney-General are tracked in the attached draft Cabinet paper (**Annex 2**) and discussion document (**Annex 3**).
3. Once you have made decisions on the proposed changes set out in this briefing, and indicated any changes that you would like made as a result of your Ministerial consultation, we can provide you with an updated version of the Cabinet paper and discussion document on Wednesday 30 October for lodging with the EXP Committee on Thursday 31 October.

Recommended action

4. We recommend that you:
 - a **note** the detailed summary of departmental feedback attached as Annex 1

Noted




- b **note** that we are not proposing any changes in relation to areas where you have already given us clear direction, that are outside the scope of the proposal, or are issues to be considered during the next phase of work Noted
- c **consider** making the following changes to the Cabinet paper and discussion document as a result of agency feedback (marked up in the attached Cabinet paper and discussion document):
- i. adding more information on potential costs into the Financial Implications section of the Cabinet paper consistent with best practice (see paragraph 46 in the Cabinet paper) Yes / No
 - ii. clarifying that the Bill would specifically exclude legislation that gives effect to or is otherwise is related to, full and final Treaty settlements, and legislation giving effect to Marine and Coastal Area (Takutai Moana) Act 2011 agreements (see new paragraph 30 in the Cabinet paper and page 20 in the discussion document) Yes / No
 - iii. making some small amendments to the discussion document to help ensure balance - for instance the addition of information on the relative strengths of New Zealand's regulatory performance, along with rewording of some questions (see pages 7-8 and questions 14, 17, 20, 27, 28, and 29-31 in the discussion document) Yes / No
- d **consider** including a rationale for not including a Treaty of Waitangi/Te Tiriti o Waitangi principle in the Bill in both the Cabinet paper and discussion document Yes / No
- e 9(2)(h) [REDACTED]
- i. [REDACTED] [REDACTED]
 - ii. [REDACTED] Yes / No



- f **note** that we will provide you with an updated version of the Cabinet paper and discussion document on Wednesday 30 October for lodging with the EXP Committee on Thursday 31 October *Noted*
- g **agree** that this briefing be released as part of the proposed proactive release of materials to accompany the release of the discussion document *Agree / Disagree*

9(2)(a)



Gráinne Moss

Chief Executive and Secretary for

Regulation

Ministry for Regulation

Date: 25 October 2024

Hon David Seymour

Minister for Regulation

Date:



Purpose of report

5. This briefing provides you with a summary of feedback from departmental consultation on the Regulatory Standards Bill draft discussion document and Cabinet paper. It also recommends some amendments to both documents as a result of departmental consultation and the discussion at your meeting with the Attorney-General on 22 October.

Overview of feedback

6. The draft Cabinet paper and discussion document (along with the draft interim Regulatory Impact Statement and draft preliminary Treaty Impact Analysis) were sent out to a broad range of departments for feedback.
7. A more detailed summary of issues raised by departments is attached as **Annex 1**.
8. In most cases, we are not proposing any changes in response to the feedback received, on the basis that the matters raised by agencies are either areas where you have already given us clear direction, they are outside the scope of the proposal, or they are issues to be considered during the next phase of the work (i.e. they relate to detailed design decisions).

Key areas of feedback

9. A number of agencies noted that they supported the objective of improving the quality of regulation and the ongoing stewardship of existing regulation. There was also some support for the proposed flexibility of agencies being able to determine a plan for reviewing their regulatory systems.
10. Key areas of agency feedback included the following:
 - *The general approach* – Several agencies noted their view that the objectives of the proposed Bill could be achieved more effectively by strengthening current arrangements and/or considering other factors that drive the delivery of good regulation such as time, resourcing and capability. The Office of the Clerk expressed a view that the current proposal gives rise to fewer constitutional concerns than the 2021 Bill, but recommended further investigation of Parliamentary options (including bringing the matters in the Bill to the attention of the Standing Orders Committee via a letter to the Speaker of the House), and more consideration of strengthening requirements in relation to pre-legislative public consultation.
 - *Financial and other implications to agencies of the proposals* - The majority of agencies that provided feedback raised concerns about the potentially significant additional costs and resource implications of the proposed new arrangements, with agencies that administer large amounts of legislation particularly affected. Some agencies commented that this would likely affect their ability to advance the Government's policy and legislative priorities within their areas of responsibility, and would add to the time it takes to progress regulatory change, and the complexity of the process. The Treasury noted its view that there were unlikely to be any cost savings for agencies as a result of the proposal over time, and recommended that, for transparency, current estimates of the cost to government of implementing the proposals in the discussion document **9(2)(h)**



9(2)(h)) should be brought into the financial implications section of the Cabinet paper.

