

Submission

To: Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington
RegulatoryStandardsBill@parliament.govt.nz

By: Northland Regional Council

On: Regulatory Standards Bill

1. Introduction

- 1.1. Northland Regional Council (NRC) appreciates the opportunity to submit on the Regulatory Standards Bill (the Bill). NRC's submission is made in the interest of promoting the sustainable management of Northland's natural and physical resources and the wellbeing of its people and communities.
- 1.2. NRC's key submission points are summarised below:
 - We have concerns that the Bill if enacted would impact on legislative change to progress Māori rights and interests and fulfilment of the Crown's Treaty obligations, which are not always resolved through Treaty settlements.
 - We are concerned that the Bill does not recognise the Treaty of Waitangi/Te Tiriti o Waitangi, nor uphold its principles.
 - NRC supports efforts to improve the quality of legislation, however the Bill does not appear the most efficient or effective means of doing so – we recommend a focus on mechanisms already in place (such as improving regulatory impact statements or guidelines).
 - The stated purpose of the Bill is to improve the quality of regulation but the 'principles' in Section 8 seem to focus unduly on preserving property rights rather than setting out the principles for quality regulation.
 - The principles unduly elevate property rights above other considerations, to the extent that a reduction of those rights should be compensated - i.e. regulation that impaired a 'property right' would need to provide compensation to those affected. This would fetter the ability to develop regulation that sought to protect the public interest or the environment.
 - The principles are unbalanced, putting undue weight on the concept that the 'beneficiary pays / compensates' for any impairment or taking of property rights without recognising the well accepted principle that 'exacerbators' should also contribute.

- Section 8(b) also seems to lack balance given it only contemplates a reduction in liberty, security or freedoms and property rights where this is to protect the same for another person – this omits matters of the common good/interest (such as the environment).
- The Bill is unclear on how ‘compensation’ would be calculated and how it would be funded – we assume an increase in tax would be needed which would effectively mean a transfer from taxpayers to property owners.
- The term property is not defined in the Bill – this creates uncertainty as to the scope of Section 8(c) – for example, does ‘property’ include the rights to discharge to air or water or the taking of water?
- Costs are potentially significant, including added process costs for Government (and taxpayers) given the requirement to review existing regulation/legislation), funding administration of the Board, and most notably funding the compensation requirements in the Bill.

We expand on these points below.

Submission

1. Māori rights and interests:

- 1.1. We have concerns that the Bill if enacted would impact on legislative change to progress Māori rights and interests and fulfilment of the Crown’s Treaty obligations, which are not always resolved through Treaty settlements. This is in large part due to the potential effect of Section 8(a)(iii). This sub-principle of equality before the law elevates formal equality over substantive equality, without taking into account the structural and systemic inequities that Māori experience. It is likely to disincentivise decision-makers from progressing policy designed to address inequities facing Māori. We therefore do not support the inclusion of the sub-principle of equality before the law without any further qualification that reflect the Crown’s obligations to address historic Treaty breaches and uphold its duties under Te Tiriti o Waitangi.
- 1.2. The principle of consulting as part of good law-making has been narrowed since the discussion document from those considered “substantially affected” to those who are “directly and materially affected” by proposed legislation. This change in wording is likely to have repercussions for iwi and hapū whose values, wāhi tapu or kaitiakitanga, may be substantially affected by proposals, but who may not meet the higher threshold of being directly and materially affected.
- 1.3. We are concerned that the Bill does not recognise Te Tiriti o Waitangi/Treaty of Waitangi, nor uphold its principles. We share concerns described in the Waitangi Tribunal’s hearings and reports (WAI 3470) that this Bill will reduce the Crown’s ability to pursue equitable policies for Māori, undermining obligations of partnership and active protection. We strongly recommend inclusion of a principle relating to upholding Te Tiriti in the Bill if it is to progress – this will ensure that

legislation/regulation can continue to appropriately address rights and interest of Māori (for example, conferring participatory rights and consultation obligations for Māori under the RMA).

