

# Interim Regulatory Impact Statement: Legislating to improve transparency of the quality of regulation Coversheet

## Purpose of Document

Decision sought: This interim Regulatory Impact Statement (RIS) has been produced to support Cabinet's decision to publicly consult on a proposed Regulatory Standards Bill via the accompanying discussion document *Have your say on the proposed Regulatory Standards Bill*.

Advising agencies: Ministry for Regulation

Proposing Ministers: Minister for Regulation

Date finalised: 30 October 2024

## Problem Definition

The quality of regulation is important for New Zealand's long-term productivity, growth, living standards, and in supporting New Zealanders' wellbeing, but there are challenges in designing and implementing good quality regulation. The Regulatory Management System (RMS) does not currently support a high level of transparency to enable a broad range of stakeholders to easily identify whether new and existing regulation meets standards of good regulatory quality. Such transparency is an important component of an effective RMS because it helps strengthen incentives for responsible Ministers and agencies to work throughout the regulatory policy cycle to ensure new and existing regulation meets quality standards. This weakness in the RMS could be remedied to some degree through the introduction of clear, authoritative standards for good quality regulation, and mechanisms that require transparent and accessible assessment of regulation against these standards.

## Executive Summary

The quality of regulation is crucial to improving New Zealand's long-term productivity, growth, living standards, and supporting New Zealanders' wellbeing. Well-designed and implemented regulation can help governments to achieve their desired economic, environmental and social outcomes, support the effective operation of markets, and protect communities from harm. On the other hand, poor regulation can impose costs, limit freedoms, stifle innovation, and give rise to other unintended consequences - or it can simply fail to achieve its intended objectives.

There are multiple challenges in ensuring that new regulation is designed and implemented well, and that existing regulation is reviewed and maintained to ensure it is still necessary and fit for purpose. A number of features and common practices relating to the design, implementation and ongoing stewardship of regulation can negatively impact on the overall quality of New Zealand's regulation. Examples include: the tendency to

overuse legislation as a lever, patchy agency performance in relation to regulatory impact analysis requirements, a large amount of outdated or no longer fit for purpose legislation and a general lack of focus on monitoring and review of the performance of regulatory systems.

The factors underlying these features and practices are complex and often involve competing incentives and pressures on responsible Ministers and agencies. These factors include: the fact that reforms are often undertaken at high speed, a perception of regulation as a relatively cheap intervention compared to other levers, capacity and capability constraints within agencies, the complexities involved in assessing and quantifying the full benefits, costs and impacts of regulation, and a lack of clear transparency about the quality of new regulatory proposals or existing regulation.

An effective Regulatory Management System (RMS) can help address some – but not all – of these issues, by articulating standards, setting expectations and processes, creating incentives and consequences, building capability, and supporting transparency.

In this context, it is difficult to assess the overall quality of New Zealand's regulation and how effectively the RMS is performing in supporting that. International indicators likely provide the most helpful assessment. These show that, while New Zealand's regulation and aspects of the RMS perform relatively well, there is likely to be significant room for improvement in the quality of New Zealand's regulation, and the RMS could play a central role in achieving that.

One particular weakness of the current RMS is that it does not support a high level of transparency in relation to whether new and existing regulation clearly meets standards of good regulatory quality. Such transparency is an important component of an effective RMS because it helps strengthen incentives for responsible Ministers and agencies to work throughout the regulatory policy cycle to ensure new and existing regulation meets quality standards. While Regulatory Impact Statements (RISs) and disclosure statements are currently the main mechanisms aimed at providing such transparency, their ability to do this is limited, particularly relating to the ability of a broad range of stakeholders, including the general public, to be able to use them to access and understand key information about regulatory quality.

The current proposal for the Regulatory Standards Bill (the Bill), as detailed in the accompanying discussion document, aims to improve transparency in relation to whether regulation does/does not meet standards by providing:

- a benchmark for good regulation through a set of principles of responsible regulation that all regulation should comply with
- mechanisms to transparently assess the consistency of new legislative proposals and existing regulation with the principles
- a mechanism for independent consideration of the consistency of existing regulation, primarily in response to stakeholder concerns.

The current proposal was developed to fulfil the Coalition Government's commitment to legislate to improve the quality of regulation by "ensuring that regulatory decisions are based on principles of good law-making and economic efficiency". While the approach being consulted on is still largely based on the previous Bill drafted by the 2009 Regulatory Responsibility Taskforce, some key changes include:

- amending some principles in the 2021 Bill to better align them with broadly accepted principles and practices

- the addition of principles for regulatory stewardship building on the obligation for Government agencies in section 12(e) of the Public Service Act 2020
- removal of the new interpretive role of the courts originally set out in clause 10 of the 2021 Bill
- substitution of a Regulatory Standards Board in place of the courts in relation to a recourse mechanism for legislation inconsistent with the principles
- addition of new powers and expectations to help support the Ministry for Regulation's regulatory oversight role.

This document provides interim analysis on two sets of options relating to the principles and associated mechanisms (Section 2A), and the recourse mechanisms (Section 2B). The Ministry for Regulation's analysis is as follows.

### *Regulatory responsibility principles and accompanying consistency mechanisms*

**The Ministry for Regulation's preferred approach** is to build on the disclosure statement regime (through Part 4 of the Legislation Act 2019 coming into force) and create new legislative provisions to support regulatory stewardship, and the review and reporting roles of the Ministry.

The Ministry supports the overall objectives that the Bill seeks to achieve and notes there are merits to the proposal in the discussion document.

However, the Ministry considers that an enhanced disclosure statement regime with enhanced obligations, will achieve many of the same benefits (e.g. increasing regulatory quality, ensuring greater accountability and transparency, and more robust arrangements for the stewardship of regulatory systems) [Redacted content 9(2)(h)]

The Ministry also considers this option would impose fewer compliance costs on government agencies.

### *Recourse mechanism*

**The Ministry for Regulation's preferred approach** (subject to further work on detailed design and feedback from public consultation), if any additional recourse mechanism is preferred, is a mechanism situated in either the Parliamentary or Executive branches of Government. The Ministry notes that a Parliamentary mechanism may align more closely with the stated objectives based on preliminary analysis, however some Parliamentary mechanisms (e.g. where amendments to Standing Orders are required) may be more appropriately determined by Parliament itself.

The Ministry considers that this approach better aligns with New Zealand's existing legal and constitutional settings.

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.

## **Limitations and Constraints on Analysis**

### **Scope constraints**

This interim RIS has been produced in accordance with the Coalition Agreement's commitment to legislate to improve the quality of regulation. The Minister for Regulation has further directed that the starting point in the development of a Regulatory Standards

Bill should be based on a previous Member's Bill under the same name, which was introduced to the House in 2021 but did not proceed past First Reading. The options analysed in this interim RIS have been constrained by these directions (e.g. through a focus on legislative rather than non-legislative options).

### **Other limitations on analysis**

The options set out in this interim RIS focus on addressing the transparency of the quality of regulation in New Zealand generally, rather than in relation to a specific piece of legislation or regulatory system. The options are also based on introducing a series of requirements and processes to better incentivise Ministers and agencies developing new regulatory proposals or stewarding regulatory systems. These requirements would be introduced within the context of strong, competing, and likely ongoing incentives (e.g. pressures to quickly progress regulatory proposals) and agency capacity constraints.

These characteristics place significant challenges when assessing the relative benefits of options, for instance:

- It is difficult to estimate likely levels of government compliance with the principles over time, compared to what would have happened under the status quo, noting that there is no mechanism being proposed that would prevent legislation being passed (or regulation continuing in place) that is inconsistent with the principles.
- Even if there are high levels of compliance with the principles, the benefits would depend on how the principles are applied and interpreted, which is likely to vary considerably across the principles (assessment of benefits also depends on views on the merits of the principles themselves, which will also vary).
- The extent to which the Bill improves regulatory quality in specific regulatory systems depends on the existing regulatory and operational settings within that system – assessment of benefits (and costs) across systems is therefore likely to be highly variable.
- Any benefits from the options (e.g. from improved regulatory quality) are generally intangible, less able to be monetised, and often only able to be realised in the long-term (e.g. it may take years for outdated legislation to be reviewed and modernised).

The costs associated with implementing the Bill are relatively more immediate, tangible and quantifiable (although they largely depend on choices, such as the scope of the requirements).

However, there are significant limitations to assessing costs more broadly, including:

- the difficulty of assessing the opportunity costs and where they fall – for instance the crowding out of other activity, or the fact that some good regulation principles may receive less attention if they are not specifically provided for in legislation.
- [Redacted content 9(2)(h)]

This interim RIS identifies other work undertaken by the Ministry for Regulation towards improving regulatory quality more generally, including non-legislative measures. Given the strong linkages between the Regulatory Standards Bill and the other suite of measures towards improving the quality of regulation (e.g. regulatory reviews, guidance issued to support capability building and operation of regulatory systems), there are limits around the

ability to, and utility of, extrapolating the impacts of the Bill alone towards improving regulatory quality relative to the suite of other measures.

**Responsible Manager**

[Redacted content 9(2)(a)]

Pip van der Scheer  
Manager, Regulatory Management System  
Ministry for Regulation

**Quality Assurance**

Reviewing Agency: Joint quality assurance panel with members from the Ministry for Regulation, Ministry of Justice, Ministry of Business, Innovation and Employment and the Treasury.

Panel Assessment & Comment: A quality assurance panel with members from the Ministry for Regulation, Ministry of Justice, Ministry of Business, Innovation and Employment and the Treasury has reviewed the interim Regulatory Impact Statement (RIS): *Legislating to improve transparency of the quality of regulation*, produced by the Ministry for Regulation, dated 22 October 2024. The panel considers that it "partially meets" the Quality Assurance criteria.

The panel has assessed the RIS on the basis that it is an interim RIS. The panel has not been asked to assess the extent to which the discussion document would support development of the final RIS.

The interim RIS clearly acknowledges that the scope of the options has been limited by the Coalition agreement and Ministerial direction in particular "through a focus on legislative rather than non-legislative options."

The panel's view is that the interim RIS does not provide sufficient analysis of the behavioural incentives and adequacy of current arrangements to make the case that the extent of legislative changes proposed (indicated in the RIS as being the discussion document proposal) are necessary to have an impact on lifting the quality of regulation.

The Ministry for Regulation has expressed a preference in the interim RIS for an alternative option building on the existing Disclosure Statement regime (through Part 4 of the Legislation Act 2019 coming into force), new legislative provisions to support regulatory stewardship and the Ministry's review and reporting roles. The Ministry considers this could encourage transparency, thereby lifting performance across the regulatory system.

The gaps in the interim RIS may be able to be addressed following the consultation process.

## Glossary of terms

The table below provides definitions of terms used in this interim Regulatory Impact Statement interim RIS.

**Legislation** - Legislation means the whole or a part of an Act or any secondary legislation (Legislation Act 2019, s 5).

**Legislation Act 2019, Part 4** - Part 4 of the Legislation Act 2019 sets out disclosure requirements for Government-initiated legislation. The purpose of the Part is to better inform Parliamentary and public scrutiny of Government- initiated legislation, and promote good administrative practices for the development of such legislation (Legislation Act 2019, s 101).

**Regulation** - The Ministry for Regulation takes a broad view of regulation to encompass any government intervention that is intended to order or influence people's behaviour, or how they interact with each other, including by directing the use and exchange of private property, resources or capital to pursue a desired policy objective.

**Regulatory impact analysis (RIA)** - The RIA regime is a set of requirements for impact analysis which apply to all Government regulatory proposals, governed by Cabinet Circular (20)2. The RIA system is administered by the Ministry for Regulation as part of its function to lift the quality of new regulatory proposals and advice.

**Regulatory Management System (RMS)** - The RMS is a set of policies, institutions, tools, and processes employed by central government to help it develop, deliver, and maintain high-quality regulation that provides value for money, and does not impose unnecessary costs.

**Regulatory stewardship** - Regulatory stewardship is the governance, monitoring, and care of regulatory systems. It aims to ensure that all the different parts of a regulatory system work together to achieve its goals, to keep the system fit for purpose over the long term, and to deliver value for money to taxpayers. Under the Public Service Act 2020, all government agency Chief Executives have stewardship responsibilities for legislation administered by their agencies, supplemented by Cabinet-mandated expectations that require agencies to properly govern, monitor, and care for their regulatory systems.

