



Submission on the proposed Regulatory Standards Bill

Prepared for the Ministry for Regulation
December 2024

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About the PSA

The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand with over 96,000 members.

We are a democratic and bicultural organisation representing people working in public and community services including the Public Service, the Legislative Branch, Crown entities, local government, the public health sector, and the publicly funded community sector. Our members working across the public sector include those who are responsible for developing regulation and those who are responsible for administering it. Our members have a strong interest in ensuring the regulatory system functions at its best.

Feedback on the proposed Bill

As the union representing the public sector workers we support improving New Zealand's regulatory system and the quality of regulatory practice. **We do not support the proposed Regulatory Standards Bill** because we don't think it will help achieve this objective.

We tautoko the points made by the New Zealand Council of Trade Unions Te Kauae Kaimahi in their submission on the Bill. We would also like to provide the following feedback.

The need for this Bill hasn't been justified

The rationale for this Bill appears to rely on unfounded assumptions, such as that "most of New Zealand's problems can be traced to poor productivity, and poor productivity can be traced to poor regulations."¹

In describing the problem, the discussion document states that New Zealand ranks low relative to other countries in relation to oversight and quality control of regulation.² The source of that statement (the OECD 2021 regulatory outlook) seems to suggest that New Zealand is around or above the OECD average for stakeholder engagement in developing regulations and in regulatory impact assessment, and only below average in terms of ex post evaluation of regulations.³ This suggests that much of the issue is around the continued assessment of the effectiveness of regulation, rather than the process for developing it.

Our regulatory system already contains several mechanisms for improving the quality of regulation-making, as detailed on pages 11-15 of the discussion document. The discussion document justifies

¹ [Have your say on the proposed Regulatory Standards Bill. Ministry for Regulation, 2024.](#) Page 3

² [Have your say on the proposed Regulatory Standards Bill. Ministry for Regulation, 2024.](#) Page 16

³ [OECD \(2021\), "New Zealand", in OECD Regulatory Policy Outlook 2021, OECD Publishing, Paris](#)

the Bill in part because there is no one single place to find the various standards for regulation.⁴ This isn't a justification for adding a layer of additional legislation; this is an issue that can be addressed by making information about the existing standards and guidance more accessible.

Advice from officials in the Regulatory Impact Statement suggests that the primary problem is around "the ability of a broad range of stakeholders, including the general public, to be able to use them to access and understand key information about regulatory quality"⁵, which suggests that the most appropriate solution would be one that makes the information more useable and accessible rather than adding in additional legislative hoops that don't necessarily improve the way information is communicated.

This Bill isn't the best way to address the problem

This Bill is an example of legislation that would exemplify and perpetuate the very flaws that it is claiming to fix within the law-making process.

The discussion document points out that Parliament's Legislation Design and Advisory Committee has noted a tendency towards using legislation in cases where it was not strictly required, or where it covered matters already addressed in existing legislation. The Bill in question seems to be a clear example of this tendency in action, given that:

- New Zealand already has several mechanisms in place for improving regulatory practice, including legislation passed in 2019 that is yet to come into effect
- Advice from officials is that this Bill is not the preferred way of addressing the problem.⁶

An evidence-informed, effective, well-regulated system should be based on the advice of experts. Although governments obviously have the right to make decisions that go against official advice, when considering how to create an efficient regulatory system we think it is important that the Government listens to its own expert advice from the Ministry it has established to be the expert source of advice in this area.

Good regulatory practice requires regulatory agencies to be resourced

The Regulatory Impact Statement for the proposed Bill points to some particular features and practices that negatively affect the quality of regulation, including:

*"the fact that reforms are often undertaken at high speed, a perception of regulation as a relatively cheap intervention compared to other levers, capacity and capability constraints within agencies, the complexities involved in assessing and quantifying the full benefits, costs and impacts of regulation, and a lack of clear transparency about the quality of new regulatory proposals or existing regulation."*⁷

At the same time as proposing to put additional requirements on agencies, this Government is almost a year into a programme of large-scale cuts to public sector funding and jobs will reduce the overall capacity and capability of agencies both to develop and administer regulations.

Undertaking research, analysis and engagement in the development of regulation takes time and resource. Scheduling periodic evaluation and review of existing regulation to identify improvements requires time and resource, especially when set against more urgent priorities to develop new policy. We believe that investing in the capacity of the public service to undertake regulatory work is the best thing the Government can do to lift the performance of regulatory work.

⁴ [Have your say on the proposed Regulatory Standards Bill. Ministry for Regulation, 2024.](#) Page 16

⁵ [Interim Regulatory Impact Statement](#) Page 2

⁶ [Interim Regulatory Impact Statement.](#) Page 3

⁷ [Interim Regulatory Impact Statement](#) Page 2

We support the overall objective of agencies being able to regularly review and improve on existing regulation, as is suggested in discussion area four. However, we don't believe adding a legislative requirement for this to happen without also looking at the main limiting factor – the capacity of the agency to undertake the work – will significantly help. If agencies are not resourced sufficiently to carry out evaluation and review it can drop to the bottom of a long list of priorities. We don't think that a legislative requirement for reviewing regulation will fix this issue if agencies aren't resourced to do the work properly.

Some of the proposed principles are not appropriate

We have concerns about several of the principles in the proposed Bill. Some of the proposed principles appear to reflect particular ideological beliefs about what constitutes good regulation, rather than technical or quality standards.

Specifically, some of the proposed principles seek to embed libertarian beliefs about individual property rights into lawmaking. If the purpose of the Bill is to improve the quality of regulation, there's no reason why the principles should be selectively focused on the "effect of legislation on existing interests and liberties" along with good law-making process as described on page 20 of the discussion document. If the bill is to be sustainable it needs to rather reflect a general consensus across party lines and be informed by the people who work to shape and implement regulation, about what is needed for quality regulation.

These are not objective criteria for the quality of regulation, these are issues of policy that are for governments to decide democratically. If the criteria is to include such subjective matters it could equally include important questions such as whether the regulation improves equity and reduces income inequality, or what effect it has on our response to climate change.

The discussion document notes that the criteria in the Bill overlap with the content of the Legislation Guidelines by including some, but not all, of the same principles. There is potential for this to create confusion and inefficiency if agencies are required to give effect to overlapping but inconsistent requirements.

We do wish to note, however, that we strongly support the proposed principle that "any regulator should have the capacity and the capability to perform its functions effectively". As mentioned earlier in this submission, however, this Government is taking a deliberate and systematic approach to reducing the overall capacity and capability of agencies both to develop and administer regulations.

Conclusion

We appreciate the opportunity to comment on the Bill. We don't see the proposed Regulatory Standards Bill as a positive step towards a better regulatory system and we would like to see no further work undertaken on it.

The PSA has existed for as long as the New Zealand Public Service and has a long-standing interest in strong and effective public services, informed by the expertise of our members who work in them. We are always willing to engage with the Public Service about how it can better harness the expertise and innovation of workers to improve services, and we would be happy to engage with the Ministry for Regulation further about this matter.

For further information about this submission, please contact

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