



Have your say on the proposed Regulatory Standards Bill

November | 2024



Ministry for Regulation
Te Manatū Waeture

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Minister's foreword

Most of New Zealand's problems can be traced to poor productivity, and poor productivity can be traced to poor regulations. To address this, the Coalition Agreement between ACT and National commits to policies aimed at rebuilding the economy and enhancing productivity. Establishing the Ministry for Regulation (the Ministry) and introducing the Regulatory Standards Bill (the Bill) are key initiatives to help the government achieve these goals

The Bill is the culmination of nearly 25 years of work. I would like to acknowledge those who have paved the way for regulatory reform in 2024, particularly Dr Bryce Wilkinson, whose book "Constraining Government Regulation" laid important groundwork for this Bill. Special thanks also go to Dr Graham Scott, Jack Hodder KC, and other members of the Regulatory Responsibility Taskforce, who refined the Bill in 2009. In 2021, I brought the Bill forward as a Member's Bill, but it was voted down by the previous government. Today, we are taking the opportunity to make real progress on regulatory reform.

The Bill aims to establish high-quality regulatory standards to help ensure that regulation keeps up with societal change, and drives productivity, by codifying principles of good regulatory practice. The aim is for future regulatory proposals, as well as existing regulations, to comply with these principles, unless lawmakers justify why they are failing to meet the standard.

The Bill also establishes a Regulatory Standards Board (the Board). The Board will assess complaints about existing regulation that is inconsistent with the principles, issuing non-binding recommendations and public reports.

Where a statement of inconsistency is made by the Board, the governing Minister must respond to justify deviation from principles. The findings, justification arguments, and relevant documents will be made publicly available to ensure transparency.

The Bill also provides the framework under which the Ministry will operate, empowering it to act in an advisory capacity, promoting good regulatory practice across all sectors. It seeks to bring the same level of discipline to regulatory management that the Public Finance Act brings to public spending, with the Ministry playing a role akin to that of the Treasury.

Under the proposed Bill, government agencies will have duties to maintain, review, and update their regulatory systems. An effective regulatory system ensures that its regulatory "stock" remains effective and responsive to change.

Ultimately, this Bill will help the Government achieve its goal of improving New Zealand's productivity by ensuring that regulated parties are regulated by a system which is transparent, has a mechanism for recourse, and holds regulators accountable to the people.

A handwritten signature in blue ink, appearing to read "David Seymour".

Hon David Seymour
Minister for Regulation
31 October 2024

What is being consulted on?

This discussion document sets out a proposal to introduce a Regulatory Standards Bill.

The Coalition Agreement between the New Zealand National Party and ACT New Zealand includes a commitment to legislate to improve the quality of regulation, ensuring that regulatory decisions are based on principles of good law-making and economic efficiency, by passing the Regulatory Standards Act as soon as practicable.

The proposed Regulatory Standards Bill would aim to bring the same discipline of regulatory management as New Zealand has for fiscal management by providing:

- a benchmark for good regulation through a set of principles of responsible regulation (see **Discussion area one**)
- mechanisms to transparently assess the consistency of new legislative proposals and existing regulation with the principles (see **Discussion area two**)
- a mechanism for independent consideration of the consistency of existing regulation, primarily in response to stakeholder concerns (see **Discussion area three**).

It would also include provisions to support the Ministry for Regulation in its work to improve the quality of regulation (see **Discussion area four**).

The proposed Bill itself has not yet been drafted so your views are being sought on a proposal on what it should contain.

What is not in scope?

For this consultation, feedback is not being sought on:

- the Ministry for Regulation or its functions
- other proposed or current Government policies relating to regulation
- issues with specific regulations or agencies
- funding decisions.

Questions for discussion

The discussion document sets out a range of questions in relation to the proposal, which are intended as a guide for you to provide feedback. However, you do not have to answer all – or any – of these questions.

Supporting information

Some supporting information that may help you form your views on the proposal is listed below.

Regulatory Impact Statement

The Ministry for Regulation has produced an interim regulatory impact statement, which provides the Ministry's analysis of available options and their relative impacts, including the proposal set out in this discussion document. You can download a copy from the [Ministry's website](#).

Preliminary Treaty Impact Analysis

The Ministry for Regulation has produced a preliminary Treaty Impact Analysis, which provides the Ministry's initial analysis of the Treaty impacts of the proposal set out in this discussion document. You can download a copy from the [Ministry's website](#).

The Report of the Regulatory Review Taskforce

The Regulatory Review Taskforce was set up to provide its view on what a Regulatory Standards Bill should contain, and reported its findings to the Government in 2009. The proposal in this document is largely based on that proposal. You can find the Taskforce's report on the [Treasury's website](#).

Other useful supporting information

In 2010, the Institute of Policy Studies at Victoria University of Wellington published a special edition of its Policy Quarterly journal, setting out the different views of a number of experts on the draft Regulatory Standards Bill proposed by the Regulatory Taskforce. This Vol. 6 No. 2 (2010) edition can be found at <https://ojs.victoria.ac.nz/pq/issue/view/515>.

In 2011, the Regulatory Standards Bill drafted by the Taskforce was introduced to Parliament and considered by the Commerce Select Committee. The reports of the Committee along with public submissions on the Bill can be found on [Parliament's website](#).

Consultation process

Consultation on the proposal to introduce a Regulatory Standards Bill is open from 19 November 2024 until 13 January 2025.