- *Proposed principles* – Several agencies raised concerns about the proposed principles and their implications. 9(2)(h)

The Treasury recommended that the Cabinet paper note the need for broad cross-party support, similar to that for the fiscal responsibility principles, if the principles are to be effective and sustainable over time. Agencies also expressed views about specific principles – with the taking of property principle singled out as having particular implications for environmental policy (e.g. reversing the polluter pays principle) and potentially having a chilling effect on the development of beneficial regulation (for instance in relation to taxation or infrastructure development). The Ministry for the Environment questioned why the proposed liberty principle didn't include a public interest qualification, 6(a)

- *Absence of a Treaty principle* - A number of agencies raised concerns around the absence of a principle of responsible regulation relating to the Treaty of Waitangi/te Tiriti o Waitangi (the Treaty) and noted that no clear rationale has been provided for that absence in both the Cabinet Paper and discussion document. Agencies also noted the discussion document does not mention the Treaty or Māori rights and interests and suggested that this be addressed.
- *Coverage of Treaty settlement legislation* – The Office for Māori Crown Relations - Te Arawhiti and the Ministry for the Environment raised the issue of whether Treaty settlement legislation will be excluded from the Bill, and how the Bill will uphold the Government's commitment to honour undertakings made by the Crown through past Treaty settlements. These agencies suggested that the Cabinet paper specifically address this matter and that it be an area of feedback in the discussion document.
- *Proposed new powers and requirements* – The Ministry of Health and the Public Service Commission queried why new information gathering powers are required, noting their view that this could be achieved through agency cooperation and the use of the Official Information Act. The Ministry of Education thought that these powers should be subject to safeguards such as human rights and privacy legislation. The Ministry of Housing and Urban Development questioned the proposal that the Minister for Regulation would be solely able to issue guidance on interpretation of the principles and, along with the Public Service Commission, proposed that there should be some elements of mutual agreement (e.g. requiring an Order in Council) before the Minister for Regulation can commission a review. The Public Service Commission is concerned that new stewardship obligations and requirements could cut across section 12 of the Public Service Act and have requested that a comment be included in the Cabinet paper to that effect.
- *Details about how the proposal would work in practice* – Several agencies wanted more details on the principles and review processes, and noted that it was unclear how the



proposal would support better operation of regulatory systems. There were also questions about the operation and independence of the proposed Regulatory Standards Board (e.g. how it would deal with vexatious complaints), the skills and expertise of its members (e.g. whether it would have expertise in relation to the Treaty) and how it would align with existing mechanisms (e.g. the Regulations Review Committee). Several agencies noted the importance of monitoring and auditing the success of the new measures, and having a good measurement framework in place.

- *The effectiveness and balance of the discussion document* – A few agencies raised concerns about the discussion document presenting only one option, overstating the problem of poor regulation, and using ‘leading’ questions. Some agencies also noted that the discussion document is unlikely to be particularly accessible to those without expert knowledge of regulation.
- *The proposed consultation process* – Several agencies commented that the proposed approach to, and pre-Christmas timing of, consultation will reduce its effectiveness. The Cancer Control Agency recommended that priority consideration be given to how the consultation process can ensure adequate time for Māori to engage, noting the importance of adhering to obligations under the Treaty. 9(2)(h)

Proposed response

11. We are not proposing that you make any changes to the Cabinet paper or discussion document in response to agency feedback in relation to:
 - the broad approach, or the core components of the proposal, including the content of the principles, the processes relating to assessment of consistency with the principles, or the nature of the recourse mechanism, on the basis that we have already provided you with extensive advice that has covered the same ground as the feedback
 - the timing or nature of the consultation process (including that the discussion document only presents a single option) on the basis that that this is the approach you have directed us to take
 - issues relating to detailed design or implementation, given these issues will be worked through in more detail during the next phase of the work.
12. However, we recommend you consider the following changes to the Cabinet paper and discussion document to address some of the other concerns raised by agencies:
 - *adding more information on potential costs into the Financial Implications section of the Cabinet paper* – on the basis that the issues of cost to agencies was raised in almost every agency’s feedback, and the Treasury has recommended inclusion of more detail on financial implications consistent with best practice
 - *clarifying that the Bill would specifically exclude legislation that gives effect to or is otherwise related to, full and final Treaty settlements* - as Te Arawhiti notes, Treaty settlements have been expressly excluded from all or some aspects of several recent Government initiatives. For example, we understand that Acts related to a Treaty



settlement are not included in the scope of review of legislation that includes references to the principles of the Treaty, reflecting the Crown's commitments under Treaty settlements. We also recommend clarification that legislation giving effect to Marine and Coastal Area (Takutai Moana) Act 2011 agreements are out of scope on the basis that they raise similar issues to Treaty settlement legislation

- *making some small amendments to the discussion document to help ensure balance* - for instance addition of information on the relative strengths of New Zealand's regulatory performance, along with rewording of some questions.
13. While you previously directed officials not to include a principle of responsible regulation relating to the Treaty in the Bill [MFR2024-103 refers], we expect this will be a significant area of interest during consultation and recommend that you consider the inclusion of a rationale for this approach in both the Cabinet paper and discussion document. If you want to make such a change, we can work with your office on precise wording.
14. 9(2)(h) [REDACTED]
- [REDACTED]
- [REDACTED]
15. Proposed changes, along with some minor edits for accuracy and clarity purposes, are tracked in the attached draft Cabinet paper (**Annex 2**) and discussion document (**Annex 3**). As discussed with your office, your Ministerial Foreword to the discussion document has been edited for length and clarity.
16. We note that inclusion of the proposed changes for your consideration would likely mean that the Cabinet paper will exceed the 10-page limit imposed by the Cabinet Office. Once you have indicated which changes you would like made, we can work with your office to make further edits as needed to ensure the paper meets this requirement.

