MINISTRY OF SOCIAL DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

4 August 2025

Tēnā koe

Official Information Act request

Thank you for your email of 21 May 2025, requesting information about the proposed Regulatory Standards Bill.

I have considered your request under the Official Information Act 1982 (the Act). Please find my decision on your request set out below.

- *All submissions sent by your department to the Ministry for Regulation, regarding the proposed Regulatory Standards Bill.*
- *All other advice produced by your department regarding the proposed Regulatory Standards Bill, including briefings, aide memoires, letters, emails, social media messages, texts and any other document.*

Please find attached the following documents:

- REP/25/3/191 – Report - Advice on the proposed Regulatory Standards Bill
- REP/25/3/232 - Aide memoire - Policy Approvals for Progressing a Regulatory Standards Bill
- REP/25/5/393 - Aide memoire - Regulatory Standards Bill: Approval for Introduction
- Email chain - Draft Cabinet paper consultation – Regulatory Standards Bill
- Email chain - RE: Update on Regulatory Standards Bill

You will note that the information regarding some individuals is withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

Some information is withheld under section 9(2)(h) of the Act in order to maintain legal professional privilege. The greater public interest is in ensuring that government agencies can continue to obtain confidential legal advice.

Some information is also withheld under section 9(2)(g)(i) of the Act to protect the effective conduct of public affairs through the free and frank expression of opinions. I believe the greater public interest is in the ability of individuals to express opinions in the course of their duty.

Please note, the advice provided by the Ministry relates to early work on the proposed Regulatory Standards Bill and may not reflect the current policy or Bill. Please refer to the Ministry for Regulation's website for the most up-to-date information on the Regulatory Standards Bill, here: www.regulation.govt.nz/our-work/regulatory-standards-bill/.

I have also identified one item of the Social Development and Employment Update (SDEU) from 18 March 2025 that discussed the status of the Regulatory Standards Bill and highlighted that it would be circulated for Ministerial Consultation. This information is refused under section 18(d) as the information will soon be made publicly available on the Ministry's website.

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with my decision on your request, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

pp.

Anna Graham
General Manager
Ministerial and Executive Services

From: Emma Hughes
To: Olivia Cross
Cc: Elisa Eckford; Pip Van Der Scheer
Subject: Draft Cabinet paper consultation - Regulatory Standards Bill
Date: Friday, 14 March 2025 5:54:00 pm
Attachments: image001.png

Kia ora Olivia,

Thank you for the opportunity to comment on the draft Cabinet Paper seeking Policy Approvals for progressing a Regulatory Standards Bill (RSB). Our comments are below and re-state many of the points made in relation to the draft Cabinet Paper seeking approval to release the discussion document.

- MSD supports the intent of improving quality of regulation. Poor quality legislation can have far-reaching consequences as it is the major source of our law and makes significant demands on New Zealanders.
- A strong government commitment to quality regulation is in MSD's view important and necessary, but it is unclear how the proposed RSB would achieve this shift. Whilst the RSB will require legislators to be transparent about any inconsistencies with the principles, it would not stop the Government from creating legislation that was incompatible with the principles (in the same way that Section 7 BoRA reports work) within the framework of Parliamentary supremacy.
- s9(2)(h) [redacted]
- MSD does not support the proposed RSB as it cuts across existing and soon-to-be-implemented frameworks, including Part 4 of the Legislation Act 2019, adding significant costs without a detailed assessment of any associated benefits. The existing tools could be strengthened without the need for legislating the principles.
- MSD supports **in part** Option 3 in the attached RIS (which is the option recommended by the Ministry for Regulation). This would utilise the model that Parliament has already adopted as a starting point around which to build an alternative legislative design.
- Even with Option 3, MSD remains concerned that there is insufficient recognition that legislative design needs to start early in the policy development process and includes consideration of whether regulation is the right approach. Government can intervene in lots of ways - regulation is just one of many tools bring about change. Sufficient time needs to be allowed for in the policy development stage to consider good legislative design.
- The Bill will create significant challenges in resourcing this work at all levels (agency, decision-makers, PCO, Parliament/House time). Further, without support and prioritisation from government this will become unduly burdensome or languish. There is no guarantee this will meet the

objectives and in particular the behavioural change required.

- The widened scope to include all secondary legislation, will further increase this burden. MSD does not support the change to include all secondary legislation. We support the view of the Ministry for Regulation that secondary legislation should be brought in by exception and not the other way round. However, if the Bill was to proceed, we offer some areas of exclusion from the MSD context below.
- Regulation is just part of the picture and operational arrangements may be just as, if not more, significant to understanding and improving the regulatory system so there are limitations in the focus on regulations only. This is not acknowledged anywhere in the draft Cabinet paper.

<u>Specific concerns</u>

1) Limited set of principles:

    - The principles are selective rather than comprehensive - they focus on private property rights, economic efficiency, and the liberty of the individual above other considerations. This would lead to those principles being given primacy.
    - s9(2)(g)(i) [redacted]
    - While there are economic costs associated with MSD interventions, many of the changes that MSD works on are seeking to have a social impact. s9(2)(g)(i) [redacted] We are unclear how these areas are to be considered in the context of the proposed RSB. The lack of clarity risks any regulation development in the social policy space not meeting the standards and therefore creating artificial barriers for the government's social policy changes.
    - MSD agrees with the assessment in the attached RIS that under the proposed RSB legislation is more likely to frequently be found to be

inconsistent with the principles due the principles being unconventional to New Zealand law-making, which would reduce the intended incentive effect of an assessment of 'inconsistency.'

- s9(2)(h) [redacted]

2) Uncertainty:

- MSD notes that the proposed RSB provides for the Minister for Regulations to issue Guidance that sets out best practice or the Minister's expectations concerning the following matters:
  - how the principles should be applied
  - how to review legislation for consistency with the principles
  - the content and presentation of the statements and plans required.
- This guidance is significant to understanding the full impacts of the proposed RSB and it is concerning not to have this detail at this stage, or at the very least when the Bill is introduced and considered by Select Committee.

3) Overreach and impact on Parliament Sovereignty:

- The proposed RSB would be a significant change in New Zealand's constitutional arrangements because it would be a legislative pronouncement of the principles that should be followed when making regulation. This would constrain the scope of government regulation and law-making powers.
- s9(2)(h) [redacted]

4) Potential to add complexity, time, costs, and risks to the process:

- Requiring new regulation (primary and secondary) to demonstrate consistency with the principles of responsible regulation is expected to add to the time it takes to progress regulatory change and to the complexity of the process. This runs counter to what we are seeing from governments (past and present) who are progressing regulation at pace. Governments are under significant pressure to respond rapidly and decisively to problems.
- In more cases than not, Ministers are looking to expediate the process, including shortened policy development and drafting timeframes and the time taken to progress legislation in the House for primary legislation (including Select Committee consideration).
- We strongly believe that efforts to improve the quality of legislation need to happen early in the process, in the policy development stage. A clear understanding of the policy objective is the foundation of good legislative design. Once the Bill is drafted and approval is being

sought to introduce the Bill to the House there would be significant investment in time and resource (including operational costs in things like IT changes) as well as political capital and to come unstuck at this point (including the potential of withdrawing the legislation would be very costly). However, we think improvements to the quality of regulation can be achieved without embedding the principles in the RSB.

