

Regulatory Standards Bill
Oral Submission [Final]
Proposal by McGuinness Institute (9 July 2025)

The purpose of the oral submission was to suggest a cost-effective and timely solution to the current predicament. In this paper we reaffirm the purpose of the Bill, but suggest a solution that meets that purpose without requiring a Bill to be passed.

Our understanding of the purpose of the Bill

- Strengthen the link between regulatory management (rules/laws) and fiscal management (\$).
- Create stable and durable public policy institutions and instruments.

The McGuinness Institute proposal

Our proposal is broken up into four parts, and makes six recommendations:

- A: Move all three regulatory management instruments together under one roof: Ministry for Regulation (MFR).
- B: Move all strategies mentioned in law under MFR.
- C: Use the departmental disclosure statements instrument (as proposed by MFR), rather than a Regulatory Standards Board.
- D: Change the Oaths and Declarations Act 1957 to ensure all ensure all MPs recognise Te Tiriti o Waitangi, and remove all non-specific references in law to Te Tiriti o Waitangi.

Part A: Move all three regulatory management instruments together under one roof: Ministry for Regulation (MFR).

Three existing regulatory management instruments exist. Below, we discuss them and recommend how they could be moved or expanded to meet the purpose above.

Instrument 1: Guidelines

The holder of this instrument is the Parliamentary Counsel Office (PCO), through the Legislation Design and Advisory Committee's (LDAC's) Legislation Guidelines. There is also a 2021 Cabinet Paper on the topic, Legislation Guidelines: Cabinet Requirements and Expectations, which, by example, indicates that Cabinet papers alone can put in place good regulatory practices for government (i.e. a law does not need to be passed).

Instrument 2: Regulatory Impact Statements

The holder of this instrument is MFR; see list of Regulatory Impact Statements.

Instrument 3: New Zealand disclosures

The holder of this instrument is unclear. Based on its contact page, the NZ Legislation Disclosures website (<https://disclosure.legislation.govt.nz>) appears to be hosted by MFR. However, the [disclaimer page](#) and [privacy page](#) suggest the owner is the PCO, as does [Treasury's website](#), which has the link text [Parliamentary Counsel Office – NZ Legislation: Disclosures](#).

The key elements of the disclosure requirements are set out in a [2013 Cabinet Paper](#):

5 From the week beginning 29 July 2013, all Cabinet or Cabinet committee papers seeking approval to introduce a qualifying government Bill or government SOP must have a disclosure statement attached that reflects the final content of the associated Bill or SOP.

6 Subsequently, when the Bill is introduced or SOP is tabled in the House, the finalised disclosure statement is to be published on a central website managed by the Parliamentary Counsel Office (PCO). A hyperlink to the disclosure statement is to be included in the explanatory note of the published Bill or SOP, and hard copies of the statement are to be made available to MPs through the Bills Office.

7 The disclosure statement is a departmental document, not a Ministerial document. It should reflect the knowledge and understanding of the department(s) responsible for the preparation of the Bill or SOP. It must, however, address all the matters specified in the appropriate template.

Looking back, the 2013 Cabinet Paper was sufficient from 2013 to 2019, at which point some aspects of it were put into law (see the Legislation Act 2019). However, our understanding is that the 2013 Cabinet Paper and the guidelines and templates have, since then, continued to be updated in an ad hoc manner. Our research indicates that the website linkages remain messy and require reviewing and updating but the actual instruments designed to guide the system are effective. For example, much of the content on disclosure requirements on the Treasury website could be moved over completely to the MFR, and be rebranded.

Section 101 of the Legislation Act 2019 (quoted below) explains the purpose of disclosure requirements, while Figure 1 (also below) shows the content of Part 4 of the Act.

101 Purpose of this Part

The purpose of this Part is to—

- (a) better inform parliamentary and public scrutiny of Government-initiated legislation; and
- (b) promote good administrative practices for the development of such legislation.

Figure 1: Excerpt from contents of Legislation Act 2019

Part 4	
Disclosure requirements for Government-initiated legislation	
101	Purpose of this Part
102	Interpretation in this Part
103	Chief executives must prepare and publish disclosure statements for Government-initiated legislation
104	<u>What must be contained, or linked to, in disclosure statements</u>
105	Disclosure statement requirements do not apply to certain Bills and amendments
106	Chief executives must act independently and include statement of responsibility
107	Government notice must be issued to support consistent approach across agencies
108	Government notice may be issued only with approval of House of Representatives
109	Factors to be considered in determining classes of legislation requiring disclosure statements
110	Ministerial direction may be given to support consistent approach across agencies
111	Disclosure relates only to information available to public under Official Information Act 1982
112	Validity of legislation not affected by failure to comply with this Part

Recommendations:

1. MFR should be accountable and responsible for all aspects of the regulatory management system.
2. The 2013 Cabinet Paper should be revisited and published, setting out the expectations of Cabinet in regard to regulatory management (it could include much of the material set out in the Regulatory Standards Bill). That is our preference, and MFR have indicated it is their preference as well in their Departmental Disclosure Statement on the Bill. The following quote is from Appendix 1 of that statement:

