

Treasury Report: Regulatory Standards Bill – 100 Day Cabinet report-back

Date:	5 February 2023	Report No:	T2024/171
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Action sought

	Action sought	Deadline
Hon David Seymour Minister for Regulation	<p>Agree on how to use your March report-back to Cabinet on the Regulatory Standards Bill.</p> <p>Provide feedback on the draft Cabinet paper attached.</p>	7 February 2023

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Felicity Parsons	Senior Analyst, Regulatory Strategy	9(2)(a) [REDACTED] (wk)	N/A (mob)
Pip van der Scheer	Manager, Regulatory Strategy	9(2)(a) [REDACTED] (wk)	9(2)(a) [REDACTED] (mob) ✓

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (Draft Cabinet paper:
<https://portia.hamlet.treasury.govt.nz/work/link/d/IMANAGE!4917809.1>)

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Executive Summary

A new Regulatory Standards Bill could play a key role in strengthening the Regulatory Management System (RMS), to improve the overall quality of regulation in New Zealand and bring the system more in line with the approach to fiscal management.

You are due to report back to Cabinet with a plan for the core components of a new Regulatory Standards Bill and a timeline for its introduction (CAB-23-MIN-0468).

As we have previously advised, we have identified a range of issues that need to be worked through to provide you with analysis of the Bill's potential impacts. In support of this, we have begun discussions with relevant subject matter experts in the public sector. We are also developing advice on additional options that could be considered for the Bill.

Given this context, we suggest that the report back to Cabinet paper does not seek specific decisions on the Bill at this stage, but instead:

- positions the Bill within your vision and expectations for the Regulation portfolio and its relationship with the new Ministry for Regulation;
- notes the core components that you are considering for inclusion in the Bill, and the key considerations that will be worked through before seeking final Cabinet approval; and
- flags the possibility of including provisions to support the functions of the new Ministry.

We also propose that the Cabinet paper notes your intention to look at ways in which current RMS and other public sector management tools could be streamlined to manage any impacts of your new proposals on agencies and Ministerial portfolios. However, we do not recommend making any commitment to move away from a robust, broad-based RMS, given your desire to ensure that we have the same amount of discipline around regulation as we already have in our fiscal management and reporting systems.

We note that the timeline set out in your Regulation Portfolio priorities letter to the Prime Minister proposed that the Bill be enacted within the current year. There are several issues that still need to be worked through and consulted upon, and it is unclear how long this may take. For the purposes of the current Cabinet paper, we therefore propose that you note your timing intentions for the Bill, subject to ongoing consultations with your Ministerial colleagues, rather than seek agreement to a timeline for its introduction.

We also recommend that you seek Cabinet's agreement to report back to Cabinet with more details on your proposed approach in the next few months, once further advice has been sought from public sector subject matter experts.

Recommended Action

We recommend that you:

- a **note** that you have been invited “to bring back to Cabinet within the first 100 days a plan for the core components of [a] new Regulatory Standards Bill and a timeline for its introduction” (CAB-23-MIN-0468 refers)

- b **note** 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]

- c **note** that officials will provide you with advice on addressing issues that have been raised by agencies with the Regulatory Standards Bill

- d **agree** to use your March Cabinet report-back on the Regulatory Standards Bill to:
 - i. position the Bill within the broader context of your thinking about the operation of the Regulation portfolio and the Ministry for Regulation

yes/no

 - ii. indicate the core components that you are considering for inclusion in the Bill, and the key considerations that will be worked through to give effect to these before seeking final Cabinet approval on the proposed Bill

yes/no

 - iii. note your intentions to have the Bill in force by the end of the year, subject to ongoing consultations with your Ministerial colleagues

yes/no

- e **agree** that the Cabinet paper should indicate that, as per your priorities letter to the Prime Minister, your intention is that the Regulatory Standards Bill would support the Ministry by providing:
 - i. a benchmark for good regulation through a set of regulatory principles that all regulation should comply with

yes/no

 - ii. transparency by requiring those proposing and creating regulation to certify whether the regulation is compatible with the principles

yes/no

 - iii. monitoring the certification process through a new declaratory role for the courts