5) Areas for exclusion from consistency assessments:

- MSD does not consider any secondary/delegated legislation should be subject to the requirements in the proposed RSB. When the empowering provisions are being drafted or amended through a Bill - this is the appropriate time to assess this.
- The Minister for Social Development and Employment is responsible for administering a range of Secondary Legislation made or amended by Order in Council under powers delegated by Parliament through an Act. But is also able to establish and approve (or amend) welfare programmes for special assistance and issue binding directions (provided for in statute) - these are drafted by MSD, approved by the Minister (or in some cases Ministers), and must adhere to the publication, presentation, and disallowance requirements in the Legislation Act 2019. These can address a wide range of circumstances and are frequently amended or developed for a time-limited period as new needs arise, such as responding to emergencies (severe weather events, Covid-19, rural assistance for a primary industry etc).
- Many of these instruments would meet the tests in proposed Clause 11 of the RSB – when a review of legislation is not required. Such criteria have not been set out in the proposed RSB for determining when the Minister for Regulation can issue a notice determining that a review of consistency of secondary legislation with the principles is not apply to a class of legislation – this leads to much uncertainty as to how this secondary legislation will be treated. MSD would expect to have a number of exclusions from the review of secondary legislation.
- Another clear case is in relation to the statutory requirement to adjust rates of main social security benefits, Student Allowances, Orphan's Benefit, Unsupported Child's Benefit, Foster Care Allowance (Minimum Rates of Payment for Board and Lodging), rates of main benefits payable to long-term hospital patients, and New Zealand Superannuation from 1 April each year. This process is known as the Annual General Adjustment (AGA). These are given effect to through Orders and Amendment Regulations. This is a mechanical adjustment and doesn't require specific policy decisions to be made and should be considered out of scope for the RSB.

6) Review of existing regulation:

- In respect of the review of existing stock we think it should be acknowledged that there is currently insufficient capacity across the board to progress the volume of regulatory change from new proposals let alone review of existing stock. We have recently heard from PCO that House time is oversubscribed for the remainder of the year.

- The Productivity Commission identified in their 2013 review that "Limited Parliamentary time means that relatively fewer resources are devoted to the review and maintenance of regulation". In our view this point has not been addressed and in fact there are fewer sitting days now.
- s9(2)(h) [redacted] This needs to be recognised in the paper.
- Also, the scope of Bills (Standing Orders require Bills to relate to one subject area (SO 264)) limits the opportunities to provide for stewardship unless there is a Regulatory Systems Bill on the programme that is given due priority.
- MSD does not support the inclusion of a 10-year timeframe to complete initial reviews due to the constraints already identified. We consider this focus would crowd out other valuable policy work. It is also unclear on how this would interface with recently amended legislation. It should also be noted that constraints on omnibus legislation, already limit the ability to cover wider stewardship matters alongside other policy changes. This makes it difficult to get general fix up matters prioritised.
- Publishing forward plans would be useful for industries/markets impacted by a particular agency's regulations (e.g. MBIE) because they would provide some certainty about the agencies forward work programme. s9(2)(g)(i) [redacted]

7) Impact on Minister/Ministry relationship:

- The proposed RSB would establish new requirements for responsible Ministers in relation to proposed legislation that is subject to consistency requirements to ensure that:

  - the explanatory note to a Government Bill or to proposed secondary legislation where the Minister is the maker, includes an independent Consistency Accountability Statement (CAS) - that is, a statement from the responsible Chief Executive stating that the Bill has been assessed for consistency with all the principles, and providing the results of that assessment - and a statement from that Minister explaining the reasons for any inconsistency identified.
  - the explanatory note to a Government amendment includes a CAS unless the Minister for Regulation has given an exemption on the grounds that the amendment would not materially change the Bill.

- MSD is concerned about the impact this requirement will have on the relationship between agencies and their responsible Minister/s. Especially where the application of the principles is subjective. This could create a great deal of tension and disharmony.

We would be happy to discuss our comments with you.

Many thanks,
Emma

Ngā mihi
Emma Hughes (she/her)
Senior Policy Analyst
Welfare System and Income Support Policy

☎ s9(2)(a) | ☎ D2D s9(2)(a) | ✉ s9(2)(a)@msd.govt.nz
The Aurora Centre | Level 9 | 56 The Terrace | P O Box 1556 | Wellington | New Zealand

Please note that I finish at 2:30pm on Tuesdays and 2pm on Thursdays.

Aide-mémoire

MINISTRY OF SOCIAL DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Cabinet paper

Date: 16 May 2025 **Security level:** Cabinet Sensitive

For: Hon Louise Upston, Minister for Social Development and Employment

File Reference: REP/25/5/393

Regulatory Standards Bill: Approval for Introduction

Cabinet Committee	Cabinet
Date of meeting	19 May 2025
Minister	Hon David Seymour, Minister for Regulation
Proposal	This paper seeks approval for the introduction of the Regulatory Standards Bill (RSB). This follows Cabinet agreement on 5 May for the Ministry for Regulation to issue drafting instructions to the Parliamentary Counsel Office (PCO) [CAB-25-MIN-0148 refers]. Cabinet agreement is also sought to refer the RSB to the Finance and Expenditure Select Committee for consideration, and to enact the RSB by 31 December 2025. The Ministry of Social Development (MSD) considers the RSB attached to the Cabinet paper reflects the policy as agreed by Cabinet.

The Aurora Centre, 56 The Terrace, PO Box 1556, Wellington
– Telephone 04-916 3300 – Facsimile 04-918 0099

Talking points	s9(2)(g)(i) [redacted]
Key issues	Progressing a RSB though to enactment is in the Coalition Agreement between the New Zealand National Party and ACT New Zealand.

MSD supports the intent of the RSB to improve the quality of regulation, but we consider existing tools could be better utilised and strengthened to achieve this, without the same level of cost, uncertainty, and risk.

The RSB sets out to establishes a benchmark for good legislation by introducing a set of principles of responsible regulation in primary legislation, focused on the effect of legislation on:

- existing interests and liberties - 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.

The RSB creates requirements for responsible Ministers and administering agencies in relation to the assessment of the consistency of proposed and existing legislation (both primary and secondary) against these principles.

Ministers are required to ensure publication and/or presentation to the House of the results of those assessments and explanations for any inconsistency.

The RSB also sets out requirements for agencies to develop plans for regularly reviewing legislation. The responsible agency must:

- develop and publish plans for regularly reviewing the legislation for consistency with the principles of responsible regulation; and
- prepare and publish regular reports on its performance in carrying out the plans.

The detail on how to prepare, publish, carry out, and report on plans for regularly reviewing legislation, including how often is to be included in the yet to be developed guidance.