You can provide a submission:

- through the [engagement hub](#) on the Ministry's website
- emailing your submission to RSBconsultation@regulation.govt.nz, or
- mailing your submission to Ministry for Regulation, P O Box 577, Wellington 6140.

This discussion document has questions that you can use to complete your submission.

As noted above, the questions are not compulsory. You can answer as many as you want or share your own thoughts about the proposed Bill.

Please send any questions on the submissions process to RSBconsultation@regulation.govt.nz.

What will happen with feedback?

The information provided in submissions will be used to help determine the final shape of the Bill that will be introduced into the House next year.

There will be a further chance to submit on a draft Bill during the Parliamentary Select Committee process in 2025.

Submitters may be contacted directly if clarification of any matters in the submissions is required.

Release of information

The Ministry for Regulation will publish a summary of submissions on its website. Submissions remain subject to request under the Official Information Act 1982. Please clearly indicate in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and which parts you consider should be withheld, together with the reasons for withholding the information. The Ministry will take such objections into account and will consult with submitters as it considers necessary when responding to requests under the Official Information Act.

Private information

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including the Ministry for Regulation. Any personal information you supply to the Ministry in the course of making a submission will be used only for the purpose of assisting in the development of advice in relation to this consultation, for contacting you about your submission, or to advise you of the outcome of the consultation, including any next steps. The Ministry may also use personal information you supply in the course of making a submission for other reasons permitted under the Privacy Act (e.g. with your consent, for a directly related purpose, or where the law permits or requires it).

We will proactively remove identifying information from the published summary of submissions. Any request under the Official Information Act 1982 that includes identifying information will need to be considered in line with that Act. Please clearly indicate in your submission if you consider your name, or any other identifying information, should not be released under the Official Information Act and why, and we will take that into account in the event of a request.

The Ministry will retain personal information only as long as it is required for the purposes for which the information may lawfully be used.

Where any information provided (which may include personal information) constitutes public records, it will be retained to the extent required by the Public Records Act 2005. The Ministry may also be required to disclose information under the Official Information Act, to a Parliamentary Select Committee or Parliament in response to a Parliamentary Question.

You have rights of access to and correction of your personal information, and further details on how to contact us are on the Ministry's website.

Questions

1. What is your name?
2. Are you submitting in a personal capacity, or on behalf of an organisation, iwi, or hapū?
3. If you are submitting on behalf of an organisation, iwi, or hapū what is the name of that organisation, iwi or hapū?

4. Where in New Zealand are you primarily based?
5. Please provide us with at least one method of contacting you, in case the Ministry needs to discuss your submission further.

Background

Why is good regulation important?

Good **regulation** can help governments to achieve their desired economic, environmental and social outcomes, support the effective operation of markets, and protect communities from harm.

Done poorly, however, 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.

Governments should therefore make careful choices about when they regulate, and any resulting regulation should be designed, implemented, and monitored so that it achieves its objectives, and its benefits outweigh its negative impacts.

‘Regulation’ versus ‘legislation’

This discussion document uses ‘regulation’ to encompass any government intervention that is intended to direct or influence people’s behaviour, or how they interact with each other. ‘Regulation’ therefore includes, but is not limited to, legislation.

Legislation includes primary legislation (i.e. law made by Parliament) or secondary legislation (where Parliament delegates its law-making power - usually to the Governor-General acting on the advice and with the consent of the Executive Council, a regulator, a Minister or a government agency).

The term ‘regulation’ is also distinct from the term ‘regulations’ which is used to describe a particular type of secondary legislation made under the delegated authority of an Act.

How good is New Zealand's regulation?

New Zealand's approach to regulation has not always been consistent with best practice.

For instance, in its 2023 *Briefing for the Incoming Attorney-General*, the Legislation Design and 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 legislation¹.

Unneeded or poor-quality legislation can arise through deficiencies in the policy development process, including a failure to fully consider the impacts of regulatory proposals on regulated parties and regulators. This is often exacerbated by a truncated or rushed legislative process. Issues can also result from poorly implemented regulation.

In addition, New Zealand has a large stock of outdated or no longer fit-for-purpose legislation. Back in 2014, the Productivity Commission noted that two-thirds of regulator chief executives reported they had to work with legislation that is outdated or not fit-for-purpose.² This creates inefficiencies for regulators, imposes unnecessary costs on regulated parties, and means that **regulatory systems** cannot easily adapt to technological, demographic, or other change, or easily respond in emergency situations.

Regulatory systems

Regulatory systems comprise a set of rules, organisations and activities that share a common policy objective (e.g. health and safety). Regulatory systems are not limited to primary and secondary legislation, but include a range of activities including the delivery of services, education, monitoring and enforcement, and dispute resolution. The Government is responsible for around 180-200 regulatory systems.

¹ LDAC (2023). [Briefing for the Incoming Attorney-General](#), pp. 12-13

² Productivity Commission (2014). [Regulatory Institutions and Practices](#), p. 224

New Zealand's regulatory performance has also stagnated or worsened over time, according to results from recent international surveys³. While those results are partly due to changes in the scope and methodology of surveys over time, or characteristics particular to New Zealand, such as its small size and relatively less formal constitutional arrangements, they indicate that there may be considerable room for improvement.

What are the current arrangements to promote regulatory quality?

Requirements for responsible Ministers and agencies

There are two main requirements for Ministers and agencies currently in place that are designed to improve the quality of proposed legislation.