**Regulatory systems** - Regulatory systems consist of formal and informal rules, norms, and sanctions, given effect through the actions and practices or designated actors that work together to shape people's behaviour or interactions in pursuit of a broad goal or outcome.



## Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

### *Regulation is an emerging focus amongst Government priorities*

1. The 54<sup>th</sup> New Zealand Government has identified regulation as an important driver of productivity and economic growth. The [Coalition Agreement](#) between the New Zealand National Party and ACT New Zealand sets out several initiatives which relate to improving the quality of regulation, including the establishment of a new Ministerial portfolio for Regulation, creating a new government agency that would assess the quality of new and existing legislation and regulation, and enacting a Regulatory Standards Act to improve the quality of regulation by “ensuring that regulatory decisions are based on principles of good law-making and economic efficiency”.

### *History of the Regulatory Standards Bill*

2. Various forms of a Regulatory Standards Bill have been introduced to the House on three previous occasions – in 2006 as the Regulatory Responsibility Bill (the 2006 Bill), in 2011 as the Regulatory Standards Bill (the 2011 Bill) on the recommendation of the Regulatory Responsibility Taskforce (established in 2009), and in 2021 as a private Member’s Bill (the 2021 Bill).
3. Public consultation on a Regulatory Standards Bill was also carried out over several different occasions:
  - The 2006 Bill received over 220 submissions from individuals and organisations as part of the Select Committee process.<sup>1</sup>
  - From June to August 2010, the then-Minister for Regulatory Reform ran a public consultation process on the draft 2006 Bill produced by the Regulatory Responsibility Taskforce via a consultation document “[Questions arising from the Regulatory Responsibility Bill](#)”. Submitters were asked to respond to a set of questions on the draft bill and regulatory quality generally.
  - Public consultation on the 2011 Bill opened through the Select Committee process after its introduction in March 2011. The 2011 Bill received around 50 submissions from a range of submitters encompassing businesses and industry associations, legal institutions and practitioners, academic think-tanks and unions.
4. Public feedback on previous versions of a Regulatory Standards Bill has been mixed. While there has been general support towards the aim of improving regulatory quality, including through the consolidation of a set of standards regulation should adhere to in its design, development and implementation, some components of previous Regulatory Standards Bills have received considerable criticism from legal practitioners, academics, and constitutional experts. Much of this criticism centred around the proposed roles for the judiciary to prefer interpretation of legislation consistent with the principles set out in previous Regulatory Standards Bills and to declare legislation inconsistent with the principles. This role has been cited as being likely to impact on the respective balance of powers between Parliament and the judiciary, invite a level of judicial interference which may seek to undermine Parliamentary supremacy in passing

<sup>1</sup> Submission Analysis published by the then-Ministry of Economic Development can be found [here](#).

legislation, and introduce significant ambiguity in New Zealand’s legal and constitutional landscape.<sup>2</sup> For these and several other reasons (e.g. the novel wording of principles), the Parliament’s Commerce Committee recommended that the Bill not be passed on two separate occasions during the Select Committee process.

5. In 2011, a previous [Regulatory Impact Statement](#) (RIS) was written to accompany the introduction of the 2011 Bill into the House. The RIS recommended strengthening Parliamentary review to improve scrutiny of legislation, over the Regulatory Responsibility Taskforce’s proposed Bill. As the 2011 Bill was halted at the Select Committee stage, the [National-ACT Confidence and Supply Agreement](#) instead included a commitment to achieve a “mutually agreed outcome” based on the Treasury’s preferred option as expressed in the 2011 RIS. This was followed by a [discussion document](#) released by the Treasury in 2012 to consult on a revised proposal, eventually resulting in the enactment of Part 4 of the Legislation Act and given administrative effect as the current disclosure statement regime.
6. In 2021, the Bill was again introduced to the House as a private Member’s Bill, but did not progress past First Reading.

### ***Current proposal for the Regulatory Standards Bill***

7. The current proposal for the Regulatory Standards Bill (the Bill), as detailed in the accompanying discussion document, is largely based on the previous versions of Regulatory Standards Bills introduced to the House on two occasions in 2011 and 2021.<sup>3</sup>
8. The current proposal for the Bill includes:
  - a benchmark for good regulation through a set of principles of responsible regulation that all regulation should comply with (analysed in Section 2A of this interim RIS)
  - mechanisms to transparently assess the consistency of new legislative proposals and existing regulation with the principles (analysed in Section 2A of this interim RIS)
  - a mechanism for independent consideration of the consistency of existing regulation, primarily in response to stakeholder concerns (analysed in Section 2B of this interim RIS).
9. While the proposed approach is still largely based on the 2021 Bill, some changes have been made, including:
  - amending some principles in the 2021 Bill to better align them with broadly accepted principles and practices
  - the addition of principles for regulatory stewardship building on the obligation for Government agencies in section 12(e) of the Public Service Act 2020
  - removal of the new interpretive role of the courts originally set out in clause 10 of the 2021 Bill

<sup>2</sup> These issues were surfaced across a number of [Select Committee submissions](#) received on the 2011 Bill.

<sup>3</sup> The 2021 Bill can be found on the New Zealand Legislation website: [Regulatory Standards Bill 27-1 \(2021\)](#).



- a proposal for a Regulatory Standards Board in place of the courts in relation to a recourse mechanism for legislation considered to be inconsistent with the principles
- addition of new powers and expectations to give effect to the Ministry’s regulatory oversight role.<sup>4</sup>

10. Throughout the development of the current proposal, targeted agency consultation has been occurring with key agencies, including the Parliamentary Counsel Office, the Crown Law Office, the Ministry for Business, Innovation and Employment, the Ministry of Justice, the Office for Māori Crown Relations – Te Arawhiti, the Treasury, the Public Service Commission and Ministry of Māori Development – Te Puni Kōkiri. To date, agencies have identified that the proposals would involve additional resourcing and are likely to be costly. Further agency consultation is being undertaken and feedback will be reflected in the final RIS.

### *Developments in New Zealand’s regulatory oversight landscape*

11. This section sets out recent and expected developments in New Zealand’s regulatory oversight landscape, which are relevant to the case for a Regulatory Standards Bill. In summary, these are:

- the establishment of the Ministry for Regulation, including new funding for various new functions and initiatives, such as regulatory reviews and second-opinion advice on regulatory proposals; and
- the impending bringing into force of Part 4 of the Legislation Act 2019, which sets out disclosure statement requirements for Government-initiated legislation.

### **The establishment of the Ministry for Regulation**

12. The Coalition Agreement between the New Zealand National Party and ACT New Zealand also provided for a Ministerial portfolio for Regulation, and a new Government agency “required to assess the quality of new and existing legislation and regulation”. As part of this, the Ministry for Regulation was set up as a new public service agency and Central Agency in March 2024.<sup>56</sup> The Ministry’s purpose is to improve the quality of regulation in New Zealand through four key functions:

- ensuring the quality of new regulation
- improving the functioning of existing regulatory systems
- raising the capability of those who design and operate regulatory systems, and
- providing continuous and enduring improvements to the regulatory management system.

13. While the responsibility to manage and steward individual regulatory systems rests with the individual government agency that administers the legislation, the Ministry is

<sup>4</sup> With the exception of the information-gathering powers addressed in Section 2A of this RIS, the other powers and expectations for the Ministry for Regulation were exempted from the regulatory impact analysis requirements on the basis that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.

<sup>5</sup> [Public Service \(Ministry for Regulation\) Order 2024](#)

<sup>6</sup> The Ministry for Regulation is one of five [Central Agencies](#) that oversee cross-cutting Government functions, alongside the Department of the Prime Minister and Cabinet, Public Service Commission, the Treasury and Social Investment Agency.

responsible for leading and making continuous improvements to New Zealand's overall Regulatory Management System (RMS).

14. The Ministry is, or will be, undertaking a range of measures towards enhancing regulatory quality. These objectives and functions are outlined in Ministry's [Strategic Intentions](#) and include:
- making continuous and enduring improvements within New Zealand's regulatory management system, including by providing guidance and setting clear expectations on regulatory performance for government agencies, working closely with other agencies with a stewardship role in the RMS (e.g. the Parliamentary Counsel Office, and Ministry of Justice)
  - lifting the quality of new regulatory proposals and advice through improving the process and quality of regulatory impact analysis, engaging with government agencies to support capability-building, and ensuring that regulatory policy is informed by robust analysis of impacts, costs and benefits
  - supporting government agencies to understand and fulfil regulatory stewardship responsibilities, including the development and communication of guidance, tools and practical support for system leaders, clarifying stewardship roles and responsibilities across the public sector, and provide leadership to identify and address system-wide risks to regulatory performance
  - investigating and reviewing regulatory issues and regulatory systems across government, by enabling members of the public to contact the Ministry for to raise specific or systemic regulatory issues
  - identifying and improving issues from analysis and benchmarking projects about the New Zealand regulatory environment, issues identified through regulatory reviews, legislative analysis and regulatory stewardship, and good practice drawing from overseas practices.

### **Impending legislative developments**

15. The Ministry is the administering agency responsible for Part 4 of the Legislation Act 2019, which sets out disclosure statement requirements for Government-initiated legislation. There is an existing statutory requirement to bring into force Part 4 of the Legislation Act by 24 March 2026.
16. Bringing into force Part 4 of the Legislation Act 2019 would encompass several supporting mechanisms including for the establishment of good practice standards for regulation as part of the disclosure statement regime. More specifically:
- disclosure statement provisions enable setting of legislative guidelines or standards via a government notice, which can cover both the content and effect of legislation and the process of its development
  - regulatory standards would be provided for through the existing disclosure statement provisions, and can be complemented with non-statutory expectations and guidance
  - under section 107 of the Legislation Act 2019, the responsible Minister (likely to be the Minister for Regulation) and the Attorney-General would jointly issue notices that would set standards which primary legislation and specified classes of secondary legislation must be assessed against. This could be supplemented by non-statutory guidance
  - the House of Representatives would need to pass a resolution approving each notice (and therefore the regulatory standards) before it is issued

- under section 110 of the Legislation Act 2019, the Minister for Regulation may also issue directions in relation to administrative arrangements for disclosure to ensure a consistent approach across agencies to support consistency of disclosures – for example, in relation to how disclosure statements are set out, or providing for other elements that disclosure statements must include, with directions being published and presented to the House of Representatives.

### **Scope of this interim RIS**

17. This interim RIS has been produced at an intermediate stage of the policy development process for the Regulatory Standards Bill and accompanies the discussion document “*Have your say on the proposed Regulatory Standards Bill*” for public consultation. The Ministry has also produced a preliminary, high-level Treaty Impact Analysis on the Bill, released alongside the discussion document and interim RIS. Following public consultation, the Ministry will develop a final RIS to accompany Cabinet’s substantive decisions on the Bill, anticipated to take place in early 2025.

## What is the policy problem or opportunity? What objectives are sought in relation to the policy problem?

### Summary of the policy problem

The quality of regulation is important for New Zealand's long-term productivity, growth, and living standards, and in supporting New Zealanders' wellbeing, but there are challenges in design and implementing good quality regulation. The Regulatory Management System does not currently support a high level of transparency to enable a broad range of stakeholders to easily identify whether new and existing regulation meets standards of good regulatory quality. Such transparency is an important component of an effective Regulatory Management System because it helps strengthen incentives for responsible Ministers and agencies to work throughout the regulatory policy cycle to ensure new and existing regulation meets quality standards. This could be remedied through the introduction of clear, authoritative standards for good quality regulation, and mechanisms that require clear and accessible assessment of regulation against these standards.

### The quality of regulation is an important determinant of wellbeing

18. The quality of regulation is crucial to improving New Zealand's long-term productivity, growth, and living standards, and supporting New Zealanders' wellbeing.
19. Regulation is an important lever to help the government achieve its objectives by directing or influencing people's behaviour, or how people interact with each other. Regulation affects the lives of all New Zealanders through the laws, processes, and systems they interact with on a daily basis. More broadly, regulation underpins markets, protects the rights and safety of citizens, and their property, and ensures the efficient and equitable delivery of public goods and services.<sup>7</sup>
20. Well-designed and implemented regulation can help governments to achieve their desired economic, environmental and social outcomes, support the effective operation of markets, and protect communities from harm. On the other hand, poor regulation can impose costs, limit freedoms, stifle innovation, and give rise to other unintended consequences – or it can simply fail to achieve its intended objectives.
21. Improving New Zealand's regulatory performance in the long term would help to support:
  - better returns on physical and financial capital
  - more productive use of human capability
  - greater social cohesion
  - a flourishing natural environment.

