

Legislative Statement: Regulatory Standards Bill – First Reading

Presented to the House in accordance with Standing Order 272.

Introduction

This legislative statement supports the first reading of the Regulatory Standards Bill (the Bill) and is presented to the House of Representatives in accordance with Standing Order 272.

Intended effects of the Bill

The Bill aims to reduce the amount of unnecessary and poor quality regulation, and bring the same discipline to regulatory management that New Zealand has for fiscal management.

To achieve this aim, the Bill intends to increase transparency and make it clearer where legislation does not meet standards by:

- promoting the accountability of the Executive to Parliament for developing high-quality legislation and exercising stewardship over regulatory systems
- supporting Parliament's ability to scrutinise Bills; and
- supporting Parliament in overseeing and controlling the use of delegated powers to make legislation.

There is no intent that any failure to comply with the Bill's provisions will affect any power to make any legislation or the validity or operation of any legislation.

Furthermore, the Bill does not confer or impose any legal right or obligation on any person that is enforceable in a court of law, with one very specific exception relating to an agency failing to comply with an information request by the Ministry for Regulation.

How will the Bill's intended effects be achieved

To achieve its stated objectives the Bill:

- introduces a set of principles of responsible regulation (principles)
- provides for the identification of any inconsistencies in proposed and existing legislation via consistency accountability statements (CASs)
- provides for statements giving reasons for identified inconsistencies with the principles
- establishes a Regulatory Standards Board to consider the consistency of proposed and existing legislation with the principles
- provides for the Regulatory Standards Minister (Minister for Regulation) and the Attorney-General to jointly issue non-binding guidance regarding certain matters in the Bill
- provides for information-gathering powers to support the conduct of regulatory reviews by the Ministry for Regulation
- requires public service Chief Executives to be responsible for proactively engaging in stewardship of regulatory systems and ensuring their agency also does so

- requires that the Ministry for Regulation periodically reports on the overall state of the regulatory management system, and requires agencies to provide information to support this reporting.

Core elements of the Bill

The principles of responsible regulation

The Bill intends to set a benchmark for good legislation by establishing a set of principles of responsible regulation focused on:

- existing interests and rights – including the rule of law; liberties; taking of property; taxes, fees, and levies; and the role of courts
- good law-making processes – including consultation; options analysis; and cost-benefit analysis.
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How will the principles apply

Administering agencies must prepare and publish a CAS following the review of existing and proposed primary and secondary legislation.

Consistency Accountability Statement (CAS) and reasons for inconsistency

A CAS is required for legislation that is subject to review requirements. This is a statement from a chief executive of a responsible agency for legislation. The CAS must confirm that the agency has reviewed the existing or proposed legislation for consistency with the principles of responsible regulation, and summarise any inconsistency identified in the review.

The CAS for proposed primary legislation, including Government amendments, will be included or linked to the explanatory note of the relevant bill or Government amendment.

The CAS following a review of existing primary legislation is presented to the House of Representatives.

The CAS for secondary legislation as it is made is included or linked in an explanatory note for the secondary legislation. The explanatory note must be published or made available with the secondary legislation when the legislation is published or made available under Part 3 of the Legislation Act 2019 or otherwise as required by law.

The CAS following a review of existing secondary legislation will be published on an internet site.

The responsible Minister or, in instances of secondary legislation, any other maker will make a statement that briefly explains the Government's reasons for any inconsistency identified in the CAS. The Bill imposes no limits, restrictions, or requirements in connection with the nature, extent, or adequacy of any reasons that may be included in a statement from the Minister or other maker.

When a CAS is not required for Government bills and Government amendments

The following Government bills (and any amendments to these bills) do not require preparation and publication of a CAS:

- Imprest Supply Bills or Appropriation Bills
- Bills that are Statutes Amendment Bills under the rules and practice of the House of Representatives
- Bills that primarily relate to the repeal or revocation of legislation identified as spent
- revision Bills prepared under subpart 3 of Part 3 of the Legislation Act 2019
- Bills prepared for the purposes of confirmation under subpart 3 of Part 5 of the Legislation Act 2019
- Treaty settlement Bills.

Additionally, the Regulatory Standards Minister can issue a notice, approved by a resolution of the House of Representatives, to specify further classes of bills that will not require a CAS.

When CAS is not required in the development of secondary legislation

Responsible agencies are not required to prepare and publish a CAS for secondary legislation:

- made under an excluded Act. Excluded Acts are:
 - a Treaty settlement Act
 - a private Act or a local Act
 - the Marine and Coastal Area (Takutai Moana) Act 2011 or Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019
 - any other Act that has been enacted from a Bill excluded from review of consistency with the principles
- made under the Defence Act 1990 or the Armed Forces Discipline Act 1971 or is otherwise made by the Chief of the Defence Force
- made by the Speaker of the House of Representatives or by the House of Representatives
- that are rules of court
- made by any judicial officer.

Additionally, the Minister for Regulation can issue a notice, approved by a resolution of the House of Representatives, to specify further classes of secondary legislation that will not require CAS when being developed.