- All regulatory proposals taken to Cabinet for approval must be accompanied by a **Regulatory Impact Statement (RIS)**, unless an exemption applies. A RIS is a document produced by the responsible government agency and provides a high-level summary of the problem being addressed, the options and their associated costs and benefits, the consultation undertaken, and the proposed arrangements for implementation and review.
- Most legislation introduced to the House must be accompanied by a **disclosure statement**, intended to promote good practices for the development of that legislation by requiring agencies to set out relevant background material, outline the quality assurance processes undertaken by the agency and note any significant or unusual provisions. Disclosure statements are currently only provided under administrative arrangements. Part 4 of the Legislation Act 2019 (which provides for new disclosure requirements) has not yet come into force.

All RISs and disclosure statements are published to allow for public scrutiny.

There are no specific requirements relating to the ongoing review and maintenance of legislation and the operation of regulatory systems, beyond a broad duty for Chief Executives in the Public Service Act 2020 in relation to proactively promoting stewardship of the agency's legislation (see section 12(1)(e)(v) of the Public Service Act 2020).

³ For instance, New Zealand's relative ranking in the OECD's Product Market Regulation Indicators survey has declined across the 2018 and 2023 results.

Various guidance has been published to support these requirements, including the *Government Expectations for Good Regulatory Practice*⁴ and *Starting out with regulatory stewardship*⁵.

New Zealand is also party to several international agreements (including Free Trade Agreements) that contain expectations for good regulatory practice, including publishing descriptions of our good regulatory practice mechanisms and processes, public consultation on proposed regulatory measures, and impact assessments of regulatory proposals.

Regulatory oversight arrangements

Regulatory oversight arrangements help make sure that regulation is of good quality and Ministers and agencies are meeting relevant expectations – just as there are assurance and audit arrangements in place for agencies’ financial performance (for instance, the Treasury’s scrutiny of new spending proposals).

Regulatory oversight

Regulatory oversight involves the establishment of mechanisms and institutions to oversee, support, and implement regulatory policy to promote better regulatory quality. It can include setting up dedicated structures (such as the Ministry for Regulation), or processes, guidance and requirements.

First and foremost, **Parliament** plays an important role with respect to oversight of regulatory quality. In addition to its broad role in holding the Executive (including Ministers and agencies) to account, Parliamentary select committee processes ensure that proposed legislation is subject to appropriate Parliamentary and public scrutiny.

One Select Committee, the Regulations Review Committee, examines all secondary legislation and may also examine proposed secondary legislation-making powers in bills. The Committee considers whether the secondary legislation ought to be drawn to the special attention of the House on one or more grounds. The Regulations Review Committee also investigates complaints about the operation of secondary legislation and may report on the complaints to the House.

⁴ This can currently be found on [the Treasury’s website](#)

⁵ This can currently be found on [the Treasury’s website](#)

How Parliament holds the Executive to account

New Zealand's constitutional framework is based on parliamentary sovereignty, which means Parliament is supreme over the other branches of government – the Executive and the Judiciary. Parliament's primary roles are to legislate and to maintain public trust in government by holding the Executive to account. The Executive sets the legislative priorities and supports the law-making process, but Parliament is ultimately responsible for producing good quality laws through effective scrutiny.

Parliament holds the Executive to account through a range of structures and procedures. These include scrutiny by members of Parliament during question time, Select Committee processes, the work of Officers of Parliament such as the Auditor-General, Parliamentary agencies such as the Office of the Clerk, and the government's own accountability systems.

In addition, the Ministry for Regulation is responsible for some oversight and quality control arrangements to help ensure new regulatory proposals meet required standards:

- It administers the requirements for quality assurance of RISs, which must all be independently assessed against set quality assurance criteria. In most cases, this assessment is led by the responsible agency – however, the Ministry for Regulation can decide to be involved in quality assurance for particularly complex, significant proposals, or where there are concerns about the agency's capacity to carry out robust quality assurance.
- It can audit the robustness of quality assurance processes put in place by agencies.
- It monitors compliance with Cabinet's impact analysis requirements.
- It has established a second opinion advice role, where it provides separate advice on the quality of regulatory proposals put forward by other agencies – in the same way that the Treasury scrutinises proposals with fiscal implications.

Other entities also play a role in helping ensure legislation introduced to the House is of a high quality, supporting the Attorney-General as senior law officer in carrying out their particular responsibility for maintaining the rule of law:

- The Parliamentary Counsel Office (PCO) is responsible for drafting Government bills and amendments to them, drafting much of New Zealand's secondary legislation,

and publishing all introduced bills, Acts and the secondary legislation it drafts. PCO's objective is to promote high-quality legislation that is easy to find, use, and understand, and to exercise stewardship over New Zealand's legislation as a whole.

- The Legislation Design and Advisory Committee (LDAC) promotes quality legislation by engaging with agencies early in the development of policy and legislation to resolve problems in the design of legislation and to identify potential public and constitutional law issues. It also publishes and maintains the Legislation Guidelines⁶, which are endorsed by Cabinet, and makes submissions to select committee where key legislative design issues arise.
- The Ministry of Justice is responsible for scrutinising proposed legislation to assess whether it is consistent with the New Zealand Bill of Rights Act 1990 (BORA). BORA protects and promotes human rights and fundamental freedoms in New Zealand.
- The Office for Māori Crown Relations – Te Arawhiti administers the Treaty Provisions Oversight Group which is available to meet with agencies to support the development of legislative provisions.