### ...but there are challenges in designing and implementing good quality regulation...

22. While the benefits of high-quality regulation - that is, regulation that is likely to achieve its objectives without imposing undue or unnecessary constraints or costs - are clear, there are multiple challenges in ensuring that new regulation is designed and

<sup>7</sup> *Regulatory Institutions and Practices*, Productivity Commission (2014), p. 15

implemented well, and existing regulation is reviewed and maintained to ensure it is still necessary and fit for purpose.

### ...both in relation to new regulatory proposals...

23. In relation to the **design of new regulation**, there are a number of features of, and common practices related to, New Zealand's regulatory policy development processes that can negatively impact on the overall quality of New Zealand's regulation including:
- A historical and ongoing over-use of legislation (particularly as a perceived low cost, 'quick fix' response to specific incidents) where existing legislation could be adapted to achieve the intended objectives, or the objectives could be achieved without use of legislation.<sup>8</sup> This can lead to unintended consequences or, more broadly, increasing complexity and incoherence in regulatory systems.
  - The regular design and implementation of reforms at high speed – often as a response to high profile issues that the public is concerned about - hampering robust assessment of regulatory impacts and a focus on good implementation.<sup>9</sup>
  - Patchy agency performance in relation to regulatory impact analysis (RIA) requirements, with many RISs not fully meeting requirements. In addition, there are increasing levels of non-compliance with RIA requirements, and the devolved nature of the quality assurance process can make it more difficult to test the robustness of assessments made by agencies. This can result in poorly designed and implemented regulation, along with a failure to identify the full impacts of regulatory proposals on regulated parties, regulators, and other regulatory systems.<sup>10</sup>

### ...and New Zealand's existing stock of regulation

24. Similarly, there are a number of features and practices relating to **New Zealand's existing stock of regulation** that negatively impact on its quality including:
- a large amount of outdated or no longer fit-for-purpose legislation,<sup>11</sup> which creates inefficiencies for regulators, imposes unnecessary costs on regulated parties, and means these regulatory systems cannot easily adapt to technological, demographic, or other change, or respond to emergency situations
  - a general lack of focus on monitoring and review of regulatory performance, including a lack of systematic evaluation of the outcomes of regulatory policies.
25. The factors underlying these features and practices are complex and involve often competing incentives and pressures on responsible Ministers and agencies. However, some key underlying factors include:

<sup>8</sup> For instance, in its 2023 Briefing for the Incoming Attorney-General, the Legislation Design Advisory Committee (LDAC), which has responsibility for promoting good quality legislation in New Zealand, noted a tendency towards using legislation in cases where it was not strictly required, or where it covered matters already addressed in existing legislation See LDAC (2023). [Briefing for the Incoming Attorney-General](#), pp. 12-13s

<sup>9</sup> For instance, LDAC notes this in its [2022 Annual Report](#).

<sup>10</sup> The Ministry (and previously the Treasury) formally recorded 25 cases of non-compliance in the 2023 calendar year, and 27 cases in the 2024 calendar year to date.

<sup>11</sup> Almost two-thirds of regulator chief executives surveyed by the Productivity Commission in 2014 reported that agencies often work with legislation that is outdated or not fit-for-purpose.

- The regular design and implementation of reforms at high speed – often as a response to high profile issues that the public is concerned about – hampering robust assessment of regulatory impacts and a focus on good implementation.<sup>12</sup>
- Capacity (and sometimes capability) constraints within agencies at all points of the regulatory policy cycle (i.e. regulatory development, implementation, and review) which can lead to poorly designed and/or implemented regulation. In addition, work to review and update existing regulation tends to be less of a priority than implementing new reforms – resulting in agencies often struggling to keep regulatory systems up to date through regular maintenance and periodic renewal
- The complexities involved in assessing and quantifying the full costs and impacts of regulation as a lever – including because its effectiveness often relies on influencing behaviour, sometimes over a very long time period, in the face of other incentives or influences. This can make it difficult for agencies to robustly assess the costs and benefits of regulation and where these costs and benefits fall.
- A lack of clear transparency in relation to how new or existing regulation measures up against agreed regulatory quality standards, which can mute incentives for responsible Ministers and/or agencies to ensure the quality of that regulation, and hamper public and Parliamentary scrutiny of it.

### **An effective RMS can help to lift regulatory quality by addressing some of these issues**

26. An effective RMS<sup>13</sup> can help address some (but not all) of these issues by:
- clearly articulating the standards that any regulation should meet – for instance, via key documents such as the *Government Expectations for Good Regulatory Practice* and the *Legislation Guidelines*
  - setting clear expectations and processes to help ensure both new and existing regulation meets those standards, for instance through the RIA Cabinet Office Circular for new regulatory proposals
  - creating incentives and consequences to encourage compliance with those expectations and processes, for instance, requiring a post-implementation review to be conducted in cases where a RIS has not been completed to acceptable standards
  - helping build capability across the system to support more robust regulatory policy development and better implementation of regulatory reforms
  - supporting transparency across the system so that it is clear where regulation has not met accepted standards – for instance, via the publication of disclosure statements.

### **It is difficult to make an assessment of the overall quality of New Zealand’s regulation**

27. As highlighted in the 2011 RIS, there are limitations on the ability to measure regulatory quality where the metric of measurement is linked to the outcome of that regulation being in place. The 2011 RIS noted that this type of measurement does not

<sup>12</sup> For instance, LDAC notes this in its [2022 Annual Report](#).

<sup>13</sup> The RMS is the set of policies, institutions, tools, and processes employed by central government to help it develop, deliver, and maintain high quality regulation that does not impose unnecessary costs.



distinguish between the legislative instrument and its implementation, and that different views on the importance and desirability of outcomes sought would result in variable assessments of quality. Added to this, as noted above, assessing the full costs of any regulation can be difficult and complex.

28. Another way of looking at regulatory quality is whether it is consistent with standards that describe characteristics of high-quality regulation – with the assumption that this is more likely to lead to desired outcomes while minimising cost. As outlined above, these standards are set out in a number of places, including the *Legislation Guidelines* (which focus on aspects of good legislative design) and the *Government Expectations of Good Regulatory Practice* (which focus more broadly on good regulatory design and practice).

29. However, while these standards can be applied to regulation in specific cases, they do not lend themselves to a system-wide assessment of the quality of New Zealand's regulation.

### **International indicators show New Zealand's regulation performs relatively well...**

30. International indicators can help present a picture of how New Zealand performs relative to other countries with respect to its regulation – noting that many of these indicators measure a mixture of the quality of regulation in specific regulatory systems, and the robustness of the overall RMS. Overall, New Zealand performs relatively well across a range of indicators:

- New Zealand ranked in the 99th percentile for regulatory quality in the 2022 World Bank Worldwide Governance Indicator.
- New Zealand ranked seventh out of 140 countries overall in the World Justice Project Rule of Law Index for 2022, placing fifth for the regulatory enforcement factor.
- New Zealand ranks above the OECD average across its Product Market Regulation Indicators (PMRI) questionnaire. With lower scores representing better performance, New Zealand scored 1.32 compared to the OECD average of 1.34 in the 2024 survey, and at 1.24 compared to the OECD average of 1.38 in the 2018 survey. Areas of strength identified by the PMRI include New Zealand's administrative requirements for new firms, barriers to entry and trade and investment.
- New Zealand has consistently ranked above the OECD average across stakeholder engagement and RIA across the OECD Indicators and Regulatory Policy and Governance surveys.

### **...but suggest there is room for improvement, particularly in relation to the RMS**

31. However, New Zealand's regulatory performance has stagnated or diminished over time, according to the most recent results. Those results are partially attributable to changes in the scope and methodology of surveys over time, and reflect that some of these indicators are not being formally documented as a result of New Zealand's small size and relatively less formal constitutional arrangements. Nonetheless, the results indicate that there may be room for improvement in New Zealand's regulatory arrangements.

32. In particular, New Zealand scores relatively poorly in relation to ex post review and evaluation of both primary and secondary legislation. The OECD notes that oversight of ex post evaluations remain underdeveloped compared to quality control of RIA generally, despite their critical importance for regulatory quality.<sup>14</sup>

33. These indicators, along with the issues outlined earlier, suggest that there is likely to be significant room for improvement in the quality of New Zealand's regulation, and that the RMS could play a central role in achieving that.

### **There are a number of weaknesses in New Zealand's RMS**

34. There are a number of characteristics of New Zealand's RMS that, over time have likely limited its effectiveness in supporting the development, implementation and maintenance of high quality regulation. These include limited resource devoted to central oversight, the largely devolved nature of RIA quality assurance processes, and a lack of tools and processes focused on ex post review. The establishment of the Ministry for Regulation, and much of the work discussed in Section 1 of this RIS aims to address some of these issues.

35. However, one particular weakness of the current RMS is that it does not support a high-level of transparency in relation to whether new and existing regulation clearly meets standards of good regulatory quality.

36. Such transparency is an important component of an effective RMS because it helps strengthen incentives for responsible Ministers and agencies to work throughout the regulatory policy cycle to ensure new and existing regulation meets quality standards.

37. While RISs and disclosure statements<sup>15</sup> are currently the main mechanisms aimed at providing such transparency, their effectiveness in doing this is subject to a number of limitations – particularly when thinking about the ability of a broad range of stakeholders, including the general public to be able to access and understand key information about regulatory quality:

- There are multiple places in which standards of regulatory quality (including best practice processes for developing regulation and for regulatory stewardship) and associated guidance for complying with these standards can be found.<sup>16</sup> These standards are all supplied for different purposes, 'owned' by different agencies, and apply at different stages of the regulatory policy cycle. In addition, most of these are written for policy, regulatory and legal professionals, which likely further impacts on their accessibility to non-expert audiences.
- While most RISs are readily available on the Ministry for Regulation's website (and previously the Treasury's website), they are often complex and technical in

<sup>14</sup> [OECD Regulatory Policy Outlook 2021](#), p. 117-118

<sup>15</sup> Noting that the coming into force of Part 4 of the Legislation Act would address some of these issues.

<sup>16</sup> As well as the [Government Expectations for Good Regulatory Practice](#) and [Legislation Guidelines](#), these include [Cabinet Circular \(20\)2](#) governing the regulatory impact analysis (RIA) system, RIA guidelines including [best practice impact analysis, conducting effective consultation, best practice monitoring, evaluation and review](#), Crown Law Office's "[Judge Over Your Shoulder](#)" guide to good decision-making and the law in New Zealand, Parliamentary Counsel Office guidance to support government departments with legislative stewardship, e.g. the [Secondary Legislation Drafting Toolkit](#), the Ministry for Regulation resources to support [Regulatory System Capability](#), the Department of the Prime Minister and Cabinet's [Policy Project frameworks](#), and The Office for Māori-Crown Relations – Te Arawhiti resources on [Crown engagement with Māori](#).

nature, and provide a broad and often detailed assessment of the costs and benefits of the proposal.<sup>17</sup> Quality assurance of RISs focus on whether the analysis in the RIS meets certain standards for analysis, rather than the proposal itself meeting standards of regulatory quality (although there are overlaps between the two things). This lessens their effectiveness as a tool to help a broad range of stakeholders easily understand whether a proposal meets standards of regulatory quality.

- Disclosure statements provide a brief assessment of whether agencies have followed some of the key processes they are expected to have followed in developing legislation and highlight certain significant powers or unusual features that may be of particular Parliamentary or public interest and may warrant further explanation. However, while Part 4 of the Legislation Act is not yet in force, disclosure statements do not provide a definitive statement about the quality of the proposed regulation against standards.
- Neither RISs nor disclosure statements provide any explicit indication about how or whether any issues with the quality of regulatory proposals they identify were factored into decisions to proceed with the proposals - including any justifications for why a regulatory proposal does not meet specific standards.
- There are no equivalent mechanisms or requirements relating to assessment of existing regulation by agencies (which would ideally result in Ministers taking forward proposed reforms to that regulation). This is particularly problematic because many legislative proposals are exempted from RIA requirements, so may not be subject to any detailed scrutiny of their quality or impacts.
- There is a lack of transparent reporting on how the system is functioning as a whole in relation to regulatory quality – due both to a historic lack of resource devoted to this oversight function (which is now the responsibility of the Ministry for Regulation) and a lack of available information on which to base this reporting.