Urgent Waitangi Inquiry into the RSB

Toitū te Tiriti has taken an urgent claim to the Waitangi Tribunal, saying the RSB breaches the Crown’s Treaty obligations. The hearing was held on 14 May 2025, but as yet the tribunal has not submitted its findings. MSD understands this could be addressed orally at Cabinet on 19 May.

Uncertainty due to undeveloped detail

The RSB makes provisions for guidance to be issued on:

- the application of principles of responsible regulation
- the content and presentation of Consistency Accountability Statements (CAS), and
- how to prepare, publish, carry out, and report on plans addressing regulatory reviews.

The specific detail of this guidance has the potential to address or worsen the concerns raised on the policy. For example:

- how the proposed principles interact with existing principles of good legislation that are not explicitly mentioned in the RSB
- the weighting of the principles (which favour individual rights and liberties) which could create artificial barriers for social policy change
- the additional work required to complete CAS
- the timeframes for and frequency of for regulatory reviews.

Exclusions or exemptions from the consistency assessment requirements

The RSB enable the Minister for Regulation to issue notices to the House of Representatives to exempt a class of bill or legislation from consistency assessment requirements and the regular review requirements. Although some types of legislation have been identified in the RSB, for the most part this work is still to come, via notices to the House.

MSD will be looking to progress some exemptions as part of this work, but until this work is complete, we do not have certainty about the scope and, therefore, the full impacts for MSD.

	The new requirements will have resource implications for MSD Meeting the proposed new consistency assessment requirements for new primary and secondary legislation would slow the progress of regulatory change, add complexity, and require additional resource. The Ministry for Regulation estimates that the annual cost across government would be $50-60 million. The annual cost to MSD is estimated to be $1-2 million. MSD is not resourced to meet the requirements of the RSB. It will impact on MSD's ability to deliver Government priorities. MSD has indicated that if the RSB is enacted, it may be necessary to seek extra Budget funding. However, we note that the Cabinet paper seeking policy decisions set out that responsible Ministers and agencies will need to consider how to manage any residual resourcing implications within baseline including trade-offs against other priorities in the absence of additional funding.
Our advice	As the RSB proceeds thought select committee, and the work on guidance and exemptions via notice takes shape with the Ministry for Regulation, MSD will need to provide you with more advice. This will cover potential exemptions from the consistency assessment requirements and on how to manage the extra requirements. To enact the RSB by 31 December 2025, following the intended introduction of the Bill on 19 May 2025, MSD note that this will not allow for a full select committee process of six months. Details on how long the Finance and Expenditure Select Committee will have to consider the RSB has not been provided. We expect there will be strong public interest in the RSB via the public submission process.

Author: Emma Hughes, Senior Policy Analyst

Responsible manager: Bede Hogan, Policy Manager

Aide-mémoire

MINISTRY OF SOCIAL DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Cabinet paper

Date:	31 March 2025	**Security level:**	Cabinet Sensitive
For:	Hon Louise Upston Minister for Social Development and Employment Minister for Community and Voluntary Sector		
File Reference:	REP/25/3/232		

Policy Approvals for Progressing a Regulatory Standards Bill

Cabinet Committee	Cabinet Expenditure and Regulatory Review Committee (EXP)
Date of meeting	1 April 2025
Minister	Hon David Seymour, Minister for Regulation
Proposal	**This Cabinet paper sets out final policy decisions on the main elements of the Regulatory Standards Bill (RSB), aimed at improving the quality of New Zealand's regulation, to enable drafting of the Bill**. The stated objectives of the proposed RSB are to reduce the amount of unnecessary and poor regulation by increasing transparency and making it clearer where legislation does not meet standards. It intends to achieve this by: • a benchmark for good legislation through a set of 'Principles of Responsible Regulation' (the Principles) (set out in primary legislation)

- mechanisms to transparently assess the consistency of proposed and existing legislation against the Principles (consistency assessment requirements)
- a new Regulatory Standards Board (the Board) with power to assess legislation against the Principles, in response to stakeholder concerns, Minister for Regulation direction, or on its own accord

The RSB is proposed to come into force on 1 January 2026 (with Bill’s introduction planned for late May 2025).

We recommend that you **do not support** the proposal in its current form, due to the significant concerns identified in the Cabinet paper, and by the Ministry of Social Development (MSD) and other agencies.

Talking points

s9(2)(g)(i)

[redacted]

	s9(2)(g)(i) [redacted]
Key issues	Progressing a RSB though to enactment is in the Coalition Agreement between the New Zealand National Party and ACT New Zealand. MSD supports the intent of the RSB to improve the quality of regulation, but we consider existing tools could better utilised and strengthened to achieve this aim without the same level of cost, uncertainty, and risk. MSD is not alone in these views. DIA which advises you on your Community and Voluntary Sector portfolio notes that the requirement to reassess all legislation within 10 years will disproportionately affect agencies that administer a large amount of legislation, such as DIA. Without additional resourcing, this would divert policy, legal and operational

resources away from Ministers' policy priorities and the Department's regulatory activities.

The Regulatory Impact Statement (RIS) produced by the MfR for the proposed RSB does not support progressing the RSB. The RIS notes that the changes sought in this Cabinet paper are unlikely to be the most efficient or cost-effective approach to improving the quality of New Zealand's regulation.

Since public consultation in late 2024, the proposed RSB has been further amended to require consistency assessments of all secondary legislation by default (new and existing) rather than by exception, and a firm deadline to review all existing legislation within 10 years has been added. Both these changes will significantly increase the projected costs associated with the RSB.

s9(2)(h) [redacted]

The proposed Principles of Responsible Regulation

The proposed Principles of good regulation are narrow and unduly focus on private property, economic growth, and individual liberties at the expense of other legitimate purposes of regulation. The proposed Principles define several concepts differently from existing law and guidance (e.g., the Legislation Design and Advisory Committee's *Legislation Guidelines*). MSD considers that certainty and clarity of the law would be better served if the Principles aligned with accepted legal values and concepts.

MSD is concerned that regulation in the social policy space may not meet the Principles, and therefore creates barriers for Government to make social policy reform.

s9(2)(h) [redacted]

s9(2)(h)

[redacted]

Costs and resourcing implications

Meeting the proposed new consistency assessment requirements for new primary and secondary legislation would slow the progress of regulatory change, add complexity, and require additional resource. MfR estimates that the annual cost across government would be $50-60 million. The annual cost to MSD is estimated to be $1-2 million.

MSD is not resourced to meet the requirements of the RSB. It will impact on MSD's ability to deliver Government priorities. If the RSB is enacted, it may be necessary to seek extra Budget funding.

Including secondary legislation

MSD does not support subjecting secondary legislation to the same requirements as primary legislation. Delegating legislation to other bodies allows Parliament to focus on broad policy goals while enabling efficient policy implementation and adaptation to changing circumstances, particularly in technical, detailed, or frequently updated areas. Parliament provides the power to make delegated legislation and there is no need to impose the RSB's requirements on secondary legislation.