Regular Reviews for consistency with the principles

Responsible agencies must develop plans for regularly reviewing existing primary and secondary legislation for consistency with the principles, and report on progress.

The good law-making principles apply in a specific manner when an agency is carrying out such a review. In effect, the good law-making principles are applied to take into account events that have occurred since the legislation was enacted or made. For example, when reviewing legislation for consistency with the principle that legislation is

expected to produce benefits that exceed the costs, the reviewers can consider benefits and costs that have been actually produced or incurred since the legislation came into force.

When regular review of Acts is not required

Responsible agencies are not required to develop plans for regularly reviewing primary legislation and report on progress for:

- Excluded Acts
- an Act to the extent that it contains amendments to other legislation
- an Act that has been repealed or is otherwise no longer in effect.

When regular review of secondary legislation is required

Responsible agencies are required to develop plans for regularly reviewing secondary legislation and to report on progress.

This requirement applies only if a CAS has previously been prepared for the secondary legislation, or other secondary legislation that amends the secondary legislation. In practice this, this means regular reviews are not required for secondary legislation:

- if it has not been made or amended since the regular review requirement comes into effect
- made under an excluded Act
- made under the Defence Act 1990 or the Armed Forces Discipline Act 1971 or is otherwise made by the Chief of the Defence Force
- made by the Speaker of the House of Representatives or by the House of Representatives
- that are rules of court
- made by any judicial officer
- specified in a Minister for Regulation notice as not requiring a CAS when being developed.

The Minister for Regulation can issue a notice, approved by a resolution of the House of Representatives, to specify further classes of secondary legislation that will require regular review.

When regular review of secondary legislation is not required

Responsible agencies are not required to develop plans for regularly reviewing and reporting on progress for secondary legislation that:

- is made under an excluded Act
- contains amendments to other legislation
- has been revoked or is otherwise no longer in effect.

Regulatory Standards Board (the Board)

The Board will comprise 5 to 7 members and will be appointed by the Minister for Regulation for a term of 3 years, with possibility of reappointment. The regulatory

standards Ministry (Ministry for Regulation) must provide the resources and administrative support necessary to enable the Board to perform its functions.

The functions of the Board are to promote the purposes of the Bill by:

- carrying out inquiries, on the papers, into whether legislation is inconsistent with the principles,
- reporting on those inquiries to the Minister for Regulation and responsible Minister,
- considering a CAS for a Government Bill and reporting to the select committee that is considering the Bill.

The good law-making principles apply in a specific manner when the Board is carrying out an inquiry. In effect, the good law-making principles are applied to take into account events that have occurred since the legislation was enacted or made, in the same manner as when responsible agencies undertake regular reviews of their legislation for consistency with the principles.

The Board may inquire into a Bill, an Act or secondary legislation following a complaint, on its own accord, or following a request by the Minister for Regulation, if the review requirements apply to them. The Board cannot carry out an inquiry in relation to particular actions, results, or persons.

The Minister for Regulation will present the Board's annual report, which will summarise its findings and recommendations, to the House of Representatives.

Guidance

To implement the Bill's intent the Minister for Regulation and the Attorney-General could jointly issue guidance that sets out recommended best practice or their expectations concerning certain matters under the Bill. The coverage includes how the principles should be applied, how to review proposed or existing legislation for consistency, and the content and presentation of a CAS. The guidance will be non-binding.

Regulatory stewardship and regulatory reviews

Briefings on regulatory management system

As another way to support good quality regulation, the Bill gives public service chief executives a responsibility to proactively engage in stewardship of regulatory systems and ensure that their agencies also do so. The regulatory stewardship responsibility refers to the governance, monitoring and care of regulatory systems to ensure that different parts of a regulatory system work well together to achieve its goals effectively, proportionately and fairly, and keep the system fit for purpose over the long term. This responsibility aligns with Section 12(e) of the Public Service Act 2020.

The chief executive of the Ministry for Regulation will be required to provide to the Minister for Regulation a briefing on the state of the regulatory management system at least once every 4 years. The Minister will be required to present the briefing to the House of Representatives.

To enable the preparation of this briefing the chief executive of the Ministry for Regulation could require necessary or desirable information from public service agencies.

Regulatory reviews and relevant information gathering powers

The Ministry for Regulation carries out reviews of (in whole or in part) regulatory system(s). These regulatory reviews are separate from the reviews of legislation for consistency with the principles introduced by the Bill undertaken by agencies or the Board.

To support the conduct of regulatory reviews the chief executive of the Ministry could require various agencies or persons to supply information to carry out a regulatory review.

The agencies or persons that may be required to supply information include public service agencies, administering agencies or makers of secondary legislation, any agency or a person that performs a statutory function, and contractors that support or facilitate the performance of a statutory function.

The duty to supply information to enable regulatory reviews will be enforceable through court order, if necessary.

The Bill requires that the findings of the regulatory reviews carried out by the Ministry for Regulation be presented to the House of Representatives together with a government response.