### **What objectives are sought in relation to the policy problem?**

38. The proposed Regulatory Standards Bill has the overall objective of improving transparency in relation to where regulation does or does not meet standards, on the presumption that this transparency will then influence decisions made during the development, implementation and stewardship of regulation – and ultimately increase the amount of regulation that ‘meets’ quality standards.
39. The proposals for the Bill presented in this interim RIS have several sub-objectives that support the overarching goal of improving transparency. These are:
- to establish and promote a benchmark for good regulation through quality standards for responsible regulation, which all regulation should comply with
  - to establish mechanisms to assess consistency of new legislative proposals and existing regulation with regulation quality standards
  - to provide an avenue for independent consideration of the consistency of existing regulation, primarily in response to stakeholder concerns.

<sup>17</sup> The Impact Analysis framework involves defining the policy or operational problem that needs to be addressed, identifying the policy objectives and the full range of feasible options for addressing that problem. It also includes analysing those options for their potential impacts and assessing their costs, benefits and risks, carrying out consultation, implementation planning, and arrangements for ongoing monitoring, evaluation and review.

## Section 2A: Deciding upon an option to address the policy problem – regulatory principles and associated mechanisms

### What scope will options be considered within?

40. This section analyses options for setting out **regulatory principles** in legislation, and mechanisms for transparently assessing the consistency of regulation against the principles. The option sets are presented as packages, rather than distinct components, because there are strong linkages between the principles and consistency mechanisms.<sup>18</sup>
41. The option sets also include some accompanying measures to further support increasing the quality of regulation.
42. The options in this interim RIS set out three groups of regulatory responsibility principles:
- Principles relating to legislative design: these principles refer to the content of legislation being developed.
  - Principles relating to good law-making: these principles refer to the process of developing legislation.
  - Principles relating to regulatory stewardship: these principles refer to the considerations around monitoring, evaluation and review of regulatory systems.
43. This interim RIS will use the current status quo (Option 1) as a baseline for assessing the set of options, given that Part 4 of the Legislation Act has not yet come into force and comparative assessments would require several assumptions around its impacts at a future point in time.

### Focus on legislative options

44. This interim RIS focuses predominantly on legislative options to address the identified problem because the proposal set out in the discussion document is based on the introduction of the Bill, as provided for in the Coalition Government commitment to “legislate to improve the quality of regulation”.
45. The Ministry for Regulation has therefore not considered in any detail whether the intended objectives of the proposal could be achieved without any legislative change. However, the Ministry notes that the disclosure regime that forms part of Option 4 is set out in legislation already (and it would likely require repeal or amendment under Options 2 or 3).

<sup>18</sup> For example, where primary legislation sets out that the review of existing legislation for consistency with regulatory responsibility principles would be through non-statutory notices issued by the Minister, this would preclude consistency mechanisms also being prescribed in legislation.

## What criteria will be used to compare options to the status quo?

46. Five criteria will be used to compare options to the status quo:
- **Durability:** standards and associated mechanisms should have broad buy-in and acceptability while having sufficient flexibility to evolve with changes in the regulatory management system to enable their enduring impact over time.
  - **Compatibility with established norms:** standards and associated mechanisms should align with enduring and well-understood norms in New Zealand's legal and constitutional landscape – including the respective roles of the different branches of government, lines of vertical accountability across government, and existing policy settings in the regulatory management system.
  - **Accountability:** standards and associated mechanisms should clearly set out the relative responsibilities for Ministers and government agencies.
  - **Effectiveness:** standards and associated mechanisms should ensure sufficient transparency of the assessment of regulation against standards, including that these assessments can be accessed and understood by the public.
  - **Cost:** assessment of estimated costs of each option relative to the status quo.

47. [Redacted content 9(2)(h)]

48. The criteria outlined above carry equal weighting in the assessment of options, however some options contain features that are more relevant to some criteria relative to others. For example, statutory power providing the Ministry for Regulation with a regulatory oversight role form a component of Options 3 and 4 only, therefore reference to this in the multi-criteria analysis will only be present in the assessment of those options.

## What options are being considered?

49. A high-level overview of the components of the four options is outlined in the overleaf below, followed by more detailed descriptions on each of the options.

**Option 1:** the status quo at the time of writing.

**Option 2:** principles for legislative design and good law-making set out in primary legislation along with statutory certification mechanisms and a role for the courts to prefer interpretation with the principles. *Option 2 reflects the approach in the 2011 and 2021 Bills.*

**Option 3:** modified principles for legislative design, good law-making and regulatory stewardship practices set out in primary legislation, with a mixture of statutory and non-statutory certification mechanisms. *Option 3 represents the proposal set out in the accompanying discussion document.*

**Option 4:** building on the current Disclosure Statement regime plus new legislative provisions to support regulatory stewardship and the review and reporting roles of the Ministry for Regulation. *Option 4 is the Ministry's preferred option.*

50. The Ministry has released a preliminary, high-level Treaty Impact Analysis alongside the discussion document and interim RIS to support the public consultation process. The preliminary Treaty Impact Analysis provides an indication of the possible Treaty impacts of the policy proposals, the nature of Māori rights and interests, and implications for Treaty settlements. It serves as an initial early review of policy proposals by officials and will be further refined following proposed consultation on a discussion document.



## Overview of options

The Ministry's functions and work programme (including non-legislative initiatives) outlined in Section 1 are assumed to form part of the wider operating context across all four options presented below.

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>	<b>Option 4</b>
	<b>Status quo</b>	<b>Principles for legislative design and good law-making set out in primary legislation along with statutory certification mechanisms and a role for the courts to prefer interpretation with the principles (2011/2021 Bill)</b>	<b>Modified principles for legislative design, good law-making and regulatory stewardship practices set out in primary legislation, with a mixture of statutory and non-statutory certification mechanisms (discussion document proposal)</b>	<b>Building on the Disclosure Statement regime plus new legislative provisions to support regulatory stewardship and the review and reporting roles of the Ministry for Regulation (the Ministry's preferred option)</b>
<b>Principles for legislative design</b>	Non-legislative guidance, particularly the <a href="#">Legislation Guidelines</a> issued by the Legislation Design and Advisory Committee and endorsed by Cabinet in <a href="#">CO (21) 2</a>	Set out in primary legislation and expressed verbatim as per the 2011/2021 Bill	Set out in primary legislation and partially modified from the principles expressed in the 2011/2021 Bill	Principles would be set out in a government notice issued under section 107 of the Legislation Act; the notices would be presented to, and would need to be approved by, the House of Representatives before being issued
<b>Principles for good law-making</b>	Non-legislative guidance via Cabinet circular <a href="#">CO (20) 2</a> set out Cabinet's RIA requirements, which include proper identification of the problem or opportunity, all feasible options to be considered, impact and risk analysis to be completed and a rationale for the option being recommended. The circular is supported by more detailed <a href="#">guidance for agencies</a> .	Set out in primary legislation and expressed verbatim as per the 2011/2021 Bill	Set out in primary legislation and partially modified from the principles expressed in the 2011/2021 Bill	Principles would be set out in a government notice issued under section 107 of the Legislation Act; the notices would be presented to, and would need to be approved by, the House of Representatives before being issued
<b>Principles for regulatory stewardship</b>	Section 12(e) of the Public Service Act 2020, supported by <a href="#">non-legislative guidance</a> issued by the Public Service Commission	Same as status quo	New category of principles set out in primary legislation	Non-legislative guidance linked to new stewardship duties for government agencies
<b>Mechanisms for ensuring consistency with principles</b>	Non-legislative requirements in CO (20) 2 for RISs to be independently quality assured, and for QA panel assessments to be included in Cabinet Papers – however this relates to the quality of the analysis, not the proposal. Non-legislative requirements for disclosure statements for Government-initiated legislation (via Cabinet Office Circular <a href="#">CO (13) 3</a> )	The responsible Minister and Chief Executive must sign a written certificate to certify the compatibility of new legislation with principles and explain any inconsistencies; this certificate must be presented to the House of Representatives Requirement that every public entity must include in each of its annual reports a statement of steps taken to comply with notices issued in the Gazette set out under clause 14 of the 2021 Bill; and general requirement for public entities to regularly review all legislation that it administers for compatibility with the principles under clause 15 of the 2021 Bill	Obligation on the Minister for Regulation to issue guidance on the interpretation and application of principles New regulatory proposals would be assessed prior to Cabinet policy decisions and prior to legislation being introduced to the House, with inconsistencies explained in a statement to be publicised Existing regulation would be assessed against reporting and review obligations set out in the Bill; the responsible Minister would be required to make a statement justifying why they are choosing not to remedy these inconsistencies New duty for agencies for regular review, maintenance and improvement of the legislation they administer and require responsible agencies to develop and publicly report against plans to review their stock of legislation	Directions on consistency mechanisms would be issued as government notices by the Minister for Regulation under section 110 of the Legislation Act; the notices would be published and represented to the House of Representatives New duty for agencies for regular review, maintenance and improvement of the legislation they administer and require responsible agencies to develop and publicly report against plans to review their stock of legislation
<b>Accompanying measures</b>		The courts would be given a new role to require all legislation to be interpreted consistently with regulatory principles where possible The courts would be given the power to grant declarations of incompatibility where legislation is inconsistent with the regulatory principles	Statutory power providing the Ministry for Regulation with a regulatory oversight role, enabling the Ministry to produce regular reporting to Parliament assessing overall performance against the principles Statutory power to allow the Ministry to require information for the purpose of regulatory reviews directly from public service agencies, statutory Crown entities, and all entities that perform statutory regulatory functions (such as local government) or are contracted by the government to support the delivery of a regulatory function (i.e., third-party service providers)	Statutory power providing the Ministry for Regulation with a regulatory oversight role, enabling the Ministry to produce regular reporting to Parliament assessing overall performance against the principles Statutory power to allow the Ministry to require information for the purpose of regulatory reviews from public service agencies, and from statutory Crown entities with the written approval or direction of the Prime Minister or Minister responsible for the statutory Crown entity

## Option 1 – Status quo

51. Option 1 reflects the status quo at the time of writing (as set out in the table above).

## Option 2 – Principles for legislative design and good law-making set out in primary legislation along with statutory certification mechanisms and a role for the courts to prefer interpretation with the principles (2011/2021 Bill)

### Principles for responsible regulation

52. Option 2 is the approach set out in the 2011 and 2021 Bills. Under this option, the Bill would set out principles in respect to legislative design and good law-making practices in primary legislation. [Clause 6 of the 2021 Bill](#) outlines a set of regulatory principles that all legislation *should* comply with, including:

- being consistent with the rule of law (e.g. every person is equal before the law, issues of legal right and liability should be resolved by application of the law)
- personal liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property
- not to take or impair, or authorise the taking or impairment of, property except in public interest or with compensation provided
- not to impose or authorise the imposition of a tax except by or under an Act
- preserve the courts' role of authoritatively determining the meaning of legislation
- not to be made unless, to the extent practicable, the persons likely to be affected have been consulted
- not to be made unless there has been a careful evaluation of the issue concerned, effectiveness of existing legislation or common law, public interest, options (including non-legislative options) reasonably available for addressing the issue, likely persons who would benefit or suffer detriment from the legislation, and all potential adverse consequences of the legislation (including potential legal liability of the Crown or any other person) are reasonably foreseeable.

### Mechanisms for certifying consistency with the principles

53. Under this option, the Minister and Chief Executive with responsibility for a Government Bill (or the Member of Parliament responsible in the event of a Member's Bill) must sign a written certificate to certify the compatibility of new legislation with the principles of responsible regulation, with the certificate being presented to the House of Representatives. Should there be departures from the principles set out in the Bill, the certificate must state those incompatibilities, explain their justification, and reasons why the legislation is proceeding despite the lack of justification.

