



13 January 2025

Submission on the Regulatory Standards Bill

As one of the leading environmental Non-Governmental Organisations (eNGOs) in Aotearoa New Zealand, World Wide Fund for Nature-New Zealand (WWF-New Zealand) supports science-based, pragmatic solutions that can deliver a future in which humanity lives in harmony with nature.

A fundamental principle that underpins positive outcomes for both people and nature is that a country's laws, regulations and institutions should be fair, equitable, transparent, efficient, and adaptive. A country's legal, policy and institutional frameworks should uphold the common good, and help protect against human rights exploitations - particularly of vulnerable populations - and provide for equitable participation and appropriate accountability.

As environmental advocates, we are concerned about any proposals that would see the public good diminished in favour of private interests. In this context, we are deeply concerned about the proposed Regulatory Standards Bill and its extreme intent to elevate the role of property rights and neo-liberal principles above other constitutional rights and public protections. This proposal prioritises the interests of corporations and private individuals above the common good and creates pathways for them to challenge and undermine essential laws and protections by arguing that regulations impose "unnecessary costs" or "limit freedoms."

WWF-New Zealand considers the proposed Bill would weaken our democracy and laws designed to balance the protection of private and public interests. It would enable corporations and other private actors to weaken important safeguards for clean air, water and public safety by seeking to overturn rules targeting climate change, pollution or public health issues, thereby prioritising short-term profits for a select few over long-term societal needs.

This Bill is anti-democratic and will fetter the ability of the government to discharge its responsibility to protect the people of Aotearoa New Zealand and the natural environment, upon which we all rely. WWF-New Zealand strongly opposes the Bill and its continued development. Versions of this Bill have been attempted several times before and failed for good reason: it has no place in New Zealand's constitutional arrangement or society.

The Bill is unnecessary and fails to demonstrate how it is in the 'public interest'

The proposal fails to exhibit basic principles of 'good law-making' such as a demonstration that it is in the 'public interest' and an assessment of those who stand to benefit from the Bill

and those who might experience harm. The Bill recklessly introduces subjective concepts that go well beyond what is necessary and without a credible assessment of a reasonable range of other options for achieving its goals.

The proposed Principles do not cover all the principles set out in the Legislation Design and Advisory Committee (LDAC) Legislation Guidelines and would not cover all the rights set out in the New Zealand Bill of Rights Act (NZBORA). In fact, some of the Principles overlap with existing ones creating redundancies and no clear path for how conflicting or overlapping principles ought to be reconciled. It lacks a comprehensive, integrated approach to improving regulatory practice and transparency and, instead, introduces uncertainty by creating a system of unequal treatment of equal protections in law-making.

As noted by the Treasury in response to previous iterations of the Bill, the quality of policy and legislative review is largely limited by external factors that influence decision-makers. This pertains to both substantive policy matters as well as the process by which policy development is undertaken. For example, when Ministers pre-determine policy objectives and options to meet political ideals or commitments, they can neglect to consider other valid, evidence-based policy options or advance policies that have avoidable, negative consequences. Regulatory Impact Statements (RIS) and cost-benefit analysis are often incomplete due to unrealistic timeframes and, therefore, lack transparency of the trade-offs between different options and obfuscate the full impact of decisions for the public. Further, many policies progress to an advanced stage without being informed by experts and those most likely affected by the proposed policy. Holding the government to account on these existing regulatory practices would go a long way in improving regulatory efficacy without significant costs.

The proposed principles in the Bill set a dangerous precedent and could constrain future governments in ways that would make it harder to prioritise the public good over private interests, and weaken existing protections

The role of lawmakers and Parliament is to balance different interests and govern for *all* people in Aotearoa New Zealand. This includes legislating to protect public health interests, including the right to clean air and water and to be free from exposure to toxic or hazardous substances. The proposed Principles could significantly constrain future governments to legislate for the public good, including public health and environmental matters, if those are deemed to be too restrictive on individual or corporate interests. This could lead to significant barriers for legislating for the collective good, particularly for future generations.

Further, where property rights might be breached, the Principles would require compensation to be provided. This could come at significant financial costs while disincentivising regulatory intervention where the public stands to benefit.

The proposal shifts power away from Parliament to the Executive under powers provided to the Minister of Regulation and a non-elected Regulatory Standards Board to make decisions on the adequacy of laws and regulations. The omission of an independent regulator or Board in this proposal speaks volumes about the seriousness with which improving regulatory practice and transparency is being taken.