There is a process to have classes of legislation exempted from the consistency assessments or review by the Board (via notices approved by the House). However, there is currently very little certainty about what could meet the threshold for exclusion.

If secondary legislation remains subject to the RSB's requirements, MSD considers that several areas of secondary legislation that you oversee should be excluded, such as the Annual General Adjustment and financial assistance following emergency or unforeseen events.

The role of the Board

The Board, with members appointed by the Minister for Regulation, would make its own assessments of the consistency of legislation against the Principles. This is intended incentivise Ministers and agencies to complete robust assessments of regulation for consistency with the Principles.

As proposed, the Board could carry out inquiries either following a complaint, at the direction of the Minister for Regulation, or on its own accord. It could do this via a report to the relevant Select Committee on bills introduced to the House, or in respect of existing legislation it could carry out an inquiry and report its findings to the Minister for Regulation. Any recommendations it made would be non-binding.

One clarification has been made that the Board would not be able to investigate decisions in relation to individual cases, which was an area of significant concern for MSD.

s9(2)(h)

[redacted]

Our advice

In their RIS, MfR preferred option is based on disclosure requirements that are set to come 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. MfR also proposes a regulatory oversight role for itself either through a statutory Board to independently consider the consistency of proposed and existing legislation OR having authority for the Ministry for Regulation to fulfil this role.

MSD supports the Ministry for Regulation's preferred option **in part**. As identified by MfR, there is already a mix of statutory and non-statutory measures intended to improve the quality of regulation. MfR's preferred option is more likely achieve better regulation at lower cost and with fewer unintended consequences.

These include section 12 of the Public Service Act 2020 concerning stewardship, Cabinet-mandated Regulatory Impact Analysis requirements, the *Legislative Guidelines*, disclosure

	statements for Government-initiated legislation, Bill of Rights vetting, and the scrutiny of Regulations Review Committee. MSD favours strengthening these existing tools, rather than implementing an inflexible formal mechanism embedded in primary legislation. If the RSB proceeds, MSD will need to provide you with more advice on how to manage the extra requirements, particularly as more direction comes from MfR on the compliance assessments and guidance on the Principles. We would also seek to discuss potential exemptions from some types of legislation you administer with MfR.

Author: Emma Hughes, Senior Policy Analyst, Income Support Policy

Responsible manager: Dee Collins, Policy Manager, Income Support Policy

From:	Emma Hughes
To:	Olivia Cross
Cc:	Elisa Eckford; Pip Van Der Scheer; Dee Collins
Subject:	RE: Update on Regulatory Standards Bill
Date:	Wednesday, 14 May 2025 2:21:00 pm
Attachments:	image001.png image002.png

Kia ora Olivia and Elisa,

Sorry for the delay in responding to this draft Cabinet paper and Bill.

MSD's position remains the same as it was in respect of the policy approvals paper. Meeting the proposed new consistency assessment requirements for new primary and secondary legislation would slow the progress of regulatory change, add complexity, and require additional resource.

MSD is not resourced to meet the requirements of the RSB. It will impact on MSD's ability to deliver Government priorities. If the RSB is enacted, it may be necessary to seek extra Budget funding or reprioritise our work programme.

We are concerned the RSB could lead to uncertainty over the application of the principles and the relationship with existing principles of good legislation that are not explicitly mentioned in the RSB. The narrowed focus of the principles in strengthening individual rights and liberties may create artificial barriers for social policy change.

There is also considerable uncertainty about the full implications of the RBS because guidance has yet to be developed (Clause 27).

- how to review proposed or existing legislation for consistency with the principles; and
- the content and presentation of a Consistency Accountability Statements (CAS); and
- the development of plans for regularly reviewing legislation for consistency with the principles (including how often).

Further, the Bill will also enable the Minister for Regulation to issue notices to exempt particular classes of legislation (both primary and secondary) from consistency assessment requirements. But as noted, there has been insufficient time for the Ministry for Regulation to identify all legislation that should be exempted from the requirements. MSD will be looking to progress some exemptions as part of this work, but until this work is complete, we do not have certainty about the scope and therefore the impacts.

As always, we are happy to discuss our feedback.

Ngā mihi,

Emma

Ngā mihi
Emma Hughes (she/her)
Senior Policy Analyst
Welfare System and Income Support Policy

☎ s9(2)(a) | ☎ D2D s9(2)(a) | ✉ s9(2)(a)@msd.govt.nz
The Aurora Centre | Level 9 | 56 The Terrace | P O Box 1556 | Wellington | New Zealand

Please note that I finish at 2:30pm on Tuesdays and 2pm on Thursdays.

From: Olivia Cross <Olivia.Cross@regulation.govt.nz>
Sent: Monday, May 12, 2025 12:41 PM
To: Olivia Cross <Olivia.Cross@regulation.govt.nz>
Cc: Elisa Eckford <Elisa.Eckford@regulation.govt.nz>; Pip Van Der Scheer <Pip.VanDerScheer@regulation.govt.nz>
Subject: RE: Update on Regulatory Standards Bill

Kia ora koutou

As mentioned last week we are now working to lodge a Cabinet paper and the draft RSB directly for Cabinet by Thursday 15 May for Cabinet on 19 May. For your visibility we have attached the draft Cabinet paper and bill. Unfortunately, the timeframes do not leave time for substantive feedback on either the Cabinet paper or bill. Again, we apologise for the tight turnarounds.

However, if on review you pick up any factual errors or significant concerns with how the policy decisions made by Cabinet have been given effect to please let us know ASAP and no later than midday tomorrow – 13 May. Please note, depending on the scope of any matters raised, we may not have time to reflect any updates in the drafting.

Important note: the Cabinet paper and draft bill contain advice that is subject to Crown legal privilege and cannot be shared outside of the core Crown. Please take care in the handling of these papers to avoid any inadvertent disclosures. If you have received this email and are outside the Crown's legal privilege please do not open the attachments and contact us immediately to advise.

Ngā mihi
Olivia

From: Olivia Cross <Olivia.Cross@regulation.govt.nz>
Sent: Wednesday, 7 May 2025 8:43 am
To: Olivia Cross <Olivia.Cross@regulation.govt.nz>
Cc: Elisa Eckford <Elisa.Eckford@regulation.govt.nz>; Pip Van Der Scheer <Pip.VanDerScheer@regulation.govt.nz>
Subject: Update on Regulatory Standards Bill

Kia ora koutou

As some of you may be aware *the Policy Approvals for Progressing a Regulatory Standards Bill* Cabinet Paper was agreed by Cabinet on Monday. A copy of the final Cabinet paper and minute are attached. Please let me know if you would like a copy of any of the annexes. Redacted versions of the papers are also available on our website here.

