

TE TAI ŌHANGA
THE TREASURY

Regulatory Standards Bill

Meeting with the Minister for
Regulation

23RD JANUARY 2024

Agenda

	Topic	Steer required from the Minister
1	Context	The purpose of this meeting is to discuss areas Treasury has identified for broadening the scope of the Regulatory Standards Bill to help inform ongoing work on the 100 day plan.
2	Regulatory Management System	How do you envision the Regulatory Standards Bill interacting with the Regulatory Management System?
3	Indicative options for broadening the Bill's scope	What are your views on the potential options? e.g. are there any significant gaps.
4	Glossary	To note.

Context

We understand that your starting point of reference for the new Regulatory Standards Bill is the member’s Bill of the same name that you introduced in 2021.

The purpose of the Regulatory Standards Bill is to improve the quality of regulation, through three primary elements.

Primary elements of the Regulatory Standards Bill	
1	some principles or standards that legislation, and the process of its development, should generally be expected to meet
2	creating mechanisms through which proposed legislation and existing legislation will be assessed against these principles
3	creating additional mechanisms to encourage or require legislative decision-makers to explain or give attention to departures from these principles or standards

We understand:

- you’re open to alternative design choices within these primary elements to increase the likelihood that the Bill is enduring, cost-effective, and best achieves its objective (initial options outlined in our previous advice before Christmas, T2023/2064)
- you’re open to options for broadening the scope of the Bill beyond these three primary elements (outlined on slide 5)
- you don’t want to add unnecessary additional burdens on Ministers/agencies without providing additional incentives

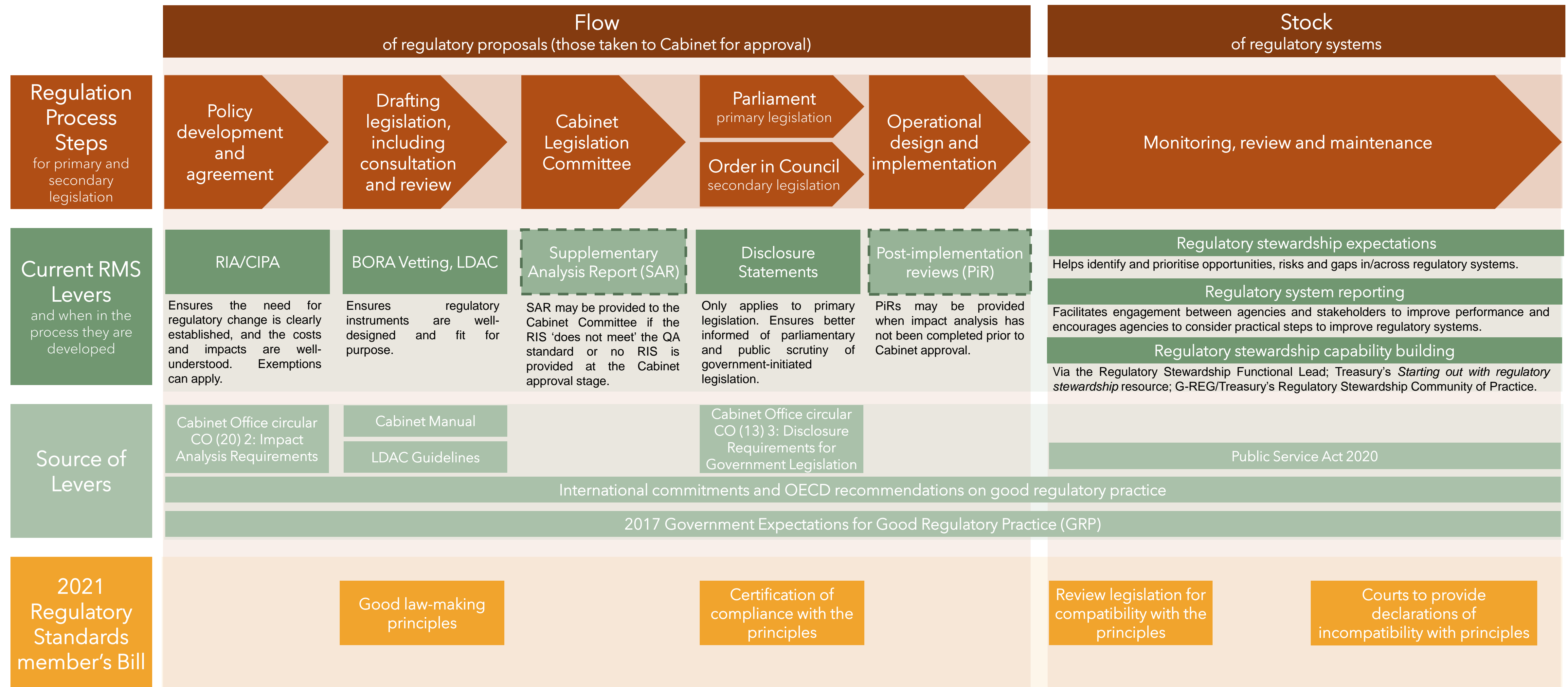
Purpose:

The purpose of this meeting is to discuss areas Treasury has identified for broadening the scope of the Regulatory Standards Bill to help inform ongoing work on the 100 day plan.