54. The Bill further sets out statutory review of legislation for compatibility with the principles, prescribing that every public entity must include in each of its annual reports under the Public Finance Act 1989, Crown Entities Act 2004, or any other Act, a statement of steps taken to comply with notices issued in the Gazette set out under clause 14 of the 2021 Bill. Clause 15 of the 2021 Bill sets out a general requirement for public entities to regularly review all legislation that it administers for compatibility with the principles.

### Accompanying mechanisms

55. The 2021 Bill provides a new role for the judiciary to prefer the interpretation of any legislation consistent with the principles set out in the Bill, and a role to declare any legislation to be inconsistent with these principles.

### ***Option 3 – Modified principles for legislative design, good law-making and regulatory stewardship practices set out in primary legislation, with a mixture of statutory and non-statutory certification mechanisms (discussion document proposal)***

56. Option 3 reflects the approach taken forward in the accompanying discussion document for public consultation.

#### **Principles for responsible regulation**

57. Under this option, the principles for inclusion in primary legislation comprise of principles relating to legislative design and good law-making *modified from the wording of the 2021 Bill*, with the addition of principles relating to regulatory stewardship.

58. The wording of some of the principles has been modified from the 2021 Bill:

- amending the wording of some of the principles to enable ease of interpretation and reflect greater alignment with broadly accepted practices and guidelines
- removing the new role for the courts to prefer interpretations of legislation consistent with the regulatory standards, to reduce ambiguity and uncertainty around the respective roles of the three branches of government
- setting out a *requirement* for non-statutory guidance to be issued to support application of the principles, rather than a discretionary measure as the 2011 and 2021 Bill provides.

59. For the specific proposed wording of the principles, refer to **Annex One**.

#### **Mechanisms for certifying consistency with the principles**

60. Under this option, the Bill would require the Minister for Regulation to issue guidance on the interpretation and application of principles. This guidance could include:

- further information on how the principles should be interpreted and applied
- what steps agencies and Ministers should take to ensure that they sufficiently consider the principles when developing new proposals or reviewing their regulation, and any processes they will follow
- the information that should be provided when assessing the consistency of regulation or justifying any inconsistency
- requirements for publication of any information generated through these processes.

61. Under this option, new regulatory proposals would be assessed for consistency with the regulatory responsibility principles prior to a proposal coming to Cabinet for policy decisions (through either a legislative or non-legislative mechanism), and prior to legislation being introduced to the House (or in the case of secondary legislation, prior to being made). Where a regulatory policy proposal or draft legislation is inconsistent with any of the principles, the responsible Minister would be required to make a statement justifying why they are proceeding with the proposal despite these inconsistencies before the legislation is introduced. This statement, along with all the information generated through the assessment process would be published (subject to equivalent provisions to the Official Information and Privacy Acts) to ensure transparency.

62. In relation to existing regulation, the Bill would require Government agencies to regularly review, maintain, and improve regulation administered by their agency

through published forward plans for review. Ministers and agencies would be required to publicly report on plans to review their stock of legislation against the principles, along with the outcomes of those reviews including any identifying and proposing remedies where existing regulation is inconsistent with the principles. Where inconsistencies are identified, but not proposed to be remedied, Ministers would be required to justify these inconsistencies.

### **Accompanying measures**

63. This option includes provisions to support the Ministry for Regulation's oversight of the quality of legislation, enabling the Ministry to produce regular reporting for Parliament assessing overall performance against the principles.

64. Under this option, the Bill would also include a statutory power that enables the Ministry for Regulation to gather information, for the purpose of this reporting and initiating and conducting regulatory reviews from public service agencies, statutory Crown entities, and all entities that perform statutory regulatory functions (such as local government) or are contracted by the government to support the delivery of a regulatory function (i.e., third party service providers). This proposal means that the ability to request information from wider state services outside of public service agencies, such as statutory Crown entities, would not require written approval from the Prime Minister or the Minister responsible for the state service, and requests for information outside central government, such as from local government or third-party providers, would be made directly rather than to the agency responsible for the regulatory system.

### ***Option 4 – Building on the disclosure statement regime through bringing Part 4 of the Legislation Act 2019 into force, plus new legislative provisions to support agency regulatory stewardship and the review and reporting roles of the Ministry for Regulation (the Ministry's preferred option)***

65. Option 4 comprises an evolving status quo that builds on Part 4 of the Legislation Act 2019 coming into force, combined with a mixture of supporting certification mechanisms and information-gathering powers for the Ministry for Regulation's regulatory reviews.

### **Principles for responsible regulation**

66. There is an existing statutory power under section 107 of the Legislation Act 2019, for the responsible Minister and the Attorney-General to jointly issue notices that set standards which primary legislation and specified classes of secondary legislation must be assessed against. The House of Representative would pass a resolution approving each notice before it is issued.

67. Standards would be set out through a combination of provisions under section 107 and strengthening non-legislative guidelines:

- standards relating to regulatory design and good law-making could be set out in a government notice issued under section 107 of the Legislation Act, supported by the Legislation Design and Advisory Committee (LDAC) Legislation Guidelines and Cabinet's impact analysis requirements
- standards relating to regulatory stewardship could be set out in new legislative provisions, supported by further elaboration such as through the Government's Expectations for Good Regulatory Practice, or a Ministerial direction.

## **Mechanisms for certifying consistency with the principles**

68. Under this option, standards would be given effect through a mixture of statutory and non-statutory mechanisms. Within the Legislation Act 2019, section 110 provides that the Minister may also issue directions to support consistency of disclosures – for example, in relation to how disclosure statements are set out, or providing for other elements that disclosure statements must include, with directions being published and presented to the House of Representatives.
69. Additional legislative measures could be introduced to strengthen the impetus for Government agencies and Ministers to give effect to the principles and pursue their regulatory programmes in a way that upholds the principles. For example, legislation could be introduced which would provide the Minister for Regulation the power to issue statements that set out requirements, processes and expectations for new regulatory proposals and stewardship of existing regulatory systems by way of Regulatory Responsibility Statements (RRS) with legal status similar to other instruments made under legislation, such as Government Policy Statements. RRSs could be required to be tabled in the House, made publicly available, and required for agencies to give effect to. In accordance with Parliamentary practice, a Select Committee could take on a scrutiny role and oversee the Government's performance. However, as the RRSs would not be secondary legislation, they could not be formally disallowed.
70. The Bill would further establish mechanisms to transparently show whether and how Ministers and agencies have complied with the requirements, processes and expectations in RRSs in relation to regulatory proposals and regulatory systems they are responsible for.
71. As with Option 3, this option includes a duty on agencies for regular review, maintenance and improvement of the legislation they administer and require responsible agencies to develop and publicly report against plans to review their stock of legislation.

## **Accompanying measures**

72. As with Option 3, this option establishes a regulatory oversight role for the Ministry for Regulation, enabling the Ministry to produce regular reporting for Parliament assessing overall performance against the principles.
73. Under this option, the Bill would also include a statutory power that enables the Ministry for Regulation to gather information, for the purpose of initiating and conducting regulatory reviews, from public service agencies, and from statutory Crown entities with the written approval or direction from the Prime Minister or Minister responsible for the Crown entity. Where information is required outside of central government (i.e. from local government or third-party service providers), information requests would be directed to the relevant agency responsible for the regulatory system.
74. Accompanying non-legislative measures could be introduced or continued to complement the strengthened disclosure regime and certification mechanisms. More specifically, they could include:
- Updating Cabinet Circular (20)2 on the RIA process to reflect the regulatory principles set out in notices under Part 4 of the Legislation Act 2019, as well as

further system improvements that enhance the quality of analysis and supporting quality assurance arrangements for Regulatory Impact Statements.

- Refreshing the *Government Expectations for Good Regulatory Practice* to reflect the requirements under the disclosure statement regime, and regulatory principles (particularly those pertaining to good law-making practices).
- Embedding regulatory standards in the policy development process, such as reflecting good law-making practices into the RIA or *Legislation Guidelines* which support the development of regulatory policy.



How do the options compare to the status quo?

	Option 1 Status Quo	Option 2 Principles for legislative design and good law-making set out in primary legislation along with statutory certification mechanisms (2011/2021 Bill)	Option 3 Modified principles for legislative design, good law-making, and regulatory stewardship practices set out in primary legislation, with a mixture of statutory and non-statutory certification mechanisms (approach outlined in the discussion document)	Option 4 Building on the disclosure statement regime with new legislative components for regulatory stewardship and regulatory review information gathering powers
<b>Durability</b>	0	<p>Having legislative design principles in primary legislation means they are much less flexible in responding to changes in regulatory best practice, societal expectations, and understanding of how systems operate.</p> <p>The selection of principles relating to legislative design is narrow in nature (i.e. with a focus on property rights and freedoms and liberties) and excludes other key principles relevant to legislative design. This is likely to impact on broad support and buy-in for the principles as a whole.</p> <p>Some of the specific principles do not appear to have broad buy-in as evidenced by public submissions on this version of the Bill identifying significant divergences in views, including legal and constitutional experts expressing strong opposition to the principles as expressed in the Bill alongside the courts' interpretative and declaratory roles.</p> <p>[Redacted content 9(2)(h)]</p>	<p>As with Option 2, having legislative design principles in primary legislation means they are much less flexible in responding to changes in regulatory best practice, societal expectations, and understanding of how systems operate. However, the modification of the principles to better align in some respects with generally accepted practices may mean this option has marginally better durability.</p> <p>As with Option 2, the selection of principles relating to legislative design is narrow in nature (i.e. with a focus on property rights and freedoms and liberties) and excludes other key principles relevant to legislative design - however it is likely preferable to Option 1 as it includes provision for a broader range of principles (i.e. the regulatory stewardship principles).</p> <p>[Redacted content 9(2)(h)]</p>	<p>Setting out principles via a government notice affirmed by the House, rather than in primary legislation, creates a greater degree of agility that allows principles to evolve over time alongside developments in the RMS, while the requirement for cross-Parliament support mitigates risks of principles being overly changeable. This is likely to lead to better durability over time.</p> <p>The approach allows for a balance between the certainty and visibility of high-level, enduring, and generally accepted principles, and flexibility in the supporting non-statutory certification mechanisms that provide more detail on the standards, as well as supporting material on how to apply them [Redacted content 9(2)(h)]</p>
<b>Compatibility with established norms</b>	0		<p>It is unclear how this proposal would fit in with existing processes and requirements such as RIA requirements and Part 4 of the Legislation Act 2019.</p>	<p>This option would align with existing processes and requirements such as RIA requirements and Part 4 of the Legislation Act 2019.</p>

The Select Committee identified a number of areas where this version of the Bill would add an extra layer to existing legislative processes and practices (e.g. overlap of new with existing principles, omission of principles and inconsistencies posed with the Regulation Review Committee's role), therefore negatively reflects its compatibility with established norms in the law-making process.

It is unclear how this proposal would fit in with existing processes and requirements such as RIA requirements and Part 4 of the Legislation Act 2019.

+

This option could strengthen accountability by making Ministers explicitly certify consistency of regulation and justify any departures.

There could be less accountability in relation to existing regulation, as the proposal would just require agencies to review their legislation against the standards over time.

++ (certification mechanisms) / - (functions and powers)

This option would strengthen accountability in a similar way to Option 1 - however, it would also require agencies and Ministers to report on consistency of proposed legislation prior to Cabinet decisions being made, as well as prior to legislation being introduced, it could also enhance accountability by requiring agencies to set and report against a plan to review existing regulation, and for Ministers to justify any ongoing inconsistency.

However, the statutory information-gathering powers would cut across existing lines of vertical accountability across government, and represents a material departure from information-gathering powers afforded to most other public service agencies.

+

This option could provide stronger accountability by requiring agencies to make disclosures about the quality of legislation being put forward to the House. Similarly to Option 2, it could also enhance accountability by requiring agencies to set and report against a plan to review existing regulation.

**Accountability**

0

+

This option could be more effective than the status quo, creating greater transparency by requiring Ministers and/or Chief Executives to certify whether proposed legislation is compatible with the principles, and the justification for any incompatibility. This certification would happen before a Bill is introduced to the House of Representatives; and before the commencement of a Bill's third reading in the House of Representatives - or in the case of secondary legislation, certification would happen before that legislation is made.