Next steps

Cabinet has agreed that a paper seeking approval to introduce the Bill along with the proposed Bill will proceed directly to Cabinet for consideration on 19 May 2025. This timeframe means we will need to lodge the final paper and draft bill by **next Thursday.**

Our apologies in advance that this timing unfortunately does not leave a window for substantive departmental consultation on the Cabinet paper and draft bill. However, we will look to circulate both as soon as we can next week for your visibility and to support any requests for briefing material you might receive from your respective Ministers' office. This will also provide a window to pick up any factual errors in the drafting but will not be an opportunity for further feedback on policy decisions.

Separately, we will be in touch in the coming weeks to consult with agencies on the development of an initial list of exemptions that could be included in a notice to be issued as soon as the Bill comes into force (see rec 21).

Ngā mihi
Olivia

Olivia Cross (she/her)
Principal Advisor, Regulatory Management System
Ministry for Regulation | Te Manatū Waeture
īmēra: Olivia.Cross@regulation.govt.nz

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Report

MINISTRY OF SOCIAL DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Date: 20 March 2025 **Security Level:** Legally privileged: In-Confidence

To: Hon Louise Upston, Minister for Social Development and Employment

File Reference: REP/25/3/191

Advice on the proposed Regulatory Standards Bill

Purpose

1 This report supports you to engage on the draft Cabinet Paper seeking '*Policy Approvals for Progressing a Regulatory Standards Bill (RSB)*' which is being proposed by the Minister for Regulation.

Executive summary

2 The Ministry of Social Development (MSD) was recently consulted on a draft Cabinet Paper seeking '*Policy Approvals for Progressing a RSB*'. MSD understands a draft of this paper has been circulated for Ministerial Consultation until 28 March 2025, before being considered by the Cabinet Expenditure and Regulatory Review Committee on 8 April 2025.

3 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 a Regulatory Standards Act as soon as practicable.

4 Since its initial inception as a Members Bill in 2006, several attempts have been made to pass a RSB.[1] This iteration includes a number of changes from previous attempts in order to mitigate legal risks previously identified.

s9(2)(h) [redacted]

5 The stated objectives of the proposed RSB are to reduce the amount of unnecessary and poor regulation by increasing transparency and making it clearer where legislation does not meet standards. It intends to achieve this by:

- a benchmark for good legislation through a set of principles of responsible regulation (set out in primary legislation)
- mechanisms to transparently assess the consistency of proposed and existing legislation with the principles (consistency assessment requirements)
- a mechanism for independent consideration of the consistency of legislation, in response to stakeholder concerns, Ministry for Regulation direction, or on its own accord (the Board).

6 s9(2)(h) [redacted]

[1] The Regulatory Responsibility Bill was a Member's Bill by former ACT leader Rodney Hide. In 2011 The Regulatory Standards Bill was a recommendation of the Regulatory Responsibility Taskforce (established in 2009). In 2021, another iteration of the Regulatory Standards Bill was introduced as a Member's Bill by David Seymour, it did not pass its First Reading.

s9(2)(h) [redacted]

7 The principles to be included in the proposed RSB are selective (i.e. they do not cover all aspects of good legislative design and lawmaking that are currently covered in the *Legislation Guidelines* produced by the Legislation Design and Advisory Committee). Some of the principles are novel in that they do not align with, or go further than, generally accepted legal values and concepts in New Zealand and relevant overseas jurisdictions.

8 The principles are focused on the effect of legislation on existing rights and liberties and on the processes that should be followed in making that legislation. There is a risk that some good regulation principles may receive less attention if they are not specifically provided for in legislation.

9 The lack of clarity on the exercise of the proposed principles could mean that regulation development in the social policy space does not meet the standards and therefore creates artificial barriers for the government's social policy changes.

10 s9(2)(h) [redacted]

11 Since engagement on the proposed RSB via a discussion document, the Minister for Regulation is proposing additions that widen the scope of the RSB and provide more prescription including:

- subjecting all secondary legislation to the consistency assessment requirements, in addition to primary legislation
- requiring responsible agencies to assess all existing primary and secondary legislation for consistency no later than 10 years after the RSB comes into force
- providing for the Regulatory Standards Board (the Board) to assess agencies' statements on consistency with the principles upon introduction of a bill, and the ability to provide a report of its assessment to the relevant Select Committee.

12 There are multiple factors that can undermine regulatory efficacy in New Zealand. Ministers face strong pressures to deliver on political commitments as soon as possible, which could be constrained by the proposed RSB. It will

create compliance costs for government departments through the certification process and the reporting requirements.

13 The Ministry for Regulation has identified in the Regulatory Impact Statement attached to the Cabinet paper, that the total cost per annum for government agencies with responsibility for primary and/or secondary legislation would be approximately $50-$60 million per year.[2] MSD is not sufficiently resourced for this work, and it may be necessary to seek Budget funding if the proposed RSB is enacted.

14 MSD is particularly concerned about the impact the proposed RSB could have on the relationship between the Chief Executive of MSD and responsible Minister/s through having to independently assess legislation against the principles, and justify any non-compliance, respectively.

15 Some specific examples of where the proposed RSB could create issues or tensions are:

- the Board could look into agencies' consistency assessment statements for bills or amendments once they are introduced into the House and step-in where they consider an agency has made a poorly substantiated statement (including providing a report to the select committee considering the bill)
- the Board could receive and deal with complaints that existing legislation is inconsistent with the principles of responsible regulation
- the level of extra compliance in respect of routine legislative changes, for example, every year the rates of main social security benefits must be adjusted via the Annual General Adjustment. This is a mechanical adjustment and doesn't require specific policy decisions to be made, but would currently be in scope of the requirements
- through requirements to provide information to the Ministry for Regulation for regulatory reviews or periodic agency compliance reporting, which could lead to the need to produce extra data and analysis
- the assurance activities would come at an opportunity cost to the MSD's wider work programme.

[2] These costs will fall unevenly across agencies due to the significant range in the volume of legislation administered by different agencies.

16 MSD does not support the proposed RSB and instead favours strengthening the existing tools available. MSD has provided our concerns to the Ministry for Regulation during agency consultation on this Cabinet paper.