Next Steps:

Based on your direction, we will provide you with further detail on options around the scope and design choices of the Bill in our next Treasury Report at the end of January. This next advice and your response will inform our drafting of the report-back to Cabinet in March 2024.

Regulatory Management System



Question for the Minister: How do you envision the Regulatory Standards Bill interacting with the Regulatory Management System?

Indicative options for broadening the Bill's scope

Area	Relevant content from 2021 Bill	Key considerations from 2021 Bill	Potential options for addressing considerations (these options aren't mutually exclusive)
Review of Legislation	<p><u>Clause 15 - Review of legislation for compatibility with principles</u> (1) Every public entity must regularly review all legislation that it administers for compatibility with the principles.</p> <p><u>Clause 14 - Guidelines</u> (1) The Minister may, by notice in the Gazette, issue guidelines in respect of this Act that may include... (c) the steps that public entities should take in order to comply with section 15(1)</p>	The scope of an agency's review is legally-focussed and limited to compatibility with the principles. These principles are largely focussed on the making of new legislation (e.g. the good law making principles) so are less applicable when reviewing existing regulatory 'stock'.	Option 1 - Periodic review of existing legislation by administering agency This review could be wider than just compatibility with the principles and may consider whether that legislation is still fit-for-purpose, consistent with agencies' regulatory stewardship responsibility. There are New Zealand and international precedents for statutory review requirements for existing legislation e.g. the Local Government Act.
Plans for Review of Legislation	<p><u>Clause 15 - Review of legislation for compatibility with principles</u> (2) Every public entity must include in each of its annual reports under the Public Finance Act 1989, the Crown Entities Act 2004, or any other Act, a statement of— (a) the steps it has taken to comply with subsection (1) during the year to which the report relates; and (b) the outcomes of any reviews under that subsection that it has completed during that year.</p>	There is a risk that the review isn't given sufficient priority and resource for it to proceed.	Option 2 - Require agencies to make and publish advance plans for proposed reviews Publishing advance plans means an agency or Minister may later be publicly questioned on progress, reducing the potential for resources/priorities to be diverted. There is precedent for similar reviews e.g. the Legislation Act requires the Attorney-General to prepare a three-yearly revision programme for each Parliament.
Mechanism to assess regulatory proposals	<p><u>Clause 6 - Principles</u> <u>Good law-making</u> (h) not be made unless, to the extent practicable, the persons likely to be affected by the legislation have been consulted; (i) not be made (or, in the case of an Act, not be introduced to the House of Representatives) unless there has been a careful evaluation of [...] (j) produce benefits that outweigh the costs of the legislation to the public or persons; (k) be the most effective, efficient, and proportionate response to the issue concerned that is available.</p>	<p>The 2021 Bill is not explicit on a proactive process for how the good law-making principles could be applied during the policy development process.</p> <p>It is also unclear how an agency or a court could assess whether incompatibility with the good law-making principles could be "demonstrably justified in a free and democratic society".</p>	Option 3 - Legislating for impact analysis requirements The good law-making principles in the 2021 Bill have similar objectives to the existing expectation for the provision of good impact analysis for regulatory proposals. As such, legislating for RIA could avoid duplication or misalignment of RIA expectations with the good-law making principles. A high-level statutory basis for RIA could also raise the visibility of requirements and may make it easier to enforce. However, there is also a risk that legislating the regime makes it harder for the regime to evolve and adapt.
Role for the new Ministry for Regulation	N/A	The 2021 Bill does not recognise the role of, or support the functions of, the new Ministry of Regulation.	Option 4 - Periodic reporting requirement for the Ministry for Regulation This could include reporting on the operation and health of the RMS, including the performance of agencies against their regulation obligations. This kind of reporting requirement is now a common feature of the New Zealand public management landscape for agencies with cross-government responsibilities.

Glossary

Legislation – we use the word legislation consistent with its meaning in the Legislation Act 2019, which is that it refers to “the whole or part of an Act or any secondary legislation” i.e. encompasses primary and secondary instruments. We generally no longer use the term “tertiary legislation” because the Legislation Act provides that all delegated legislation, how or by whomever it is made, is now called “secondary legislation”.

Regulation – we take a broad view of regulation, which encompasses any intervention intended to order or influence people’s behaviour or how they interact with each other in pursuit of a desired policy objective. It should be a dynamic activity that requires ongoing learning, adjustment and improvement, in order to stay effective and avoid unnecessary compliance costs or restrictions on people’s rights of action in a world of continual change and innovation.

Regulatory Stewardship - Regulatory stewardship refers to the governance, monitoring, and care of our regulatory systems. It aims to ensure that all the different parts of a regulatory system work together to achieve its goals, and to keep the system fit for purpose over the long term. Effective stewardship requires a proactive and collaborative approach, so that regulatory systems adapt to changing circumstances in a timely and cohesive way. (*Starting out with regulatory stewardship: A resource*, December 2022)

Regulatory System - A regulatory system is a set of formal and informal rules, norms and sanctions, given effect through the actions and practices of designated actors, that work together to shape people’s behaviour or interactions in pursuit of a broad goal or outcome.

Regulations - a class of secondary legislation