In the case of existing regulation, the requirement for public entities to include in annual reports information on steps taken to regularly review their legislation for consistency, and the outcomes of any completed reviews could also create greater transparency than the status quo.

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While this option takes a similar approach to Option 2, it could be more effective in improving transparency than that option, as it would require assessment of consistency (and subsequent publication of that assessment) at an earlier stage in the policy process, through the assessment of regulatory proposals at the time of Cabinet decisions, as well as prior to introduction to the House. This would make it clearer where Ministers have decided to proceed with policy proposals even where they have been assessed as being inconsistent with the principles.

Obligations for agencies to plan for and to review existing regulation could also be more effective at increasing transparency compared to Option 2, as the proposal requires agencies to develop and communicate specific plans and then report against them. This assessment of consistency is also proposed to focus more broadly on regulation (compared with legislation) including assessment of the effective operation of regulatory systems.

Transparency of compliance for existing regulation may also be improved by the requirement for the responsible Minister to provide justification, where non-compliance is not being remedied.

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This option could have similar levels of effectiveness in improving transparency as Option 2 - however, process requirements for assessment of consistency would be set out in secondary rather than primary legislation and/or supporting guidance. Similarly to Option 2, obligations for agencies to develop and report on plans to review their existing regulation could improve transparency of the consistency of existing legislation with the principles.

**Effectiveness**

0

<p><b>Cost</b></p> <p>0</p>	<p>This option has the greatest cost compared to the status quo, of the options considered. The certification mechanisms proposed in this option are more stringent, including the requirement for certification of all legislation within ten years after the Bill would come into force. [Redacted content 9(2)(h)]</p>	<p>This option would also be potentially significantly more costly relative to the status quo. Government agencies would incur additional costs associated with certifying new legislation for compliance with the principles and associated with regulatory stewardship obligations contained in the Bill (e.g. developing plans and undertaking periodic reviews of existing legislation). [Redacted content 9(2)(h)]</p>	<p>This option would be more costly relative to the status quo. Government agencies would incur additional costs associated with certifying legislation for compliance with principles set out in government notices, however under this option there is the potential for implementation to be phased. As in Option 3, there would also be costs associated with regulatory stewardship obligations contained in the Bill (e.g. developing plans and undertaking review of existing legislation).</p>
<p><b>Overall assessment</b></p> <p>0</p>	<p>Overall, this option would be worse compared to the status quo</p>	<p>Variable</p> <p>This option has both benefits and disadvantages relative to the status quo, resulting in a mixed/variable assessment overall.</p> <p>The Ministry notes that the resulting impact would highly depend on the way that its provisions are implemented, including the amount of buy-in from Ministers and Government agencies.</p>	<p>+</p> <p>Overall, this option would be likely better than the status quo.</p>

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

### *The Ministry recommends Option 4 overall*

75. While supporting the overall objectives that the Regulatory Standards Bill seeks to achieve, and noting that there are merits in Option 3 (the proposal presented in the discussion document), the Ministry's preferred approach is **Option 4** as the disclosure statement regime under Part 4 of the Legislation Act will achieve many of the same benefits for increasing regulatory quality without generating the same risks as including principles in primary legislation. Specifically, existing provisions under the Legislation Act 2019 would enable the setting of regulatory responsibility principles (per section 107) and mechanisms for ensuring consistency with those principles (per section 110).
76. Additionally, by issuing regulatory standards via a government notice that requires approval by the House of Representatives, Option 4 provides for regulatory standards to be set out in a manner that is more likely to garner broader buy-in over the longer-term, strengthening the clarity and durability of the proposal. At the same time, using a government notice as a vehicle for setting standards provides sufficient agility for the principles to evolve over time, [Redacted content 9(2)(h)]
77. The Ministry considers that Option 4, as with Option 3, could create greater impetus for the stewardship of existing regulation through the new duty on agencies for regular review, maintenance and improvement of the legislation they administer, and the requirements to develop and publicly report against plans to review their stock of legislation. The latter requirement should also improve transparency for the public, regulated parties and other interested stakeholders, and could support better dialogue on the nature and relative priority of issues with existing regulation.
78. The Ministry notes that there are upfront and ongoing costs associated with this new duty, however considers that the long-term gains from increased regulatory quality derived from the ex-post review of regulation can be immense, particularly where proactive stewardship of regulation can avoid regulatory failure or chronic regulatory under-performance. In addition, the proposed approach aims to give agencies significant flexibility to plan and undertake reviews in a way that is most suitable for their context, as it does not mandate a certain number of reviews or require regulatory systems to be reviewed within a specific time.
79. On the regulatory review powers for the Ministry for Regulation, Option 4 comprises a package of preferable information-gathering powers that can support the effective and efficient conduct of reviews while supporting existing vertical lines of accountability. The inclusion of an approval process from the Prime Minister or responsible Minister ahead of requesting information from wider State services would provide a safeguard that supports existing vertical lines of accountability, protects both the Ministry for Regulation and the relevant State service from any criticism that statutory independence is being compromised, and ensures the information request is justified in the public interest.

## What are the marginal costs and benefits of the option?

### Limitations to cost-benefit analysis

80. There are significant limitations and caveats around the quality of the cost-benefit analysis, given the policy context of the proposed Regulatory Standards Bill. The marginal impacts of the Bill on the quality of regulation are uncertain as they depend on the strength of the incentives that increased transparency bring - relative to other incentives and constraints - for each individual regulatory proposal and regulatory system.

81. [Redacted content 9(2)(h)]

There may also be costs arising from the application of the principles to policy initiatives which are also too uncertain to estimate, for example costs associated with more consultation, or costs arising from providing compensation for any impairment of property.

82. The Ministry further notes that additional decisions will be required to determine the types of regulation which would be *excluded* for assessment against principles of the Bill under Option 3 (such as legislation of an administrative or technical nature).<sup>19</sup> Policy decisions around the scope of consistency assessments would have a material impact on the marginal costs and benefits.

83. Further limitations are as explained in the “Limitations and Constraints to Analysis” section of the interim RIS.

### Approach to cost-benefit analysis

84. With the above caveats in mind, the cost-benefit table has been developed based on pursuing **Option 3**, which is the proposed approach to the Bill taken forward in the discussion document.

85. Comparatively, the Ministry considers that the marginal costs of Option 4 would be lower, and that Option 2 would be materially more costly due to its certification mechanisms being more stringent and prescriptive, as well as the requirement for certification against all legislation ten years after the Bill would come into force. 9(2)(h) [Redacted content 9(2)(h)]

<sup>19</sup> Several types of primary and secondary legislation in New Zealand are considered administrative or technical rather than representing changes in policy direction. These include legislative stewardship vehicles such as Revision Bills or Statutes Amendment Bills.

86. At this point of the policy process, the Ministry's analysis indicates that **direct impacts** of the Bill predominantly fall within the machinery of the New Zealand Government. The consistency mechanisms for assessing legislation against regulatory responsibility principles would sit within the responsibilities of government agencies - primarily public service agencies that would be subject to the requirements in relation to the legislation they directly administer, then wider state services in relation to regulatory stewardship obligations for the operation and review of regulatory systems.

Affected groups	Comment	Impact	Evidence Certainty
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### Additional costs of Option 3 compared to taking no action

Ministry for Regulation (as administering agency)	<p>Costs to the Ministry involve:</p> <ul style="list-style-type: none"> <li>• Drafting/ issuing guidance on the application and interpretation of principles</li> <li>• Providing training and guidance to agencies on new requirements</li> <li>• Reviewing agency consistency statements and stewardship reports</li> <li>• Preparation of periodic agency compliance report</li> </ul>	<p>Medium - the Ministry for Regulation may require additional resourcing in order to carry out some of these functions</p> <p>Preliminary estimation by the Ministry suggests approximately \$1 million per annum in FTE costs.</p>	Medium
Other government agencies	<p>Costs to other agencies involve:</p> <ul style="list-style-type: none"> <li>• Producing and publishing consistency statements for new legislation</li> <li>• Producing and reporting on plans for review of existing legislation</li> <li>• Undertaking additional stewardship activity, such as monitoring, evaluation, and review of regulatory systems</li> <li>• Providing information to the Ministry for Regulation for regulatory reviews if requested</li> </ul> <p>The preliminary estimate assumes regulatory systems are reviewed every five years on average - there are about 200 regulatory systems, which means about 40 systems being reviewed annually. It assumes additional stewardship activity for each system will require about 2-4 FTE across all</p>	<p>Variable but likely to be higher - the obligation to periodically review existing legislation will likely impose significant costs on agencies, especially those that administer a large number of regulatory systems or complex regulatory systems; particularly for agencies that are less advanced in their regulatory stewardship work.</p> <p>Preliminary estimate is \$17.8 million - \$31.8 million per annum total, across the public service.<sup>20</sup></p>	Medium

<sup>20</sup> This early estimate is under review and will be refined by the Ministry for Regulation over coming months, ahead of final policy decisions.



	<p>functions, given the low base of stewardship activity currently.</p> <p>This estimate also includes \$3 million per annum across the public service for producing consistency statements for new legislation - this assumes the current average of around 100 bills and 400 new secondary legislation drafted by PCO per year.</p>		
Crown	Redacted content 9(2)(h)]	Redacted content 9(2)(h)]	Low
Judiciary/ Legal Practitioners	[Redacted content 9(2)(h)]	[Redacted content 9(2)(h)]	Low
Wider public	Some indirect transactional costs - e.g. some parties may face additional costs from changes resulting from reviews of existing legislation	Variable depending on the regulatory system members of the public interact with	Low
<b>Total monetised costs</b>	Estimate includes costs to Ministry for Regulation and other government agencies only and are still being refined to support the final RIS and policy decisions.	Variable but likely to be higher compared to taking no action. Preliminary estimate is \$18.8 million - \$32.8 million per annum.	Low
<b>Non-monetised costs</b>		Likely higher compared to taking no action	Low
<b>Additional benefits of Option 3 compared to taking no action</b>			
Ministry for Regulation (as administering agency)	<p>Greater ability to assess the effectiveness of other government agencies in stewardship of the regulatory systems they administer.</p> <p>Forward plans for reviewing legislation, published by government agencies, could result in greater information certainty on the pipeline of new regulatory proposals which can facilitate Ministry for Regulation functions (e.g. administration of the RIA system).</p>	Medium to high	Medium
Other government agencies	If requirements for more regular review of legislation result in more up to date legislation, then	Variable relative to the status quo depending on the agency's existing regulatory practices and	Medium

	this could make it easier for government agencies to do their jobs.	whether regular review leads to changes to legislation.	
Parliament	Potential for improved Parliamentary scrutiny through having additional mechanisms to evaluate new legislation introduced into the House. Flow-on benefits of more robust debate on the quality of legislation.	Medium	Low
Wider public	Benefits derived if there are improvements in regulatory quality over time. Potential avoidance of regulatory failure which may otherwise result from the lack of monitoring and evaluation of existing regulation/regulatory systems.	Variable depending on the positive impact of changes, e.g. avoidance of regulatory failure can result in significant benefits where it avoids hefty costs or injury to the person	Low
<b>Total monetised benefits</b>		Uncertain	Low
<b>Non-monetised benefits</b>		Likely higher compared to taking no action	Low

## Section 2B: Deciding upon an option to address the policy problem – recourse mechanism

88. Section 2B analyses the high-level options for a recourse mechanism to enable independent consideration of the consistency of existing regulation with the principles, primarily in response to stakeholder concerns. This is proposed as an additional mechanism to enhance transparency of whether existing regulation meets or does not meet regulatory standards, was included in the 2021 Bill as a function undertaken by the courts, and is currently included in the discussion document as a function undertaken by a Ministerially-appointed Regulatory Standards Board situated within the Executive.

### What scope will options be considered within?

89. Section 2B assesses high-level options for a recourse mechanism because the discussion document includes a proposal to establish a Regulatory Standards Board for this purpose.

90. As this interim RIS is produced at an interim point of the policy process, options in this section will be analysed at a high-level, focussing on the *branch of Government that a recourse mechanism should be situated in* – i.e. the Executive, Parliament, or Judiciary. This interim RIS does not consider in any detail whether the intended objectives of the proposal could be achieved under the status quo and does not assess specific recourse mechanisms against each other.