The information in the RIS suggests that the specific legislative changes sought in this Cabinet paper are unlikely to be the most efficient approach to pursuing the stated objectives. It highlights that, if the recommendations are agreed, regulating in the public interest may be more costly, with an uncertain impact on the underlying behavioural incentives and on the information problems that drive poor regulatory outcomes. The panel notes that the scope of consistency reviews was included after public consultation, and the RIS has limited analysis of impacts, including on local government. This additional requirement has significant estimated costs and potential for crowding out other regulatory maintenance and stewardship activity. **The Ministry for Regulation has expressed a preference for an alternative approach based on disclosure requirements** coming into force through Part 4 of the Legislation Act 2019, supplemented by Ministerial commitments to good regulation and stewardship. The RIS indicates that this would encourage better information and sharpened incentives across regulatory regimes. [bold added]

Part B: Move all strategies mentioned in law under MFR.

See our 2024 GDS Index work. The research found that 16% of operational GDSs (32 out of 195) have a legal relationship of some form to New Zealand law by either being required to be published ('must') or able to be published ('may').

If these strategies have formed part of New Zealand law, they warrant being seen and managed as part of the regulatory system.

Recommendation:

3. A register should be kept of all strategies mentioned in legislation (along the lines of the MFR's register of Regulatory Impact Statements).

Part C: Use the departmental disclosure statements instrument (as proposed by MFR), rather than a Regulatory Standards Board.

Reasons:

- The Bill proposes that the Regulatory Standards Board report to the Minister for Regulation, as well as to the relevant Select Committee, when assessing a Government Bill. In our view, Parliament should not bring operational tasks into the House. Instead, it should delegate tasks to experts. It is important for MPs to make decisions over strategic institutions and instruments but, where possible, leave operational decisions to institutions outside of Parliament. Further, we consider any such Board should report to Parliament and its reports should be tabled in the House.
- Establishing and maintaining a guidance Board (in this case, the Regulatory Standards Board) is an expensive proposition. A single person is a cheaper option. Advisory roles, such as the Parliamentary Commissioner for the Environment or the Ombudsman, are likely to be more cost-effective.

Recommendations

4. Given the Ministry for Regulation CE reports to the Minister for Regulation, the Minister should set out the roles and responsibilities, and then hold the Ministry to account.
5. The purpose of the departmental disclosure statements instrument should be expanded.

Part D: Change the Oaths and Declarations Act 1957 to ensure all ensure all MPs recognise Te Tiriti o Waitangi, and remove all non-specific references in law to Te Tiriti o Waitangi.

Te Tiriti is consistently mentioned in the *Cabinet Manual* as one of the country's founding documents and, in 2023, the full text of Te Tiriti was included in an Appendix in the manual. At the same time, we recognise that its mentions in law are not consistent (see our [Working Paper 2023/03 – Appearances of Te Tiriti/The Treaty in New Zealand Legislation](#)).

We suggest the current oath of allegiance be expanded to include Te Tiriti. This would be an alternative to having Te Tiriti in law (unless required for specific cases such as Treaty settlements). The existing oath should be expanded and made specific for new MPs in the House.

Recommendation

6. Our suggested additional text is below, in bold:

17 Oath of allegiance for Members of Parliament

The oath in this Act referred to as the oath of allegiance shall be in the form following, that is to say:

I, [*specify*], swear **allegiance to all the people of New Zealand and promise to adhere to all constitutional arrangements, including acknowledging Te Tiriti o Waitangi as the founding document of New Zealand.** ~~that~~ I will **also** be faithful and bear true allegiance to His [*or Her*] Majesty [*specify the name of the reigning Sovereign, as thus: King Charles the Third*], His [*or Her*] heirs and successors, according to law. So help me God [***the latter being optional***]. [bold text added to indicate our recommended changes]

Below, for comparison, is section 19 of the Executive Councillor's oath:

Executive Councillor's oath

(1) The oath in this Act referred to as the Executive Councillor's oath shall be in the form following, that is to say:

I, [*specify*], being chosen and admitted of the Executive Council of New Zealand, swear that I will to the best of my judgment, at all times when thereto required, freely give my counsel and advice to the Governor-General for the time being, for the good management of the affairs of New Zealand. That I will not directly nor indirectly reveal such matters as shall be debated in Council and committed to my secrecy, but that I will in all things be a true and faithful Councillor. So help me God.

Summary

It is critical that Government has in place a regulatory management system and a fiscal management system. It is therefore important that MFR is seen to be responsible and accountable for the whole of the regulatory management system, including laws, guides and registers (in the same way Treasury is responsible for the fiscal management system).

The current system is messy and unclear and we consider the proposed Bill makes the roles and responsibilities even less clear. We suggest all parties – MFR, PCO and Treasury – review their websites and actively move from a three- to a two-agency system, with no duplication on their websites. This does not seem to require a change in law. Rather, the solution is a Cabinet Paper setting out clearly the expectations of the three parties involved and how they should interconnect.