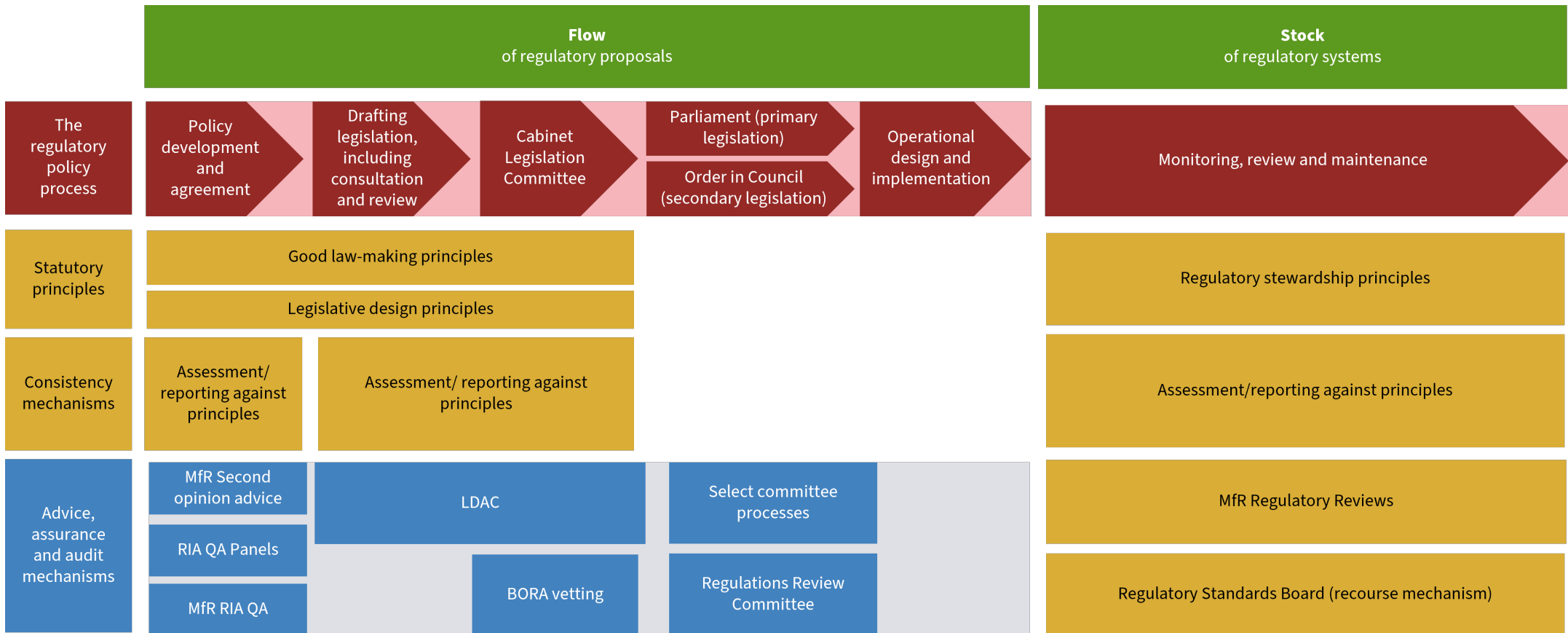
There are fewer regulatory oversight arrangements within the Executive in relation to the performance of existing regulation. However, the Ministry for Regulation has responsibility for:

- improving the functioning of regulatory systems by undertaking regulatory reviews of specific regulatory systems or sectors
- raising the capability of regulators to design, operate and govern regulatory systems effectively.

The diagram below sets out how all these aspects of regulatory oversight fit together.

⁶ These can be found on [LDAC's website](#).

How regulatory oversight mechanisms fit together



Key: Blue boxes are existing mechanisms. Yellow boxes are components of the proposed Bill

RIA – Regulatory Impact Analysis

OIA – Official Information Act

LDAC – The Legislation Design and Advisory Committee

BORA – New Zealand Bill of Rights Act 1990

Why a Regulatory Standards Bill?

New Zealand's current regulatory oversight arrangements as outlined in the previous section are under-developed compared with many other countries. In particular, New Zealand tends to rank low relative to other countries in relation to oversight and quality control of regulation.⁷ Some issues with our current approach include that:

- agencies' performance in relation to RIA requirements can be patchy, 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. The Ministry for Regulation is currently leading work to help address some of these issues
- there are few checks and balances in place in relation to the performance of existing regulation, or monitoring of agencies's **stewardship** of their regulatory systems
- while there are standards for regulation set out in a number of different places (e.g. the *Government Expectations for Good Regulatory Practice* and the *Legislation Guidelines*) there is no one, single place to find these standards
- aspects of our oversight arrangements, including the relatively informal nature of these arrangements along with limited accountability mechanisms, mean that we need to make some improvements to better comply with our international obligations in relation to good regulation.

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 well together to achieve its goals, to keep the system fit for purpose over the long term and to deliver value for money for taxpayers.

⁷ OECD (2021). [OECD Regulatory Policy Outlook](#)

The idea of a Regulatory Standards Bill – to strengthen regulatory oversight and improve the quality of regulation through legislative means – was first proposed in 2006, when the Regulatory Responsibility Bill was introduced as a private member’s Bill, but did not progress past its first reading in Parliament.

In 2009, the Government established the Regulatory Responsibility Taskforce to consider what should be in a Regulatory Standards Bill.