Recommended actions

It is recommended that you:

1 **note** that the Minister for Regulation is undertaking Ministerial Consultation on a draft Cabinet paper seeking '*Policy Approvals for Progressing a Regulatory Standards Bill (RSB)*' until 28 March 2025, to enable Cabinet Expenditure and Regulatory Review Committee's consideration of the paper on 8 April 2025

2 **note** that the main accountability mechanisms for the Executive is through requiring the publication and presentation to the House of statements concerning compliance with the principles

3 **note** that this will lead to increased Parliamentary scrutiny through having additional mechanisms to evaluate new legislation introduced into the House, and in respect of existing legislation, the House would need to decide what to do with statements made in respect of reviews of existing legislation

4 **note** that the Ministry of Social Development (MSD) has raised the following key concerns with the Ministry for Regulation on the proposed RSB:

4.1 the proposed principles of responsible regulation are narrow with an undue focus on private property, economic growth and individual liberties at the expense of other areas, such as the legislation you have responsibility for

4.2 guidance on interpreting the regulatory principles is intended to be issued by the Minister for Regulation after enactment, which leaves uncertainty currently about how the principles are intended to be interpreted and applied

4.3 the impact on the relationship between agencies and responsible Minister/s through having to independently assess legislation against the principles, and justify any non-compliance respectively and publicise these views

4.4 the increase in complexity, time, costs, and risk to the process for developing legislation, against limited evidence that the proposed RSB will be effective

4.5 the proposed 10-year timeframe for initial assessments of existing legislation will impact on MSD, Minister/s, Parliamentary Counsel Office and Parliament/House time

4.6 that secondary legislation should not be included by default in the proposed RSB, as this could constrain the exercise of that discretion and effectively subject secondary legislation to scrutiny by Parliament

4.7 MSD is not sufficiently resourced to meet the requirements of the proposed RSB, particularly in respect of existing legislation and this work would crowd out other policy work on new initiatives

5 s9(2)(h) [redacted]

6 **note** that the proposed RSB could impact on your roles as the Deputy Leader of the House and the Deputy Chair of the Cabinet Legislation Committee as follows:

6.1 potential for increased time for scrutiny of bills in light of consistency accountability statements and the justifications from the responsible Minister in the explanatory note to a bill, and

6.2 capacity impacts on the Government's legislation programme via the assessment of all existing legislation (primary and secondary) if this were to drive remedial changes.

Dcollins

Dee Collins
Policy Manager
Income Support Policy

20/03/2025
Date

Hon Louise Upston
Minister for Social Development and Employment

Date

Background

17 The Ministry of Social Development (MSD) was recently consulted on a draft Cabinet Paper seeking *'Policy Approvals for Progressing a Regulatory Standards Bill (RSB)'*. MSD understands this this has been circulated for Ministerial Consultation until 28 March 2025, before being considered by the Cabinet Expenditure and Regulatory Review Cabinet Committee on 8 April 2025. The intention is to introduce the proposed RSB to the House in May 2025.

18 Passing the RSB is part of the Coalition Agreement between the New Zealand National Party and ACT New Zealand.

What is being proposed?

19 Cabinet approval is being sought on the policy approvals necessary to draft the RSB. The purposes of the proposed RBB are identified as:

- to promote the accountability of the Executive to Parliament in relation to the development of high-quality legislation and regulatory stewardship
- to support Parliament to scrutinise bills and oversee the power to make delegated legislation.

20 This is intended to be given effect to by providing:

- a benchmark for good legislation through a set of principles of responsible regulation that all legislation (primary and secondary) should comply with
- mechanisms to transparently assess the consistency of proposed and existing legislation with the principles
- requiring disclosure of the reasons for any identified inconsistencies
- a mechanism for independent consideration of the consistency of proposed and existing legislation in response to stakeholder concerns, Minister for Regulation direction, or on its own accord (the Regulatory Standards Board (the Board))
- supporting the Ministry for Regulation in its work to improve the quality of legislation (regulatory oversight role).

21 Since the proposal for a RSB was outlined in a discussion document,[3] additional changes are proposed which would expand the proposed RSB. These include:

- that the consistency requirements apply to all secondary legislation (previously only to be included by exception)
- responsible agencies would be required to complete consistency assessment of all existing primary and secondary legislation within 10 years from when the RSB comes into force (previously no time limit)
- new powers for the Board to assess agencies' statements on consistency with the principles upon introduction of a bill, and provide a report of its assessment to the relevant Select Committee.

22 It is proposed that the Act would come into force on 1 January 2026, with a further six months allowed for consistency assessment requirements for agencies and Ministers to be brought in via Order in Council.

Most submitters did not support the proposed RSB

23 Approximately 23,000 submissions were received in respect of the discussion document. Analysis provided by the Ministry for Regulation to date indicates that around 88 percent of submitters opposed the proposal for a RSB.

24 The key reasons cited were the perceived narrow focus of the proposal in strengthening individual rights and liberties at the expense of other objectives, the lack of provision for the Treaty of Waitangi/Te Tiriti o Waitangi and broader Māori rights and interests and the likely costs relative to effectiveness.

25 A small percentage of submitters (0.33 percent) supported or partially supported the proposal for a RSB and almost 12 percent did not have a clear position.

MSD has a number of concerns about the proposed RSB

26 While MSD supports the intent of improving the quality of regulation, we remain unconvinced that the proposed RSB will achieve its intent, but could impose significant costs of the public service.

[3] A discussion document was released on 19 November 2024 (CAB-24-MIN-0437 refers), with public consultation open for just over eight weeks.

27 There are multiple factors that can undermine regulatory efficacy in New Zealand. The Regulatory Impact Statement (RIS) developed in respect of the 2011 attempt at a RSB[4] identified that "Ministers face strong pressures to:

- respond quickly and decisively to the latest risk, accident or misdeed
- commit to concrete action, even without evidence that the action will address the problem or that the benefits are likely to exceed the costs
- stick to a political commitment once made, and
- deliver on the commitment as soon as possible".

28 These realities remain the same and will not be addressed by the proposed RSB.

29 The proposed RSB would cut across existing and soon-to-be-implemented frameworks, including Part 4 of the Legislation Act 2019,[5] adding significant costs without a detailed assessment of any associated benefits. It is MSD's view that the existing tools (as set out in **Appendix One**) could be strengthened without the need for legislating the principles. This is also the view of the Ministry for Regulation (refer to Option Three in the RIS attached to the Cabinet paper). MSD supports Option Three in part. The Cabinet paper proposes that the current disclosure requirements set out in Part 4 of the Legislation Act 2019 would be repealed.

30 Even with Option Three, MSD is concerned insufficient recognition is given to the fact that legislative design needs to start early in the policy development process and includes consideration of whether regulation is the right approach at all.

31 It is expected that the requirements in the proposed RSB will lead to increased parliamentary scrutiny through having additional mechanisms to evaluate new legislation introduced into the House. In respect of existing legislation, the House would need to decide what to do with statements made in respect of reviews of existing legislation. It seems likely there would be pressure to make changes where there are clear areas of inconsistency but

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[4] Any chosen regulatory intervention will have costs as well as benefits, and these will fall differently on different groups. Their identification and appropriate weighting depend on decision-makers' values and may be politically contested.

[5] The 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.

there is no specific detail on this. This could lead to intervention by the Board or the Minister of Regulation.

32 In your role as the Deputy Leader of the House and the Deputy Chair of the Cabinet Legislation Committee (LEG), supporting the Leader of the House in the managing the Government's business in the House, MSD can see the potential for the proposed RSB to impact these roles. MSD expects the identification of non-compliance via bills and legislative instruments when they are being considered by LEG to increase the level of debate in LEG, and increase the spotlight on the responsible Minister. It will add another area for increased scrutiny by the opposition, and the public and organisations when bills are progressed through Parliament.

33 If the review of existing legislation were to result in a wider programme of amendments, this would also impact on the Government's legislation programme and the time available in the House to progress new legislation.