91. The discussion document includes a range of questions around recourse mechanisms for public input through the consultation process. The feedback from consultation will inform the Ministry's policy development process, and direction for more detailed design choices. The Ministry will provide more comprehensive analysis on the merits of the status quo and specific recourse mechanisms in the final RIS on the Bill.

### What criteria will be used to compare options to the status quo?

92. Five criteria will be used to compare options to the status quo:

- accessibility
- increased compliance with good practice
- alignment with the constitutional role of the branch of government
- timeliness
- costs

### What options are being considered?

#### Option 1 – Status Quo

93. There are a range of methods through which individuals and businesses can currently raise complaints, including in relation to aspects of regulation. Those institutions, and the scope of their functions, are outlined overleaf.

94. The Ministry for Regulation's new function for regulatory reviews will provide an additional avenue for individuals and businesses to raise complaints about regulation, or the operation of specific regulatory regimes. The Ministry is in the process of developing a publicly facing engagement hub which would allow complainants to

directly submit complaints. Members of the public will also continue to be able to make submissions on areas where there is an existing regulatory review underway as part of the public consultation process.

Recourse mechanism	Design features			What remedies/recourse are available?
	What types of issues does the mechanism consider?	Who can raise a complaint?	Does the organisation have discretion to not hear complaints?	
<b>Regulations Review Committee</b>	Secondary legislation	Anyone	Yes, the complaint must be placed before the Committee but the Committee may agree by unanimous resolution not to proceed with a complaint	<p>Recommendation powers</p> <p>Report on any matter relating to secondary legislation including complaints about secondary legislation to the House; the House may amend or revoke the secondary legislation</p> <p>Government response required to RRC report within 60 working days</p>
<b>Parliamentary petitions</b>	Wide remit - both primary and secondary legislation	Anyone	No, if petition meets requirements; however, petitions can be combined or referred to a more appropriate body	<p>Recommendation powers</p> <p>Committee's reports are published to Parliament, or referred to Select Committee or the relevant Minister</p>
<b>Ombudsman</b>	Decisions, and processes for decisions under primary and secondary legislation, but not quality of legislation	Complaints can be refused where the complainant has insufficient personal interest	Yes, on specific grounds (trivial, frivolous, insufficient personal interest, where investigation is unnecessary)	<p>Recommendation powers</p> <p>Report concerns to Ministry or table recommendations to Cabinet</p> <p>Issue recommendations and can require agencies to respond</p>
<b>Raising with Ministers / agencies</b>	Any matter	Anyone	Yes, though likely to hear complaint and respond via letter or meeting	<p>Recommendation and amendment powers</p> <p>Complaints can inform future work programme or particular response to complaint</p> <p>If inquiry is established, powers under the Inquiries Act apply</p>
<b>Independent Commissions (e.g. Health and Disability Commissioner, Privacy Commissioner)</b>	Depends on the scope of the entity, but generally focused on oversight of a body or an area of practice and investigation of matters within the scope of their functions; can cover quality of legislation within their scope and often have investigatory powers of a commission of inquiry	Depends on the entity	Depends on the entity, but most have specified process grounds to decline, or where the complaint is trivial; some entities have fairly broad powers to decline, e.g. the Privacy Commissioner	Powers depend on the Commission, e.g. the Privacy Commissioner has compensatory powers, compared to the Independent Police Conduct Authority where its powers are primarily recommendations
<b>Tribunals (e.g. Employment Relations Authority, Immigration &amp; Protection Tribunal)</b>	Depends on the tribunal - includes reviewing government agency decisions or resolving civil disputes between parties by applying the law to the facts as determined by the tribunal; does not cover quality of legislation	Depends on the tribunal	Depends on the legislation governing the tribunal - some require a review before a claim can be lodged, e.g. for the Human Rights Review Tribunal, claims must be lodged with the relevant Commissioner first	<p>Depends on the tribunal - each tribunal has its own powers set out in the relevant legislation</p> <p>Some can make recommendations which require consideration of decision (e.g. immigration), reinstate employees where unjustifiably dismissed (e.g. Employment Relations Authority), award damages/compensation</p> <p>Generally, tribunal decisions can be appealed to courts</p>
<b>Judicial Review</b>	Focused on the way the decision is made; does not cover quality of legislation	Applicant must be directly affected or have legitimate concern	No	<p>Declaratory / compensatory powers</p> <p>Quash decision</p> <p>Prohibit or order action</p>

## Option 2 – Strengthening recourse mechanisms within Parliament

95. This option would involve strengthening, or adding, a recourse mechanism within the New Zealand Parliament. Standing Orders currently provide that the Regulations Review Committee may consider complaints relating to the operation of secondary legislation. [Standing Orders 326-327](#) set out the functions of the Regulations Review Committee, the grounds for drawing secondary legislation to the attention of the House, and complaints procedure.

### Expanding the scope of the Regulations Review Committee or establishing a new legislation committee to consider primary legislation complaints

96. An amended Parliamentary recourse mechanism could involve expanding the scope of the Regulations Review Committee to examine complaints relating to primary legislation on substantially similar grounds to the current criteria set out in Standing Order 327(2). There is some alignment between some of the grounds and the proposed regulatory responsibility principles for inclusion in the Bill (Option 4 in Section 2A), such as “trespassing unduly on personal rights and liberties”.

97. Alternatively, a new Select Committee could be created focusing on scrutinising legislative quality issues including examining complaints relating to primary legislation. The 2023 Standing Orders Review Committee recommended that consideration should be given to the creation of such a committee in the next three-yearly Standing Orders review.

98. The Ministry notes that any decision to expand the functions of the Regulations Review Committee or create a new committee would require amending Standing Orders, which would be at the discretion of Parliament rather than the Executive.<sup>21</sup>

### Establishing a new Parliamentary Officer

99. Officers of Parliament are appointed by the Governor-General on the recommendation of the House. They work in an independent “watchdog” capacity, and help Parliament hold the Government of the day to account. Their powers enable them to further scrutinise the Government on behalf of the House of Representatives. There are currently three Officers of Parliament – the Ombudsman, the Controller and Auditor-General, and the Parliamentary Commissioner for the Environment.

100. Functions for a new Officer of Parliament to support regulatory scrutiny could include auditing the quality of disclosures made to Parliament and the quality of legislation provided to it, as well as dealing with complaints about legislation or consistency with legislative standards. This may provide for a more systematic review of complaints relative to the existing functions of the Regulations Review Committee. Special processes could be developed to enable any recommendations to be implemented, and these would need to be worked through with the Office of the Clerk. The establishment of a Parliamentary Officer could be authorised through a Bill rather than through amendments to Standing Orders.

<sup>21</sup> However, the Minister may bring a matter to the attention of the Standing Orders Committee for their consideration, for example, through a letter to the Speaker to request the Committee to consider whether to make procedural changes.



### **Option 3 – Providing for a recourse mechanism within the Executive**

101. Under this option, the recourse mechanism would form part of the Executive, either through expanding the existing functions of the Ministry for Regulation or creating a new institution. There are also choices around the degree of separation/independence between the Minister and the proposed institution. The Ministry has identified two main sub-options for a recourse mechanism within the Executive – a statutory officer (internal to the organisation) and a Ministerially-appointed Board (external to the organisation).

#### **A statutory officer within the Ministry for Regulation**

102. A statutory officer could be appointed within the Ministry for Regulation, with the scope of its functions similar to the roles of the Chief Archivist (within the Department of Internal Affairs), Surveyor-General (within Land Information New Zealand), or Director of Land Transport (within the Ministry of Transport). There could also be a direct reporting line to the Minister for Regulation for the purposes of the officer exercising their independent functions (similar to the Commissioner of Crown Lands and the Valuer-General). The role would be situated within the Ministry, but with a requirement to act independently when required by the Act.

#### **Ministerially appointed Board outside of the Ministry for Regulation (the option proposed in the discussion document)**

103. As an alternative to a role set up within the Ministry for Regulation, a Ministerially appointed Board could be established in the Executive branch of government. This option would provide a degree of separation from the Ministry itself.

104. The discussion document sets out the proposal for a Regulatory Standards Board to consider the consistency of regulation with standards, primarily in response to complaints. The proposal sets out that the Board would be established as an independent statutory Board comprising of members appointed by the Minister for Regulation and would require members to have a range of skills including legal and economic expertise.

[Redacted content 9(2)(h)]

### **Option 4 – Providing for a recourse mechanism within the Judiciary**

#### **Courts**

105. The 2011/2021 Bills provided for the courts to grant declarations of incompatibility where primary or secondary legislation is inconsistent with the regulatory principles. This new role would be limited to the making of declarations of incompatibility with the specified principles of the Bill and would explicitly exclude any power to make injunctive or compensatory orders.

106. Initially, this would only apply to legislation passed after the Act comes into force. Following a transition period of 10 years, the jurisdiction would then extend to all legislation (including Acts), irrespective of when it was enacted.

107. The intent of this option was to incentivise Ministers and agencies to comply with the principles to avoid declarations of incompatibility where the courts deem that the principles have been breached. [Redacted content 9(2)(h)]

This is likely to result in significantly more risk averse behaviour on the part of government agencies and Ministers, compared to situating the recourse mechanism elsewhere.

### **Specialist Tribunal**

108. Tribunals are a relatively flexible mechanism with their jurisdiction and powers prescribed in statute. Some tribunals, such as the Human Rights Review Tribunal, can make declarations of inconsistency, though this is an unusual feature for a Tribunal. Compared to the judicial review function of the courts, the risks and costs of an adjudicative tribunal may be similar, given the quasi-judicial nature of tribunals.

**How do the options compare to the status quo/counterfactual?**

	<b>Option 1 - Status Quo</b>	<b>Option 2 - Strengthened recourse mechanism within Parliament</b>	<b>Option 3 - New recourse mechanism within the Executive</b>	<b>Option 4 - Recourse mechanism within the Judiciary</b>
<b>Accessibility</b>	0	+	Variable depending on design	-
		<p>Expanding the scope of the RRC may increase accessibility for complaints about primary legislation, by providing a dedicated mechanism which is already established and therefore has some certainty of process.</p> <p>Conversely, this would be a substantial new role for the RRC, which may require additional resourcing in order not to result in delays and therefore reduce accessibility to recourse. This would depend on the number of complaints. If a separate Legislation Committee were to be established, this could increase accessibility to recourse for primary legislation complaints.</p> <p>Having separate committees for primary and secondary legislation may make recourse less accessible to the public as it adds complexity to the process. This may be mitigated by design and implementation decisions.</p>	<p>Creating a new recourse mechanism may increase accessibility, compared to the status quo, as there will be a specific and dedicated avenue for complaints about both primary and secondary legislation.</p> <p>The accessibility of any new mechanism will depend on the detailed design choices and implementation.</p>	<p>A judiciary-based recourse mechanism is likely to increase the cost of making a complaint. There is more formality with court processes. This could limit the types of individuals and businesses that can access the scheme.</p> <p>A specific tribunal would allow for a less formal process, less costs for complainants and therefore enable a broader range of individuals and businesses to access the scheme.</p>
<b>Increased compliance with good regulatory practice</b>	0	Variable	+	-
		<p style="text-align: center;">Variable</p> <p>It is unclear whether expanding the role of the RRC to include primary legislation and its operation would result in increased compliance with good regulatory practice. The RRC may report to the House on complaints and so with an expanded scope could provide a more certain recourse for primary legislation complaints.</p> <p>Over a longer term, expanding the scope of the RRC or implementing a separate Legislation Committee could strengthen Parliamentary scrutiny of Executive decision-making.</p> <p>There may be an increase in risk-averse behaviour on the part of Ministers and government departments when developing and pursuing policy options, given the potential for a higher level of scrutiny. This is less so than with Options 2 and 3, but the risk is still present.</p>	<p>Creating any new model situated in the Executive could lead to increased compliance compared to the status quo as there will be dedicated capacity and capability to take forward complaints. The level of impact would depend on the functions and powers of the mechanism, and the strength of competing incentives.</p> <p>Where the Board is either providing scrutiny over legislation's consistency with the principles, or of government's assessments of consistency with the principles, this is likely to result in more risk averse behaviour (on the part of government agencies, compared to Options 1 and 2).</p>	<p>It is unclear how effective the courts would be as a monitoring/quality assurance mechanism - as involvement would only be triggered in relation to specific proceedings, and the legislation relevant to those proceedings assessed for compatibility with the principles. A broader, more integrated role could likely be played by a specific tribunal, which would solely be focused on regulatory standards complaints.</p> <p>There is likely to be a significant inhibitive effect on government's development of regulatory proposals, due to the prospect of being drawn into a court process and its costs leading to more risk-averse behaviour relative to Options 1, 2 and 3.</p> <p>Some principles proposed are open to trade-offs, and the judgment exercised in the interpretation and how these should be applied is more appropriately made by the Executive.</p> <p>[Redacted content 9(2)(h)]</p>

[Redacted content 9(2)(h)]

**Alignment with constitutional role in the branch of government**

0

+

Examining complaints about legislation falls within the primary roles of Parliament to legislate and maintain public trust in government by holding the Executive to account. Parliament can therefore make value judgements or reflect public concerns about existing or proposed legislation in line with its current constitutional role and other responsibilities. Some existing recourse mechanisms (such as the RRC) are situated in Parliament.