yes/no

- f **agree** that the Cabinet paper should indicate that you are also considering whether the Bill should include additional provisions to:
 - i. support the functions of the new Ministry for Regulation (such as the power to seek information as part of the sector review process)

yes/no

- ii. reinforce some expectations on agencies for good regulatory practice (such as ongoing stewardship of regulatory systems and publishing advanced plans for proposed reviews of regulatory systems)

yes/no

- g **agree** that the Cabinet paper should indicate that you will also consider whether there are additional elements that should be included in the Bill, as more detailed design work is undertaken on the Bill and the Ministry for Regulation's new functions, and how they intersect with the current Regulatory Management System
- h **provide feedback** on the draft Cabinet paper attached to this report

Pip van der Scheer
Manager, Regulatory Strategy

Hon David Seymour
Minister for Regulation

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Purpose of Report

1. The purpose of this report is to:
 - propose an approach to the March report-back to Cabinet relating to the Regulatory Standards Bill (the Bill) promised as part of the government's 100-day plan commitments, and
 - seek your feedback on a draft of that report-back.

Progress on the development of the Regulatory Standards Bill

2. We see significant benefits in strengthening the Regulatory Management System (RMS), in order to improve the overall quality of regulation in New Zealand, and bring the system more in-line with the approach to fiscal management. A new Regulatory Standards Bill could play a key role in that strengthening.
3. The 100-day plan Cabinet paper invited you “to bring back to Cabinet within the first 100 days a plan for the core components of [a] new Regulatory Standards Bill and a timeline for its introduction” (CAB-23-MIN-0468). As previously reported (see Regulatory Standards Bill – Initial Advice and Options T2023/2064 of 15 December 2023), we have identified a range of broad issues that need to be worked through to provide you with analysis of the Bill's potential impacts, including statutory changes, provisions in new international agreements, and case law developments and trends that have occurred in the 14 years since the original Regulatory Standards Bill was developed.
4. We have also sought to identify additional options that could be considered for the Bill (see the Regulatory Standards Bill slide pack for the Minister for Regulation of 23 January 2024). These have included but are not limited to:
 - a periodic review obligation with a wider purpose and scope that would also cover how legislation is being implemented,
 - a possible obligation to make and publish advance plans for proposed reviews,
 - a possible obligation for the Ministry for Regulation to publish a periodic report on the operation and health of the regulatory management system, including the performance of agencies against their regulatory management obligations.
5. We have also begun discussions with relevant subject matter experts in the public sector to support the provision of robust analysis of the proposed Bill's provisions and related administrative requirements.
 - We have had initial discussions with the Ministry of Justice on the practical operation of the BoRA vetting requirements, which are the closest existing equivalent of the proposed certification requirement in the Bill.
 - We have asked the Legislation Design and Advisory Committee (LDAC) for advice on legislative design questions associated with the Bill and we have provided some initial questions to a subcommittee that has just been established by LDAC to advise us on the Bill.

- 9(2)(h)

Proposed approach to the Cabinet report-back

6. Given this context, and as previously advised (see Regulatory Standards Bill – Initial Advice and Options T2023/2064 of 15 December 2023), we suggest that the Cabinet paper is a noting paper. We think this paper could helpfully position the Bill within your vision and expectations for the Regulation portfolio and its relationship with the new Ministry for Regulation.
7. This Cabinet paper should also note the core components that you are considering for inclusion in the Bill, and the key considerations that will be worked through before seeking final Cabinet approval. In the attached draft Cabinet paper, we have used the core components that you have outlined in your priorities letter to the Prime Minister, i.e., that the Bill:
 - a. provides a benchmark for good regulation through a set of regulatory principles that all regulation should comply with;
 - b. provides transparency by requiring those proposing and creating regulation to certify whether the regulation is compatible with the principles; and
 - c. provides monitoring of the certification process through a new declaratory role for the courts.
8. In addition to these components, we suggest that you also flag the possibility of including provisions to support the functions of the new Ministry (such as the power to seek information as part of the sector review process) and to reinforce some expectations on agencies for good regulatory practice (such as ongoing stewardship of regulatory systems and publishing advanced plans for proposed reviews of regulatory systems).
9. We also suggest that, at this stage, you retain the flexibility to include additional elements in the proposed Bill. This would enable, for example, the Bill to eventually take into account your later decisions on how the RMS should be adjusted in light of decisions made on the detail of the Bill and the Ministry's new functions.