34 The Cabinet paper states that the RSB would "bring the same discipline of regulatory management that New Zealand has for fiscal management". The circumstances of regulation making in respect of the welfare system is vastly different, involving decisions on entitlement to financial assistance. MSD does not agree that it is appropriate to relate the ability of Parliament to make laws to the approach to fiscal management.

35 The fundamental objectives of the Public Finance Act 1989 are to ensure Parliament is ultimately responsible for public finance and to ensure accurate and transparent public accounts. In contrast, the proposed RSB could fetter the ability of Parliament to make laws, and lead to laws being applied and interpreted in a way that is contrary to the policy intent.

Setting principles of responsible regulation in primary legislation through the RSB could constrain the Government

36 The proposed RSB would be a significant change in New Zealand's constitutional arrangements because it would be a legislative pronouncement of the principles that should be followed when making regulation, requiring legislators to be transparent about any inconsistencies with the principles. While the proposed RSB does not directly limit the power of Parliament to make laws, it does suggest that laws that are not consistent with its values would be more difficult to pass. If not, it would merely be a compliance exercise.

The proposed set of principles are limited and weighted towards private property and individual rights

37 The principles (refer to **Appendix Two**) are expressed in very broad terms and are selective rather than comprehensive. They focus on private property rights, economic efficiency, and the liberty of the individual above other considerations. This would, in MSDs' view, lead to those principles being given primacy.

38 The principles may be applicable to more traditional uses of regulation, such as public safety, consumer protection, economic stability and social justice. They are less obviously applicable to the kind of legislation MSD manages, which deals with, for example, resource allocation (and setting the conditions of receiving support).

39 They do not cover all the legislative standards set out in the *Legislation Guidelines* (produced by the Legislation Design and Advisory Committee) that have been endorsed by Cabinet in CO (21) 2, which are the government's key reference point for assessing whether legislative proposals are consistent with accepted legal and constitutional principles. They are silent on the principles of the Treaty of Waitangi/Te Tiriti o Waitangi, obligations under international law, privacy, the delegation of legislative power, and the enforcement of legislation.

40 MSD is concerned that this imbalance may seek to constrain the power of the Government to intervene in the affairs of citizens. This is of particular concern to MSD in administering the welfare system efficiently, such as setting and enforcing obligations, or addressing welfare fraud.

41 The lack of clarity in the exercise of the proposed principles risks any regulation development in the social policy space not meeting the standards and therefore creating artificial barriers for the government's social policy changes.

42 The proposed RSB provides that the Minister for Regulation may issue guidance, including on:

- how the principles should be applied
- how to review legislation for consistency with the principles
- the content and presentation of the statements and plans required.

43 s9(2)(h) [redacted]

44 s9(2)(h) [redacted]

45 MSD is concerned about the detail which is not yet available. This guidance is important to understanding the full impacts of the proposed RSB and it is concerning not to have this detail at this stage, or at the very least when the bill is introduced and considered by a Select Committee.

Potential to create tension in the relationship between Ministers and their Departments

46 The main expected outcome of the proposed RSB is as a transparency mechanism. The proposed RSB specifically provides that the responsible Chief Executive act independently of the responsible Minister in relation to making the assessments of consistency and for those assessments to be published. MSD is concerned about the impact this will have on the relationship between agencies and their responsible Minister/s where there are differing views, especially where the application of the principles are inherently subjective. This could create a great deal of tension and disharmony.

47 These assurance activities would come at an opportunity cost to delivering on your priorities and to the MSD's wider work programme.

The RSB will add complexity, time, costs, and risks to the process

48 Requiring new regulation (primary and secondary) to demonstrate consistency with the principles of responsible regulation would add to the time it takes to progress regulatory change and to the complexity of the process and require additional resource. The main costs to agencies come in the form of:

- producing and publishing consistency statements to certify new legislation is compliant (or not) with the principles
- development and reporting on plans for reviews of existing legislation
- undertaking a review of all legislation – primary and secondary within ten years
- supporting responsible Ministers to make statements on any inconsistencies identified in reviews of primary legislation and/or publishing statements on any inconsistencies found in secondary legislation

- providing information to the Ministry for Regulation for regulatory reviews if requested
- providing information to or responding to recommendations from the Regulatory Standards Board.

49 MSD is also concerned about the timing of such statements via the explanatory note to a bill or legislative instrument in respect of secondary legislation. At this stage there would be significant investment in time and resource (including operational costs in things like IT changes) as well as political capital.

50 The Ministry for Regulation has identified in the RIS that the cost per annum for Government agencies and other entities with responsibility for primary and/or secondary legislation to undertake high quality analysis to support consistency statements, and review existing legislation against the principles, and for Ministers to respond to frequent findings of inconsistency would be a total cost of approximately $50-$60 million per year.[6]

51 There has not been time for MSD to fully assess the direct cost impact, but estimates it could be between $1-2 million per annum. You are responsible for a reasonable amount of primary and secondary legislation that require frequent amendment (we assess MSD would be included in the top 15 agencies for the stock of current secondary legislation). As such it may be necessary to seek Budget funding to support this work once the regime is fully operationally on an on-going basis. This would particularly be the case where findings of inconsistency lead to legislative change, which in turn can lead to operational costs for MSD, which could increase costs significantly.

Review of existing legislation within 10 years of the RSB's enactment

52 MSD considers there would be significant challenges in resourcing this work at all levels (agency, decision-makers, PCO, Parliament/House time in dealing with the reporting on reviews and if remedial amendments are made). It is somewhat unclear what the House will be required to do with the results of reviews, but it must create expectations of remedial work where inconsistencies are found. However, without support and prioritisation from

[6] These costs will fall unevenly across agencies due to the significant range in the volume of legislation administered by different agencies. For example, 15 agencies likely administer more than 90 percent of all secondary legislation, and at least three agencies (Ministry of Health, Ministry of Primary Industries, and Ministry of Business, Innovation and Employment) administer more than 900 pieces of secondary legislation each.

Government to address inconsistency this will become unduly burdensome or languish.

53 The Productivity Commission identified in their 2013 review that "limited Parliamentary time means that relatively fewer resources are devoted to the review and maintenance of regulation". This fact has not been addressed sufficiently in the draft Cabinet paper, and in reality there are fewer sitting days now.

54 MSD does not support the inclusion of a 10-year timeframe to complete initial reviews due to the constraints already identified. We consider this focus would crowd out other valuable policy work.

MSD does not support the widened scope to all secondary legislation

55 The widened scope to include all secondary legislation will further increase the burden described above.[7] MSD does not support the change to include all secondary legislation. When the empowering provisions are being drafted or amended via a bill is the appropriate time for assessment.

56 We support the view of the Ministry for Regulation outlined in the RIS that secondary legislation should be brought in by exception. However, if the RSB was to proceed, we think there are some areas of secondary legislation that should be excluded from the requirements.