Next steps

17. Once you have made decisions on the proposed changes set out in this briefing, and indicated any changes that you would like made as a result of your Ministerial consultation, we can provide you with an updated version of the Cabinet paper and discussion document on Wednesday 30 October for lodging with the EXP Committee on Thursday 31 October.

Annex 1: Summary of substantive agency feedback on draft RSB Cabinet paper and discussion document

24 October 2024

Area of feedback	Agencies raising issue	Summary of issues raised by agencies	Change proposed
Support for aspects of the proposal	MfE, DIA, Treasury, MBIE, MCH, MSD, MoE, MFAT, Office of the Clerk, MoD, MoJ	Several agencies commented that they support the overall aim of improving the quality of New Zealand’s regulation/legislation. MoE 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. MoJ supported exclusion of the courts in providing recourse.	No change proposed.
Rationale for and scope of proposal	DIA, MBIE, MoE, Customs, Cancer control agency, MoH, MSD, MfE, MSD, HUD, Office of the Clerk, MFAT, RBNZ	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.	Minister has provided direction on the framing of the proposal and its rationale in the Cabinet paper, and the discussion document focuses on explaining the option that the Minister has decided to take forward. No change proposed.
Implications for agencies	MoJ, MBIE, MfE, DIA, MoT, MoH, LINZ, MSD, MoE, MFAT, Customs, Corrections, MoD, 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 change to include more details on costs to agencies in the Financial Implications section of the Cabinet paper. Otherwise, no change proposed.
Proposed principles and supporting guidance	MoJ, MoH, the Treasury, DIA, Corrections, MfE, MoD, HUD	9(2)(h) [REDACTED]	Minister has provided direction on the principles. There are also already proposed provisions for justified departures and exemptions from the principles. 9(2)(h) [REDACTED] Otherwise, no change proposed.

		<p>9(2)(h)</p> <p>6(a)</p> <p>9(2)(h)</p>	
Provision for a Treaty principle	Te Arawhiti, MoH, MoE, MCH, Customs	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 MoH's regulation-making powers in areas with significant health inequities for Māori.	Minister has provided direction on the inclusion of a Treaty principle. Proposal that consideration be given to how to address this issue in the Cabinet paper and discussion document for Minister's review. Otherwise, no change proposed.
Treatment of Treaty settlement-related legislation	Te Arawhiti, MfE	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	Proposed change to address this in the Cabinet paper and discussion document for Minister's review.
Regulatory Standards Board	MfE, the Treasury, Customs, MSD, DIA, MoE, MFAT, Customs, HUD, PSC	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	The Board is intended to have discretion to avoid having to hear vexatious complaints. Board expertise is one of the areas where feedback is being sought in the discussion document. Other comments relate to the detailed design that will be considered during the next phase of the work. No change proposed.
Review of existing regulation	MBIE, MfE, MoE, MFAT	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	In the proposal, accountability sits with agencies for stewardship of their regulation (including review) and with Ministers for taking forward regulatory changes following such reviews (or justifying why they have not pursued regulatory changes). In our view, this creates the necessary accountability dynamics to ensure agencies can give free and frank advice where they identify issues with regulatory systems, and Ministers are held transparently accountable for their response to that advice. There could be some provision made to ensure Ministers support agencies in discharging their obligations, which can be considered as part of detailed design. No change proposed.
Proposed new powers	MoH, PSC, MoE, NEMA, HUD	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. PSC is concerned that the new	Minister has provided direction on proposed new powers and expectations. PSC has requested a comment be included in the Cabinet paper to outline its concerns about the potential overlap with its responsibilities. Otherwise, no change proposed.

		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	Minor wording changes proposed to clarify this issue.
Preliminary Treaty impact analysis (TIA)	MfE	The TIA should be reflected more in the body of the Cabinet paper	The Cabinet paper references and attaches the TIA. No change proposed.
Discussion document	DIA, Te Arawhiti, Office of the Clerk, MBIE, MfE, HUD, MoD, PSC, Customs	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.	At the Minister's direction, the discussion document focuses on explaining the option that the Minister has decided to take forward. We have proposed a minor wording change to reflect the role of the Treaty Provisions Oversight Group and to reflect consultation on a 'proposed' Bill. We have also proposed some minor changes to improve the perceived balance of the document. Otherwise, no change proposed.
Implementation of the proposal	The Treasury, DIA, Corrections, MSD, Customs, 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.	These comments relate to the detailed design that will be considered during the next phase of the work. No change proposed.
Consultation process	Te Arawhiti, MfE, DIA, IRD	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)	Minister has provided direction on the consultation process. Small text changes made to refer to targeted engagement with Māori. Otherwise, no change proposed.