In its report, the Taskforce expressed a view that:

[t]he fundamental nature of the principles contained in the [Legislation] Guidelines, and patchy compliance by policy-makers with the guidelines and the regulatory impact analysis requirements, signals the need for a coherent, mandatory, regulatory quality regime. Analysis of the scale and scope of a problem, the various options for addressing it, whether legislation is required (and whether existing laws are sufficient) should be the first things examined by policymakers. Yet all too often they are the last. The Taskforce members are satisfied that the constitutional principles require additional and effective mechanisms to motivate early, and transparent, consideration of proposals against them. They should have legislative force.⁸

The Taskforce therefore proposed a draft Bill to set principles in legislation and require regulation to be assessed against these standards.

The Taskforce’s Bill formed the basis of the Regulatory Standards Bill that was introduced as a private Member’s Bill in 2021 (which similarly did not progress at the time).

While the components of the proposed Regulatory Standards Bill outlined in this discussion document share many similarities with the Taskforce’s draft Bill and the 2021 Regulatory Standards Bill, there are also some key differences, including that this proposal includes:

- amendments to some of the principles in the 2021 Bill to better align them with broadly accepted principles and practices
- establishment of a Regulatory Standards Board rather than giving a role to the courts in finding legislation inconsistent with the principles

⁸ Regulatory Responsibility Taskforce (2009). [Report of the Regulatory Responsibility Taskforce](#), p. 16

- new powers and expectations to give effect to the Ministry for Regulation’s regulatory oversight role.

This discussion document seeks feedback on each of these components of the proposed Bill.

Questions

6. What are your overall views on the quality of New Zealand’s regulation?
7. What are your overall views on the current arrangements in place to promote high quality regulation?
8. Do you ever use RISs to find out information about proposed government regulation? If so, how helpful do you find RISs in helping you make an assessment about the quality of the proposed regulation?
9. Do you ever use disclosure statements to find out information about a Bill? If so, how helpful do you find disclosure statements in helping you make an assessment about the quality of the Bill?
10. What are your views about the effectiveness of the regulatory oversight arrangements currently in place?
11. What are your views on setting out requirements for regulatory quality in legislation? Are there any alternatives that you think should be considered?



Discussion area one: Setting standards for good regulation

How would standards for good regulation be set?

It is proposed that the Bill would set out a set of principles that the Government would consider when developing legislative proposals or exercising stewardship over regulatory systems. The principles would be in primary legislation, consistent with the Taskforce's view that this was necessary to give the principles sufficient weight.

These **principles of responsible regulation** would act as a set of criteria against which new regulatory proposals or existing regulation could be assessed.

The principles would be broad and expressed at a high level. The Bill would require the Minister for Regulation to release guidelines that would set out in more detail how the principles should be interpreted and applied.

What would the principles cover?

It is proposed that the Bill include principles based on the Taskforce's recommended principles, as set out in the 2021 Bill.

These principles are selective rather than comprehensive – for instance, they do not cover all the principles set out in the *Legislation Guidelines*. Instead, as the Taskforce noted, they “focus primarily on the effect of legislation on existing interests and liberties and good law-making process.”⁹

In some cases, the wording of the principles differs slightly from the ones in the 2021 Bill – these reflect changes made to better align some of the principles with how they are currently formulated in the *Legislation Guidelines* or elsewhere in legislation. However, other principles reflect new formulations of legal principles.

It is also proposed that the Bill include some new principles focused on the review and maintenance of existing regulation, given that many issues arise when legislation is poorly implemented, or is no longer fit for purpose.

The proposed principles fall into three broad categories:

- principles relating to the design and content of legislation
- principles relating to good law-making

⁹ Regulatory Responsibility Taskforce (2009), p. 38

- principles relating to regulatory stewardship.

What would the principles not cover?

There are some principles in the *Legislation Guidelines* that are not proposed to be covered in the Bill.

For instance, even though there is some overlap with rights set out in the BORA, the proposed Bill would not cover all of these rights.

In addition, it is not proposed that the Bill would include a principle relating to the Treaty of Waitangi/Te Tiriti o Waitangi.

What would the specific principles be?

The proposed principles are set out below.

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.

Questions

12. What are your views on setting principles out in primary legislation?
13. Do you have any views on how the principles relate to existing legal principles and concepts?

14. Do you agree with the focus of the principles on:

- rights and liberties?
- good law-making processes?
- good regulatory stewardship?

15. Do you have any comments on the proposed principles themselves?

16. In your view, are there additional principles that should be included?

Discussion area two: Showing whether regulation meets standards

A key part of the 2021 Regulatory Standards Bill contained a requirement for Ministers and agencies to certify new and existing legislation against the principles.

Similarly, this proposal would provide for both new legislation and existing regulation to be assessed against the principles of responsible regulation.

This approach aims to create a strong incentive for agencies and Ministers to ensure that regulation for which they are responsible is consistent with the principles, or that any departure is justified. It also aims to ensure that there is full transparency and accountability where a Responsible Minister chooses:

- to proceed with legislation despite it being inconsistent with the principles (without justification)
- to not address unjustified inconsistencies identified in existing regulation.

By applying the same scrutiny to both new regulatory proposals and existing regulation, the aim is to significantly improve the quality of New Zealand's stock of regulation over time.

How would new regulatory proposals be assessed?

The proposed approach would set requirements for agencies to ensure that new regulatory proposals are assessed for consistency with relevant principles, and any inconsistencies identified.

These requirements would apply prior to:

- a proposal coming to Cabinet
- primary legislation being introduced into the House, or secondary legislation being made and published.