Potential areas for exclusion from consistency assessments

57 The draft Cabinet paper proposes that the Minister for Regulation could issue a notice to specify a class of bills or secondary legislation that should be excluded from consistency assessments or review by the Board. These notices would need to be approved by the House. Some examples of when this power could be used could include:

- where it is not practical to undertake consistency assessments (e.g. legislation passed in response to an emergency)
- where it is not cost-effective to undertake consistency assessments (e.g. technical or minor legislation that is not already excluded)
- to otherwise help align consistency requirements with regulatory impact analysis requirements.

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[7] As identified in the RIS, the inclusion of secondary legislation would potentially increase the volume of legislation captured by the proposed RSB from around 1,000 existing Acts to up to around 10,500 existing pieces of primary and secondary legislation.

58 You have also been delegated the authority to establish and approve (or amend) welfare programmes for special assistance and to issue binding directions (provided for in statute). These are drafted by MSD, approved by you (or in some cases joint Ministers), and must adhere to the publication, presentation, and disallowance requirements in the Legislation Act 2019. These can address a wide range of circumstances and are frequently amended or developed for a time-limited period as new needs arise, such as responding to emergencies (severe weather events, Covid-19, rural assistance for a primary industry etc).

59 MSD considers that many of these instruments would meet the criteria above. It is not clear what the process would be for the Minister for Regulation to issue a notice (following approval from the House) to have a class of bills or secondary legislation excluded from consistency assessment or review by the Board. However, MSD would expect to have a number of exclusions.

60 Another clear case would be the statutory requirement to adjust rates of main social security benefits via the Annual General Adjustment (AGA). These are given effect to through Orders and Amendment Regulations. This is a mechanical adjustment and doesn't require specific policy decisions to be made, and should be considered out of scope for the proposed RSB.

The proposal for a Regulatory Standards Board

61 The proposed RSB would establish a Board, with members appointed by the Minister for Regulation, to make its own independent assessments of the consistency of legislation. This is intended to create incentives for Ministers and agencies to complete robust assessments of consistency with the principles.

62 The Board could carry out inquiries either following a complaint, at the direction of the Minister, or on its own accord into whether legislation is inconsistent with the principles. Any recommendations it made would be non-binding.

63 The Board could investigate the consistency of legislation with the principles in two broad ways:

- it could look at consistency assessments of bills as introduced into the House, and provide a report to the Select Committee on its findings
- it could look at existing legislation and carry out an inquiry into whether the legislation is consistent with the principles, and report to the Minister on its findings.

s9(2)(h)

64 [redacted]

65 [redacted]

66 [redacted]

67 The Ministry for Regulation does not support the use of a statutory board and preferred a Ministry for Regulation-led assurance mechanism. MSD does not consider either option is necessary in light of our views that existing tools and mechanisms should be strengthened.

Next steps

68 Engage on the draft Cabinet paper through Ministerial Consultation and at Cabinet Expenditure and Regulatory Review Cabinet Committee on 8 April 2025 where the final Cabinet policy decisions on the approach to the proposed RSB are being discussed, in order for instructions to be provided to the Parliamentary Counsel Office.

69 MSD can provide you with further briefing material for Cabinet Expenditure and Regulatory Review Cabinet Committee meeting if required.

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[8] This extends to hearing complaints about how legislation has been applied in an individual case.

Appendix One: Proposed principles of responsible regulation

1 The proposed principles would cover the following areas:

1.1 *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; and issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion.

1.2 *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.

1.3 *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, and compensation is provided to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment.

1.4 *Taxes, fees and levies* - Legislation should be consistent with section 22 of the Constitution Act 1986 (Parliamentary control of public finance); legislation should impose 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; and legislation should impose a levy to fund an objective or a function only if the amount of the levy is reasonable in relation to both the benefits/risks to that class of payers, and the costs of efficiently achieving the objective or providing the function.

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

1.6 *Good law-making* – good law-making should include:

- consulting, to the extent practicable, the persons or representatives of the persons that the responsible Minister considers will be directly and materially affected by the legislation
- 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; and who is likely to benefit, and who is likely to suffer a detriment, from the legislation

- establishing that legislation should be expected to produce benefits that exceed the costs of the legislation to the public
- establishing that legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available.

Appendix Two: Current standards for regulatory quality

1 The status quo includes a mix of statutory and non-statutory measures intended to set standards for regulatory quality. These standards relate to processes for good lawmaking, legislative design and regulatory stewardship and include:

- the regulatory impact analysis (RIA) requirements, set out in Cabinet circular CO (24) 7 and accompanied by guidance issued by the Ministry for Regulation, which set out requirements and considerations to encourage a systematic and evidence-informed approach to policy development.
- the Legislative Design and Advisory Committee (LDAC), which advises departments on legislative design issues and consistency with fundamental legal and constitutional principles. It also publishes the Legislative Guidelines, which have been endorsed by Cabinet in CO (21) 2, as the government's key reference point for assessing whether legislative proposals are consistent with accepted legal and constitutional principles.
- the Government Expectations for Good Regulatory Practice, which establishes expectations for the design of regulatory systems and regulatory stewardship. Some government agencies also publish resources to support aspects of regulatory stewardship, such as improving regulatory system capability
- section 12(e) of the Public Service Act 2020, supported by non-legislative guidance issued by the Public Service Commission, establishing considerations for regulatory stewardship.

Mechanisms for encouraging and assessing compliance with standards

2 There are a range of existing mechanisms focused on encouraging agencies to comply with the standards above, and to assess whether they are being met.

- Cabinet's RIA requirements set out in CO (24) 7 set out a non-legislative expectation for RISs to be independently quality assured, and for QA panel assessments to be included in Cabinet Papers – however this relates to the quality of the analysis, not the proposal itself.
- Non-legislative requirements for disclosure statements for Government-initiated legislation are set out in Cabinet Office Circular CO (13) 3, This establishes a process for agencies to provide information to support Parliamentary scrutiny of proposed legislation, with a focus on existing government expectations for the development of legislation and significant or unusual features that should be used with care.

- The Ministry of Justice and/or the Crown Law Office conduct vetting of bills against the Bill of Rights Act (BoRA) and provides advice to the Attorney-General on consistency. Where inconsistency with the BoRA is identified and not resolved prior to introduction of a bill, the Attorney-General must notify the House.
- In Cabinet papers seeking approval to introduce a government bill, departments are expected to identify whether any aspect of the bill departs from the default approach in LDAC's Legislation Guidelines and to justify any departures. LDAC also examines some government bills after introduction, assessing for inconsistency with the Legislation Guidelines. LDAC may make submissions to parliamentary select committees if substantial inconsistency is identified.

Accompanying measures

3 The Ministry for Regulation has several internal functions which are intended to provide oversight of and support the functioning of the Regulatory Management System. This includes providing early engagement, established by CO (24) 7, reviewing bid for the 2025 Legislation Programme as per CO (24) 6, and second opinion advice on regulatory proposals for agencies.

4 Information required for reviews would continue to be obtained through co-operation between agencies and the use of engagement and consultation processes.