The bottom line is that these Principles are at odds with existing, good practice regulatory systems that protect and enhance equally important collective interests, including a healthy and thriving environment.

The proposed Bill lacks recognition for Te Tiriti o Waitangi/the Treaty of Waitangi and potentially narrows the role of the New Zealand Bill of Rights Act in our law-making and regulatory systems

The proposal is silent about how the Crown will meet its obligations and duties under te Tiriti o Waitangi/the Treaty of Waitangi (the Treaty). Given the Government's proposed Treaty Principles Bill, which seeks to replace the well-established Treaty principles with alternatives that are informed by a specific political ideology, one can only assume the omission of Treaty considerations in this proposal is a further, intentional attempt to limit the established role of the Treaty as part of law-making.

Furthermore, establishing a Regulatory Services Board that can only consider whether a law or regulation meets a narrow subset of regulatory practice principles oriented towards protection of property rights, necessarily puts it at odds with universally accepted protections afforded under the New Zealand Bill of Rights Act (NZBORA). Without proper and full consideration of how all relevant regulatory practice principles interact with each other, a proposal that narrowly focuses on a subset of principles could have the consequence of minimising other equally important rights and interests, as well as the important constitutional role of NZBORA.

The Bill fails to meet its own regulatory standards (i.e. it is not good regulation) and would divert taxpayers' dollars away from critical public services like healthcare, education, energy, and food security.

The Ministry for Regulations advises that the proposal does not pass existing regulatory standards. If the Minister is serious about improving regulatory practice and transparency, he should ensure his own legislative proposals are able to meet the bar he seeks to set for future governments.

Further, the Ministry for Regulation considers that the disclosure 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. The Ministry prefers the mechanisms in Part 4 over the Proposed Bill because it offers greater flexibility compared to legislated principles, and because the guidelines will face greater scrutiny in their promulgation." However, the Proposed Bill would require Part 4 to be repealed without it ever being tested, despite the fact Part 4 of the Legislation Act passed with cross-party support and the Proposed Bill does not have multi-party support across the Parliament. This is another example of how this Bill does not do what it purports to, but rather seeks to advance a certain ideology rather than establish broad support for good regulatory practice.

It is also worth noting the potentially significant budgetary impacts of an enhanced Ministry of Regulation, a Regulatory Services Board, and the reviews and repeals of existing regulation, and subsequent revisions to the current regulatory toolkit are also uncoded. These costs are completely unnecessary given existing regulatory systems in place could be strengthened instead and would achieve much more.

Aotearoa New Zealand has already experienced a crisis of the commons and this new law could leave future generations with the burden of collapsed ecosystems along with a massive price tag to restore them

New Zealand has already experienced a crisis of the commons in which successive governments' failure to properly regulate to prevent significant and widespread environmental degradation has resulted in an erosion of the public good for the benefit of a handful of private - mainly corporate - interests.

For example, the lack of appropriate freshwater management through recent decades of rapid agricultural (dairy) intensification has meant that the public good in the form of the quality of our lakes, rivers and streams has been significantly eroded, whilst private enterprises have benefited. 46% of New Zealand's lakes are now in poor health and 45% of total river length is now unsuitable for activities like swimming. Whilst the dairy industry has expanded dramatically, the New Zealand public now finds itself in a situation where remedial action to restore the health and mauri of waterways to a reasonable level is required - at the expense of the taxpayer.

This proposed legislation could fetter future governments' ability to regulate for cleaner freshwater, a stable climate, and for other critical environmental outcomes by enabling polluters to demand "fair compensation" for lost profits.

Conclusion

This anti-democratic Bill sets a dangerous precedent, and ought to be abandoned. WWF-New Zealand prefers Part 4 of the Legislation Act to be implemented and opposes the Proposed Bill.

We consider it is more appropriate for principles of responsible regulation to be issued as guidelines (as is the case in other jurisdictions) than in statute. Further, the Attorney-General's involvement in issuing the guidelines, and the requirement that they be ratified in the House, are important checks and balances on Ministerial power which are missing in the Proposed Bill.

Should work on the Bill progress, it should not do so without being subject to rigorous scrutiny by constitutional experts examining whether or not there is a demonstrated need for the Bill (i.e. a legitimate gap in constitutional or regulatory protections that necessitates reconciliation). If reconciliation is desirable, then independent legislative and regulatory experts should convene to further examine the necessary and appropriate mechanisms required to adequately deliver such protections and ensure an appropriate balance of relevant legislative and constitutional matters.