At either stage, a regulatory policy proposal or draft legislation could be assessed as inconsistent with any of the principles. There would then be two options for the responsible agency and Minister:

- the regulatory policy proposal or the draft legislation could be amended to ensure consistency with the principles (or withdrawn entirely)

- the responsible Minister could make a statement justifying why they are proceeding with the proposal despite these inconsistencies.

To provide transparency, any Ministerial statements, along with the relevant key supporting information generated through the assessment process could be published after a Bill has been introduced, or secondary legislation made (subject to equivalent provisions of the Official Information and Privacy Acts).

How would existing regulation be assessed?

The proposed approach would set new requirements for both Ministers and agencies in relation to the review of regulation for which they are responsible.

These requirements would include a duty for Ministers and agencies to maintain, review and update the regulatory systems for which they are responsible. This duty is discussed further in **Discussion Area Four**.

Under this duty, agencies would be responsible for regularly reviewing their regulation for consistency with the regulatory stewardship principles.

Where a responsible agency identifies any inconsistency with those principles, there would be two options for the agency and the responsible Minister:

- an agency could commit to amendment of the regulation within a specified time (for instance, by adding it to a forward plan for regulatory amendments)
- the responsible Minister could make a statement justifying why they are choosing not to remedy these inconsistencies.

Again, to help ensure full transparency, the Bill would require the publication of any Ministerial statements, along with the relevant key supporting information generated through the assessment process (subject to equivalent provisions of the Official Information and Privacy Acts).

How would processes for assessing consistency be set?

Under the proposed approach, the Bill would only set out the high-level expectations of agencies and Ministers. It would not set out detailed processes.

Instead, under the proposed approach, the Minister for Regulation would be required to issue guidelines in relation to the assessment of consistency of proposed and existing regulation. These guidelines would set out:

- further information on how the principles should be interpreted and applied
- what steps agencies and Ministers should take to ensure that they consider the principles when developing new proposals or reviewing their regulation, and any processes they should 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.

What would be exempt from consistency requirements?

There will be situations where it may not be possible or desirable for new or existing regulation to be assessed for consistency with the principles, for instance in emergency situations, or in relation to proposed or existing regulation that has only minor or technical impacts or significance (e.g. much secondary legislation).

The proposed approach would therefore enable the Minister for Regulation to determine which types of regulation are required to comply with consistency requirements. Other regulation not covered by the direction would be exempt.

This would aim to provide some flexibility to recognise specific circumstances, or to ensure agencies and Ministers are focusing on regulation that has the most potential or actual impact on New Zealanders.

The ability to exclude the application of mechanisms to certain proposals will also be important to enable new arrangements to align with **RIS exemptions** where appropriate.

RIS exemptions

[Cabinet Office Circular CO \(20\) 2](#) sets out where a RIS is not required for certain types of government regulatory proposals. These exemptions include where a proposal is minor or technical in nature, in emergency situations, or where the analysis that would be set out in a RIS has been done elsewhere (e.g. where a business case has been produced).

The Crown's commitments under Treaty settlements are reflected in deeds of settlement, which are given effect through legislation. The proposed approach would therefore

exclude legislation that gives effect to, or is otherwise related to, full and final Treaty settlements.

How would these arrangements fit with existing processes?

There would be a degree of overlap between the proposed new arrangements for assessing consistency, and some of the existing arrangements for promoting the quality of regulation discussed in the **Background** section above, in particular the requirements relating to RISs and disclosure statements. It will be important that these are aligned and streamlined, to minimise costs and complexity.

Given that RIS requirements and other guidance (such as the *Legislation Guidelines*) are administrative (i.e. they are not required by legislation), new arrangements to align and streamline the new proposal and current RIS requirements can be designed once a Bill has been drafted.

However, requirements for disclosure statements are set out in **Part 4 of the Legislation Act 2019**. While these requirements have not yet been brought into force, they include provisions for the Government to issue standards that would operate in a similar way to the proposed principles – however they would be set out in secondary legislation and affirmed by the House.

Part 4 of the Legislation Act 2019

Part 4 of the Legislation Act requires notices to be issued by the Attorney-General and the Responsible Minister (which we anticipate would become the Minister for Regulation) and agreed by Parliament, that set out what disclosure statements must contain. The notices would specify what information disclosure statements must contain about departures from legislative guidelines and standards, and identify legislative guidelines or standards for this purpose.

Similar to the proposed Bill, this would effectively set quality benchmarks for all legislative proposals, but it would do this in secondary rather than primary legislation. However, Part 4 has not yet been brought into force, and no notices have therefore yet been issued. In the meantime, agencies are still required to prepare disclosure statements, but the requirement is administrative (i.e. a Cabinet requirement) rather than legislative.

Any changes to the disclosure regime would therefore require amendment or repeal of Part 4. This would be worked through in more detail during the drafting of a Bill.

Questions

17. Do you agree that there are insufficient processes in place to assess the quality of new and existing regulation in New Zealand? If so, which parts of the process do you think need to be improved?
18. Do you think that the new consistency checks proposed by the Regulatory Standards Bill will improve the quality of regulation? Why or why not?
19. Do you have any suggested changes to the consistency mechanisms proposed in this discussion document?
20. Which types of regulation (if any) do you think should be exempt from the consistency requirements proposed by the Regulatory Standards Bill (for example, regulation that only has minor impacts on businesses, individuals, and not for-profit entities, legislation that corrects previous drafting errors, or legislation made under a declared state of emergency)?