Timeframes for the Bill

10. We are aware that the letter to the Prime Minister on your Ministerial priorities proposes that the Regulatory Standards Bill should be introduced and enacted in the current year. Meeting this timeframe would only be possible if the 2021 Member's Bill was used as a starting point, with only very minor modifications, and a very truncated policy process, including in relation to consultation.
11. Our discussions with a range of subject matter experts in the public sector have raised a number of practical and constitutional issues that would need to be worked through, as outlined in the table below.

Elements of the Bill	Issues to be resolved (not exhaustive)
Principles that legislation, and the process of development, should generally be expected to meet	The selective nature of the chosen principles and how they have been framed may make it more difficult for agencies to interpret the principles and to get broad political and public buy in. If, as a result, legislation frequently breaches the principles, this could significantly reduce the impact of the Bill.
Certification that regulation is compatible with the principles	The volume of certifications required could impose significant costs on agencies. From a value for money perspective, it may not make sense to include all secondary legislation in the certification process given the principles being certified against may be less relevant for secondary legislation.
Role for the Courts in monitoring the certification process	<p>9(2)(h) [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] The proposed role of the courts also includes fiscal risks, including the costs of remedial legislation to ensure Parliament’s intent is given effect to, as well as the costs of defending the Crown in court.</p>
Agencies’ regular review of all legislation for compatibility with principles	The mandated scope of the agency review obligation in the Bill is limited to compatibility with the principles and could usefully be made wider to consider whether legislation is cost effective and is still delivering the intended policy outcomes, consistent with agencies’ regulatory stewardship responsibilities.

12. Ahead of a more significant consultation process, it is unclear how long such issues may take to work through. You will soon receive a Treasury Report which seeks your decisions on a Legislation Bid for the Regulatory Standards Bill, including the timing you would like to include in the Bid. Regardless of your decision on the Legislation Bid, we suggest that in the Cabinet paper you note your timing intentions for the Bill, subject to ongoing consultations with your Ministerial colleagues, rather than seek agreement to a proposed timeline for its introduction.

13. We also recommend that you seek Cabinet’s agreement to report back to Cabinet with more details on your proposed approach in the next few months and note that, at that stage, you would be seeking specific policy decisions in relation to the components of the Bill, and agreement to proceed to drafting.

Interaction with the wider Regulatory Management System

14. In thinking about framing a narrative for Cabinet, we have been mindful of your desire that the work of your new Ministry is focussed on particular areas of regulation – broadly being regulation that affects the economic incentives and activities of businesses and individuals and, in particular, their property rights. This has a two-pronged focus,

covering both the assessment of proposals for new and amended regulation, and the review of existing regulation (sector reviews).

15. We can see the merit in focussing the resources of the new Ministry for Regulation on particular types of regulation. But we also think a robust and broad-based RMS is vital to increasing the practical attention given to regulatory quality by government agencies, consistent with your ambition for building the same amount of discipline around regulation as we already have in our fiscal management and reporting systems.
16. We understand that you would like to consider options for streamlining elements of the RMS (such as RIA) as a way to manage the potential concerns of other Ministers on the impact on their portfolios and agencies of a more rigorous approach to increasing regulatory quality. We suggest that you ask the new Ministry to work with other central agencies to better align and integrate the RMS with other public sector management tools and reduce the potential burden of separate regulatory management requirements (e.g, through ensuring no unnecessary duplication). Also, we suggest you direct officials to identify options for further streamlining existing RMS processes, as detailed decisions are taken on the Regulatory Standards Bill and the functions of the new Ministry.

Next Steps

17. We have attached a draft Cabinet paper as per the above, for your consideration.
18. We are currently working to the following timeline:
 - a. Revise the draft Cabinet paper, to take into account your feedback, so that it is ready for Ministerial and departmental consultation during the week of 12 February
 - b. Provide you with a proposed final Cabinet paper by 20 February
 - c. Lodge the final Cabinet paper with EXP Cabinet Committee by 22 February
 - d. EXP Cabinet Committee to consider the Cabinet paper on Tuesday 27 February.