

Treasury Report: Agency consultation on draft Regulatory Standards Bill Cabinet paper

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| Date: | 19 February 2024 | Report No: | T2024/375 |
| | | File Number: | SH-11-2-7-20-1-6 |

Action sought

| | Action sought | Deadline |
|---|--|------------------|
| Hon David Seymour Minister for Regulation | Provide feedback on the draft Cabinet paper attached. | 20 February 2024 |

Contact for telephone discussion (if required)

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

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes:

Annex One - Summary of agency feedback and Treasury's proposed response (end of this document)

Annex Two – [Tracked changes] Draft Cabinet paper report back on a new Regulatory Standards Bill (separate document) -

<https://portia.hamlet.treasury.govt.nz/work/link/d/IMANAGE!4922101.1>

Annex Three – [Clean copy] Draft Cabinet paper report back on a new Regulatory Standards Bill (separate document) -

<https://portia.hamlet.treasury.govt.nz/work/link/d/IMANAGE!4923347.1>

Drafts in annexes two and three are not included. The final cabinet paper can be viewed on the Ministry's website: www.regulation.govt.nz/mfr-what-we-do/information-releases

Treasury Report: Agency consultation on draft Regulatory Standards Bill Cabinet paper

Executive Summary

This report summarises the feedback Treasury received as part of agency consultation on the draft Regulatory Standards Bill Cabinet paper that we provided for your review on 5 February (T2024/171 refers).

It summarises feedback provided during agency consultation, and provides you with an updated version of the Cabinet paper, with Treasury's proposed changes to reflect departmental feedback.

It also notes that we have now commissioned the Crown Law Office (CLO) to provide formal advice on the Bill by 26 February.

Subject to your agreement and further comment, we recommend that this updated version of the paper be used as the basis for Ministerial consultation ahead of the paper being lodged on Thursday 22 February.

Recommended action

We recommend that you:

- a **note** that the updated version of the draft Cabinet paper incorporates the majority of the feedback provided by consulted agencies

- b **note** that the table in the Annex provides a summary of all feedback provided and how Treasury has reflected this in the paper

- c **provide** any further feedback on the draft Cabinet paper so we can supply you with an updated version for Ministerial consultation beginning 20 February.

Pip van der Scheer
Manager

Hon David Seymour
Minister for Regulation

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Treasury Report: Agency consultation on the draft Regulatory Standards Bill Cabinet paper

Purpose of report

1. This report:
 - updates you on feedback provided during agency consultation on the draft Regulatory Standards Bill Cabinet paper
 - provides you with an updated version of the Cabinet paper, with Treasury's proposed changes to reflect agency feedback.

Consultation with agencies

2. The Cabinet paper was sent to targeted agencies, including those with Regulatory Management System responsibilities, on 9 February 2024, with feedback sought by 15 February 2024.
3. The agencies consulted with were the Department of the Prime Minister and Cabinet (DPMC), Ministry of Business, Innovation and Employment (MBIE), Parliamentary Counsel Office (PCO), Public Service Commission (PSC), Crown Law Office (CLO), Ministry of Justice (MoJ) and Te Arawhiti.
4. Some of the relevant contacts from these agencies also sit on the Legislative Design and Advisory Committee (LDAC) and provided feedback in that capacity.
5. The main focus of the feedback was on ensuring clarity that the proposed approach has potentially significant constitutional and resourcing implications, and that further work will need to be done to fully understand these, and to mitigate any risks and unintended impacts.
6. Other substantive feedback included clarifying the timeframe around next steps, and the provisions and scope of the Bill.
7. Agency feedback and how we have addressed it is summarised in **Annex One** to this report. An updated Cabinet paper with tracked changes is attached as **Annex Two**, and a clean copy of the updated draft is attached as **Annex Three**, for your review.

Crown Law advice Drafts in annexes two and three are not included. The final cabinet paper can be viewed at www.regulation.govt.nz/mfr-what-we-do/information-releases

8. 9(2)(h) [Redacted]

Next steps

9. Once you have reviewed Treasury's proposed changes, and provided any further feedback on the Cabinet paper, we can provide you with a final draft for Ministerial consultation.

10. We understand that you propose to circulate the draft Cabinet paper for Ministerial consultation beginning Tuesday 20 February. Your office would then lodge the paper on Thursday 22 February, to be discussed at EXP Committee on Tuesday 27 February and Cabinet on Monday 4 March.

Annex One – Summary of agency feedback and Treasury’s proposed response

11. The below table summarises substantive feedback we received from consulted agencies, and how we propose it be reflected in the updated version of the Cabinet paper.

| Feedback | Agencies who raised this issue | Proposed response |
|---|--|--|
| <p>9(2)(h) [REDACTED]</p> | <p>DPMC, MBIE, PCO, CLO, MoJ, LDAC</p> | <p>9(2)(h) [REDACTED]</p> |
| <p>The paper should clarify that the 2021 Bill is the starting point for the proposed new Bill.</p> | <p>DPMC, PSC</p> | <p>New paragraph 23 of the Cabinet paper notes that the 2021 Bill is the starting point for the new Bill.</p> |
| <p>The paper should clarify the scope of the Bill.</p> | <p>DPMC</p> | <p>References have been added to clarify that the Bill would apply to all primary and secondary legislation.</p> |
| <p>There should be more background on the size of the regulatory quality issue the Bill is trying to address.</p> | <p>DPMC</p> | <p>We do not propose to add material into the Cabinet paper to cover this in more depth – in our view, this has been well-signalled in your previous Cabinet submission, and the next Cabinet paper and accompanying RIS will cover this off in more detail.</p> |
| <p>There should be more detail provided on the proposed timing and process.</p> | <p>DPMC, PSC</p> | <p>The section on next steps has been updated with more specific timing, reflecting your decisions in relation to the legislation bid for the Regulatory Standards Bill.</p> |
| <p>The term ‘property rights’ should be explained.</p> | <p>DPMC</p> | <p>Paragraph 16 has been updated with a reference to the definition in the LDAC guidance.</p> |
| <p>The term ‘public sector value’ should be explained.</p> | <p>DPMC</p> | <p>The term is directly taken from the 100 Day Cabinet paper, and we therefore consider a definition is not needed – however, we have proposed clarifying that the reference is to the Cabinet paper.</p> |
| <p>9(2)(h) [REDACTED]</p> | <p>PCO, MoJ, LDAC</p> | <p>9(2)(h) [REDACTED]</p> |

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|--|------------|---|
| | | 9(2)(h) [Redacted] |
| 9(2)(h) [Redacted] | PCO, LDAC | Consideration of options would be covered in the subsequent Cabinet paper, following provision of detailed advice to you. We do not propose attempting to address this comment in the current Cabinet paper. |
| The paper should provide a more detailed approach to the Bill. | PSC | This paper is intended to provide a high level update. Detailed recommendations would be made in the subsequent Cabinet paper, following provision of further advice to you. We therefore do not propose attempting to address this comment in the current Cabinet paper. |
| 9(2)(h) [Redacted] | 9(2)(h) | 9(2)(h) [Redacted] |
| 9(2)(h) [Redacted] | [Redacted] | [Redacted] |
| While there are no human rights implications arising specifically from this paper, the paper should note the need to work through any implications arising from the proposed principles in further work. | MoJ | Paragraph 38 has been amended to reflect this comment. |
| While there are no financial implications arising specifically from this paper, the paper should note that there are resource implications arising from the work as a whole. | MoJ | Paragraph 34 has been amended to reflect this comment. |