Discussion area three: Enabling people to seek independent assessment of whether regulation meets standards

The 2021 Bill created a specific role for the courts in applying the principles. This role included:

- preferring interpretations of legislation that were consistent with the principles
- being able to declare legislation inconsistent with the principles in response to applications to the court.

The Taskforce saw these roles as strengthening the application of the principles and providing strong incentives for responsible Ministers and agencies to ensure good quality regulation – to avoid the courts publicly declaring regulation inconsistent with the principles. It also provided a way for individuals or organisations to complain about poor quality regulation.

Current mechanisms for considering complaints about regulation

There are already a range of ways that members of the public can raise complaints about the quality of regulation in New Zealand, or the way that regulation has been applied or enforced. These include:

- the Regulations Review Committee, which focuses on secondary legislation (described earlier in this discussion document)
- the Office of the Ombudsman
- independent Commissions within Government (e.g. the Human Rights Commission, the Health and Disability Commissioner)
- bringing a judicial review case to the courts
- bringing a legal case to a tribunal (e.g. the Employment Relations Authority)
- raising the issue with a Minister or Government agency directly (or with local government and non-government administering agencies)
- creating a petition on the New Zealand Parliament website regarding the regulation.

Proposed approach

The proposed approach would aim to complement current mechanisms for hearing complaints about regulation.

It differs from the 2021 Bill in that it no longer provides a role for the courts. Instead, it proposes that a Regulatory Standards Board be established to consider the consistency of regulation with the principles in response to complaints.

The proposed Board would aim to offer a relatively low-cost, agile way to consider and respond to complaints quickly. It would focus on the consistency of existing regulation with the principles.

What form would the Board take?

The proposed Board would be established as a statutory board that would make non-binding recommendations independent of Ministers and agencies.

It would be made up of members appointed by the Minister for Regulation, and would be supported by a secretariat from the Ministry for Regulation.

The Board would likely be made up of members with a range of skills, including legal and economic expertise.

What would the Board do?

The Board would be able to consider complaints about inconsistency of existing regulation with one or more of the principles, and would deliver non-binding, recommendatory findings.

The Board would consider the operation of regulatory systems (e.g. how well regulation is being implemented) as well as the content and design of legislation.

The Board would also be able to undertake reviews at its own behest, or at the direction of the Minister for Regulation.

After considering an issue, the Board would provide a short report setting out any views on the consistency of regulation with the relevant principle(s), along with any recommendations for addressing this inconsistency.

If there was insufficient information for the Board to come to any conclusion on the consistency of regulation, and the Board thought further investigation was worthwhile,

the Board could also recommend that the responsible agency should undertake a review of the whole or particular parts of that regulatory system to assess it for consistency.

If the Board found any inconsistency with the principles, the responsible Minister would be required to respond to that finding, including justifying any decision not to address identified inconsistencies.

All Board findings would be published (subject to equivalent provisions of the Official Information and Privacy Acts) to ensure transparency.

The Board's report could also be presented to the House to help strengthen Parliamentary scrutiny.

What would the Board not do?

The aim is that the Board would not:

- cut across any existing complaint mechanisms
- consider decisions made by Ministers or agencies in relation to individual cases.

The Board would not initially have a role in assessing new regulatory proposals – but this could be reviewed over time.

How would the Board operate?

In order to manage the costs of the Board and the costs to agencies in responding to any complaints, the Board would:

- have some discretion in relation to whether to consider complaints, and what principles to consider in response to any complaints.
- operate 'on the papers' (i.e. it would not hold hearings) and on the basis of reasonably available information.

Questions

21. Have you used any of the existing mechanisms described above to raise issues or bring complaints about the quality of regulation to the Government? If so, did you find them effective?
22. Do you think that New Zealand needs a new structure or organisation to consider complaints about the quality of regulation? Why or why not?
23. If a new structure is created specifically to consider complaints about regulation:

- a. do you think a Regulatory Standards Board would be the best mechanism to do this?
 - b. are there any alternatives that you think would be preferable to the proposed Board for investigating complaints about regulation?
24. Do you have any views on the detailed design of the proposed Board, including how it would operate and the proposed number of members?
25. In your view, what individual skills or experience should Board members have?

Discussion area four: Supporting the Ministry for Regulation to have oversight of regulatory performance

The proposal includes setting some new expectations for Ministers and agencies in the Bill to help improve the quality of regulation by:

- supporting the measures discussed earlier in this discussion document
- helping the Ministry for Regulation to take on a strong regulatory oversight role.

Setting strengthened regulatory stewardship expectations

Under the proposed approach, the Bill would:

- set a broad requirement for agencies in relation to regular review, maintenance and improvement of the legislation they administer. This would clarify and strengthen the legislative stewardship requirements that are already set out in s 12 of the Public Service Act 2020.
- require responsible agencies to develop and publicly report against plans to review their stock of legislation.

The proposed Bill could allow the Minister for Regulation to set further, more detailed requirements on how this should be done - e.g. in relation to the timing of plans and reports and what they must contain.

Given known issues with New Zealand's stock of legislation, encouraging agencies to more actively steward their regulatory systems will be critical to improving the quality of regulation over time.

This approach aims to place clearer and more specific requirements on agencies in relation to regulatory stewardship, and make this activity more transparent. However, it also aims to give agencies significant flexibility to plan and undertake reviews, as it does not mandate a certain number of reviews, or require regulatory systems to be reviewed within a specified time. Despite this, as a result of this proposal, agencies may need to dedicate greater resource to monitoring, evaluating, and reviewing their stock of legislation, which is likely to create costs for agencies.