Variable depending on design

The various proposed approaches for this option largely align with the Executive's constitutional role of administering the law.

Having a statutory officer within a government agency is a model that has several precedents.

The Board model gives the proposed recourse mechanism a higher degree of independence from government, although the extent of this is not yet clear and subject to further detailed design decisions. [Redacted content 9(2)(h)]

[Redacted content 9(2)(h)]

-

**Timeliness**

0

Variable depending on design

Without additional resourcing, expanding the role of the RRC may result in less timely responses to complaints, as it may be a substantial addition to the Committee's workload.

A separate Parliamentary mechanism reviewing primary legislation may improve timeliness as it would have a narrower scope, and specific purpose and resourcing.

+

All models proposed would be newly established recourse mechanisms, with specific scope, resourcing, capacity and capability to review complaints about regulation. This is likely to result in more timely consideration of complaints than the status quo where a person may raise a complaint in a channel which has a multitude of other responsibilities and functions (such as a responsible Minister or agency)

[Redacted content 9(2)(h)]

There may be significant waiting time for complaints to be considered and for a response or outcome, in part due to the higher level of formality for court processes.

If a specialist tribunal model was established, this may result in more timely consideration of complaints, assessments and outcomes, compared to the courts.

-

**Costs**

0

-

As the RRC has an existing mandate to review complaints in relation to secondary legislation, it could be efficient to strengthen or scale up the role of the RRC as it provides existing architecture.

Conversely, this could be a substantial new role for the RRC with practical cost considerations around how the role would be expanded. It could create substantially more work,

-

A new recourse mechanism within the Executive ranges from significant to more modest extra costs (for instance, if a statutory officer is appointed). Costs will be highly dependent on the volume of complaints and how they are dealt with.

Estimations for a Regulatory Standards Board could be around \$1.8m per annum based on 20 findings a year.

[Redacted content 9(2)(h)]

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Establishing a separate adjudicative, regulatory-focused tribunal will involve significant cost. This cost may or may not be justified depending on the volume of complaints.

There is also the potential for significant increased costs if the courts are involved in assessing consistency of legislation, which would have flow-on impacts to the public as it may limit other work agencies can carry out. [Redacted content 9(2)(h)]

resulting in higher resourcing requirements and costs. This would depend on the number of complaints.

Setting up a dedicated committee to review primary legislation complaints only is likely to be more costly.

**Overall  
assessment**

0

Variable depending on detailed design

Variable depending on detailed design

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

109. The Ministry does not have sufficient information to inform a decision on whether it supports an additional recourse mechanism or its preferred recourse mechanism at this point of the policy process. At a high level, and in accordance with the multi-criteria analysis, the Ministry considers that if an additional recourse mechanism is preferred, it should be situated within either the **Parliamentary** or **Executive** branches of Government. The Ministry notes that a Parliamentary mechanism may align more closely with the stated objectives based on preliminary analysis, however some Parliamentary mechanisms (e.g. where amendments to Standing Orders are required) may be more appropriately determined by Parliament itself. Further work is needed to identify the relative costs and benefits of specific recourse mechanisms within Parliament and/or the Executive. This analysis will be informed by feedback provided through the public consultation process, as well as further design work undertaken by the Ministry.

110. However, the Ministry has sufficient evidence to conclude that the recourse mechanism should not sit within the Judiciary branch of Government. [Redacted content 9(2)(h)]

111. This in turn may result in a significant inhibitive effect on government agencies and Ministers in the policy options analysed and pursued. The increased resourcing requirements to participate in a court process scrutinising decisions and compliance would be certain to eventuate where a recourse mechanism is established within the Judiciary, which makes the realisation of this risk comparatively certain. While any new recourse mechanism is likely to have some impact to this effect, the risk of this is significantly lessened if a recourse mechanism is situated within Parliament as the mechanism will be unlikely to be judicially reviewable. [Redacted content 9(2)(h)]

The judgments of the application of the principles may be more appropriately conducted by the Executive.

112. Therefore, the Ministry does not support the use of the courts as a recourse mechanism and is unlikely to support the introduction of a new specialist tribunal. The Ministry's analysis of the relative costs and benefits of establishing a new recourse mechanism within the Judiciary indicates that there would be higher costs, both monetised and non-monetised, for most affected parties, compared to situating the mechanism within either Parliament or the Executive. This includes costs to members of the public in participating in the process (either through the time taken to represent themselves in a court process, or a direct cost of hiring legal representation), government agencies where there would be significant time, resourcing and monetary costs for legal analysis and representation to defend the legislation or law-making process under review, and to the Judiciary itself in establishing and maintaining



ongoing operations of the recourse mechanism. The benefits of situating a recourse mechanism in the Judiciary are considered to be similar to situating the recourse mechanism in another branch of Government.

### What are the marginal costs and benefits of the option?

113. Given that the Ministry is not identifying a preferred option at this point, the marginal costs and benefits table focusses on the generic costs and benefits of introducing an additional recourse mechanism relative to the current status quo. Where a certain cost or benefit is specific to a particular mechanism (e.g. costs of pursuing litigation), this is identified in the cost benefit table.

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs compared to taking no action</b>			
Ministry for Regulation	Secretariat costs where the mechanism is situated internally to the Ministry (e.g. a Statutory Officer or Board)	Current estimate is \$1-2 million per annum for the Ministry's secretariat function	Medium
Other government agencies (including in-house legal practitioners)	Costs of providing advice or evidence where a complaint is made about a regulatory system they administer Costs of providing agency response [Redacted content 9(2)(h)]	[Redacted content 9(2)(h)]	Medium
Parliament	Where an extended recourse mechanism is situated within Parliament, additional costs are required for establishment and/or ongoing operation	Variable depending on detailed design	Medium
Judiciary	Where a recourse mechanism is situated within the judiciary, additional costs are required for establishment and ongoing operation Where a recourse mechanism is situated within the judiciary, additional time and resourcing is required to support litigation, which may have flow-on effects to the efficiency of administering non-regulatory cases Opportunity costs associated with progressing non-regulatory cases which may mean comprising timely resolution of justice where other cases are at higher stake	Variable depending on the volume of complaints, higher if a specialist tribunal is proposed to be established	Medium
Lawyers / Legal Practitioners outside of the public sector	Administrative and financial costs associated with potentially increased caseload from legal enquiries	[Redacted content 9(2)(h)]	Medium

Members of the public	Additional time and cost associated with seeking the appropriate recourse mechanism to pursue a complaint	[Redacted content 9(2)(h)]	Low
<b>Total monetised costs</b>		Variable depending on detailed design	Low
<b>Non-monetised costs</b>		Variable depending on detailed design, likely to be relatively higher with a judicial mechanism	Low

### Additional benefits compared to taking no action

Ministry for Regulation	Information gathered through findings made from the recourse mechanism can help the Ministry gain insight into regulatory issues, which can inform its future work programme		Low
Other government agencies	Government agencies can gain greater visibility of the impacts (including unforeseen impacts or unintended consequences of regulation) where these issues are surfaced through an additional recourse mechanism.	Variable	Low
Parliament	Where a recourse mechanism is situated within Parliament, greater visibility of impacts associated with regulation (including unforeseen impacts or unintended consequences) being surfaced  Where a recourse mechanism is situated within Parliament, in the longer-term, MPs can be more empowered to identify these issues from the outset of legislation being introduced into the House, providing an "early intervention" mechanism towards the long-term improvement of regulatory quality  Where a recourse mechanism is situated within Parliament, greater accountability towards ensuring adequate "checks and balances" between Parliament and the Executive		Low
Lawyers / Legal Practitioners outside of the public sector	Increased opportunities to provide access to justice for members of the public		Medium
Members of the public	Increased access to complaints processes, particularly where there is no specified process within the status quo		Medium

	Increased transparency which has the potential to result in increased trust in government Ability to gain greater understanding of the machinery of government		
<b>Total monetised benefits</b>		Variable depending on detailed design choices	Low
<b>Non-monetised benefits</b>		Variable depending on detailed design choices	Low

## Section 3: Delivering an option

### How will the new arrangements be implemented?

114. The approach for implementing the Bill would depend on the final policy choices as to the principles expressed in the Bill, the associated consistency mechanisms, and the selected recourse mechanism. Feedback received as part of the public consultation process will inform ongoing policy development in relation to those components of the Bill.

115. The Ministry will set out the implementation arrangements for the Bill in the final RIS to support Cabinet's final decisions on the Bill.

### How will the new arrangements be monitored, evaluated, and reviewed?

116. The Bill will be administered by the Ministry for Regulation and form part of the Regulatory Management System.

117. The Ministry plans to conduct a Post-Implementation Review of the Bill within five years after its enactment to evaluate whether the Bill is meeting its objectives, identify costs and benefits following its implementation, and consider any proposals that could enhance the Bill's fitness for purpose in the context of the wider RMS at the time of the evaluation.

## **Annex One: Proposed wording of the principles**

The proposed principles are set out below, as well as in Discussion Area One of the accompanying discussion document.

### **Legislative design principles**

#### *Rule of law*

- The importance of maintaining consistency with the following aspects of the rule of law:
  - the law should be clear and accessible
  - the law should not adversely affect rights and liberties, or impose obligations, retrospectively
  - every person is equal before the law
  - there should be an independent, impartial judiciary
  - issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion.

#### *Liberties*

- Legislation should not unduly diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person.

#### *Taking of property*

- Legislation should not take or impair, or authorise the taking or impairing of, property without the consent of the owner unless:
  - there is good justification for the taking or impairment
  - fair compensation for the taking or impairment is provided to the owner
  - compensation is provided to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment.

#### *Taxes, fees and levies*

- The importance of maintaining consistency with section 22 of the Constitution Act 1986 (Parliamentary control of public finance)
- Legislation should impose, or authorise the imposition of, a fee for goods or services only if the amount of the fee bears a proper relation to the costs of efficiently providing the good or service to which it relates.
- Legislation should impose, or authorise the imposition of, a levy to fund an objective or a function only if the amount of the levy is reasonable in relation to both:
  - the benefits that the class of payers are likely to derive, or the risks attributable to the class, in connection with the objective or function
  - the costs of efficiently achieving the objective or providing the function.

#### *Role of courts*

- Legislation should preserve the courts' constitutional role of ascertaining the meaning of legislation.
- Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

## **Good law-making**

- The importance of consulting, to the extent practicable, the persons or representatives of the persons that the government considers will be substantially affected by the legislation.
- The importance of carefully evaluating:
  - the issue concerned
  - the effectiveness of any relevant existing legislation and common law
  - whether the public interest requires that the issue be addressed
  - any options (including non-legislative options) that are reasonably available for addressing the issue
  - who is likely to benefit, and who is likely to suffer a detriment, from the legislation.
- Legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons.
- Legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available.

## **Regulatory stewardship**

- Legislation should continue to be the most effective, efficient, and proportionate response to the issue concerned that is available.
- The system should continue to be fit for purpose for the people, area, market, or other thing that is regulated.
- Unnecessary regulatory burdens and undue compliance costs should be eliminated or minimised.
- Any regulator should have the capacity and the capability to perform its functions effectively.
- Any conflicts or adverse interactions with other regulatory systems should be eliminated or minimised.
- The importance of monitoring, reviewing, and reporting on the performance of the system.