Supporting the Ministry's regulatory oversight role

The Ministry for Regulation is responsible for conducting regulatory reviews that aim to assess whether regulatory systems are achieving their objectives and are not imposing

unnecessary compliance costs, or unnecessarily inhibiting investment, competition and innovation.

Under the proposed approach, the Bill would give the Minister and Ministry for Regulation some powers to help carry out these reviews, with the aim of ensuring that these reviews can be carried out as efficiently and effectively as possible.

In particular, the Ministry will need to obtain information from entities that exercise regulatory functions – both to help decide whether a regulatory review is warranted, and to inform regulatory reviews. While most information would likely be requested and shared co-operatively, there may be some situations, where a statutory power to obtain information may be required. However, any such powers would not override prohibitions or restrictions on the sharing of information already set down in legislation. Entities required to comply with requests for information as part of regulatory reviews are likely to incur costs, which will range depending on the size and complexity of the information request and the entity's existing capacity and capability to comply with the request.

The proposed approach would also aim to increase the impact of reviews by enabling Parliament to consider review reports and to hold the Government to account for its response to the review.

More specifically, under the proposed approach, the Bill would support the Ministry's role in carrying out regulatory reviews by:

- providing for the Minister for Regulation to initiate regulatory reviews and set terms of reference for reviews
- providing information-gathering powers to enable the Chief Executive of the Ministry for Regulation to require information to be provided on request, to support the effective and efficient conduct of reviews, from:
 - public service agencies as defined in section 10(a) of the Public Service Act 2020)
 - statutory Crown entities as defined in section 7(1)(a) of the Crown Entities Act 2004
 - any entity that makes or administers secondary legislation, including local government

- any entity authorised by an Act to undertake a regulatory function, for example the Reserve Bank and statutory occupational licensing bodies
- any entity contracted by the government to support the delivery of a regulatory function, also known as third-party service providers
- setting a requirement for the review report to be presented to the House together with the Government’s response.

Other proposed provisions to support the Ministry for Regulation’s oversight of the quality of regulation include:

- a requirement for the Ministry for Regulation to produce a regular report for the Minister for Regulation to present to Parliament assessing the overall performance of the Regulatory Management System, including a broad assessment of the consistency of regulation against the principles
- a power for the Ministry for Regulation to require provision of information from agencies to support this regular report.

Such provisions would aim to strengthen accountability and transparency throughout the system, and give the Ministry for Regulation a solid statutory basis to carry out its central agency role.

Questions

26. Do you support the proposals in this section for strengthened regulatory stewardship expectations on agencies to be set out in a Bill?
27. Do you agree that there may be some situations where a power for the Chief Executive of the Ministry for Regulation to obtain information will be required to help decide whether a regulatory review is warranted and to inform regulatory reviews?
28. Do you agree that the proposed information gathering powers are justified for the purpose of informing regulatory reviews? Do you think the powers should apply to all the types of entities listed above, or only some?
29. Do you think the information gathering powers are broad enough to enable the Ministry for Regulation to undertake regulatory reviews effectively and efficiently?
30. Do you think any safeguards or procedures should be applied to limit how the information gathering powers are used by the Ministry for Regulation? What safeguards do you think should be put in place?

31. Do you support the proposals in this section in relation to the Ministry for Regulation's broad oversight role?
32. Are there any other measures you think a Bill should contain to support the quality of regulation?



Any other comments?

The Ministry would welcome any further comments you may have on the proposed Regulatory Standards Bill, including in relation to the following:

Questions

33. Do you think the overall proposal will be effective in raising the quality of regulation in New Zealand?
34. Do you think there are other provisions that should be included in the Bill. If so, what would they be?
35. Would you prefer any alternative options to the Bill, including non-legislative options?

What's next?

Your feedback on the proposal contained in this document will help inform further policy development and contribute to drafting a Regulatory Standards Bill.

There will be a further opportunity for you to provide feedback on a Bill if it progresses to select committee.

The proposed timeline for introduction of a Bill is in the first half of 2025.

Questions glossary

Questions

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1. What is your name?
2. Are you submitting in a personal capacity, or on behalf of an organisation, iwi, hapū?
3. If you are submitting on behalf of an organisation, iwi, hapū what is the name of that organisation, iwi or hapū?
4. Where in New Zealand are you primarily based?
5. Please provide us with at least one method of contacting you, in case the Ministry needs to discuss your submission further.

Questions

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6. What are your overall views on the quality of New Zealand's regulation?
7. What are your overall views on the current arrangements in place to promote high quality regulation?
8. Do you ever use RISs to find out information about proposed government regulation? If so, how helpful do you find RISs in helping you make an assessment about the quality of the proposed regulation?
9. Do you ever use disclosure statements to find out information about a Bill? If so, how helpful do you find disclosure statements in helping you make an assessment about the quality of the Bill?
10. What are your views about the effectiveness of the regulatory oversight arrangements currently in place?
11. What are your views on setting out requirements for regulatory quality in legislation? Are there any alternatives that you think should be considered?

Questions

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12. What are your views on setting principles out in primary legislation?
13. Do you have any views on how the principles relate to existing legal principles and concepts?
14. Do you agree with the focus of the principles on:
 - a. rights and liberties?
 - b. good law-making processes?
 - c. good regulatory stewardship?
15. Do you have any comments on the proposed principles themselves?

16. In your view, are there additional principles that should be included?

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