- 1.4. NRC operates within a unique Te Taitokerau context, and is home to a significant Māori population. NRC's commitment to upholding Te Tiriti o Waitangi and fulfilling its obligations as a Te Tiriti partner is formally articulated through Tāiki ē (NRC Te Tiriti Strategy and Implementation Plan). Through this document, NRC has committed to fostering meaningful, active partnerships with tangata whenua. The Regulatory Standards Bill, by omitting any reference to Te Tiriti, prioritising threatens to impede NRC's ability to fulfil its Te Tiriti commitment creating a legislative environment that could make it more difficult or costly to implement policies designed to address Māori rights and interests.
2. The Bill appears unnecessary:
 - 2.1. There are more effective and efficient ways to ensure regulation is of a high standard – for example, improving the rigour applied to evaluating costs and benefits in regulatory impact statements (and the evidence base used). We note the Ministry for Regulation also views the bill as *“unnecessary because there are more efficient and effective ways of improving the quality of lawmaking.”* We do not see a need for the Bill and instead recommend improvement be pursued through review of the 'Government Expectations for Good Regulatory Practice', the Legislation Guidelines, and improving the rigour and weight applied to regulatory impact statements.
3. The Bill is unbalanced:
 - 3.1. The Bill appears unbalanced in its current form because Section 8(b) only contemplates a reduction in the rights and freedoms of a person where this protects the rights and freedoms of another person – it does not recognise that rights and freedoms can be restricted for appropriate reasons such as to protect or enhance wider public good, the environment or the national interest.
 - 3.2. Section 8(c) is also unbalanced in that it elevates property rights above common interests to the extent that compensation is payable for any impairment to property – this effectively embeds the principle that the beneficiary pays (i.e. the public / taxpayer) but completely disregards the 'exacerbator pays' principle. These two concepts are normally both applied (for example the Biosecurity Act requires an assessment of the extent to which both beneficiaries and exacerbators should contribute to costs or be required to meet obligations).
 - 3.3. This imbalance and sole focus on the beneficiary paying for any impairment of property in the Bill is likely to significantly constrain Government's ability to pass regulation that seeks to protect the public good / interests or the environment – or

if compensation is required, at least make it significantly more expensive to do so. For example, if compensation is to be payable for any law or regulation that 'impairs' property, the Government could face major hurdles (and/or costs) regulating for purposes relating to biosecurity, commercial fishing, greenhouse gas emissions, development in areas of natural hazard risk, or addressing impacts on the commons (such as air or water, or over-allocation of resources).

4. Uncertainty created by the Bill:

- 4.1. The scope of any compensation is unclear largely because the Bill does not define key terms such as 'property', 'impairment' or 'compensation'. For example, it is unclear what is meant by impairment of property and whether this includes 'bundles of rights' commonly associated with property, which can include rights to discharge to air or water, the taking of water, or the emission of noise or greenhouse gases.
- 4.2. The Bill also does not set out how any compensation is to be calculated – for example, would this include compensation for lost opportunity costs. The absence of definitions for key terms, and details of how any compensation is to be calculated, is likely to lead to high process cost (more on this below) and potentially legal debates. There is also a great deal of uncertainty as to how the Bill would affect existing Acts/regulations and the scope for changes to these acts – retrospectively reviewing such regulation against new principles would be a significant task and could cause all sorts of administrative issues if changes were to be required (and if potentially backdated compensation were to be payable).

5. Costs

- 5.1. It is likely that costs associated with enactment of the Bill would be significant. We see added process costs associated with the reviews of new and existing regulation, the administration of the Board, and most significantly, the potential for compensation. We assume costs of the Bill and fulfilling its obligations (including compensation) would fall to the taxpayer – we would expect a Bill of this nature to clearly spell out these costs as part of its development, noting that assessing the costs and benefits is one of the principles in the Bill (Section 8(k)).

6. Scope of the Bill

- 6.1. As we understand it, the Bill (and principles) would not apply to regulation by local government – we strongly support this, given that the principles (and especially any compensation) would severely constrain the ability for local government to carry out its roles and functions and to give effect to government direction. Compensation would simply be unaffordable for local government – nor would this make sense if local government were to be subject to inquiry by the Board when implementing national direction.

6.2. We strongly support that the Bill does not apply to Treaty Settlement legislation (and some marine legislation) – this is logical, given the nature of settlement legislation and that it can confer specific rights to settlement entities (e.g. Joint management arrangements). However, if the Bill is enacted, we believe the scope of the exemption should also go beyond settlement and redress legislation. Māori rights and interests are provided in the provisions of a range of statutes — both those containing explicit Treaty-based clauses and those that do not — and are foundational to achieving effective working relationships between Māori and the Crown.

7. Relief sought:

7.1. We recommend that the Bill is not progressed, and that instead the Government looks to strengthen existing mechanisms to improve the quality of legislation – for example, review of the ‘Government Expectations for Good Regulatory Practice’, the Legislation Guidelines, and improving the rigour and weight applied to Regulatory Impact Statements.

7.2. In the event the Government decides to progress the Bill, we recommend:

- i. That the Bill includes a Treaty principles clause (or similar) to ensure ongoing recognition of Māori rights and interests.
- ii. That appropriate consultation is undertaken with Māori before the Bill progresses further (noting we have heard consultation with Māori has been inadequate to date despite this being a requirement in Section 8(i) of the Bill)
- iii. To either remove the compensation provisions / beneficiary pays approach, or if they are retained, to re-balance these provisions by incorporating an ‘exacerbator pays’ principle as well.
- iv. To adjust the principles so that the emphasis on property rights and individual rights is balanced with recognition of public good / common interests as well.
- v. To clearly define key terms, including ‘property’, ‘impairment’ and ‘compensation’ in the context of the Bill.
- vi. To set out the scope for compensation and how it is to be calculated – we would also strongly recommend that the costs of the Bill (and compensation) are clearly articulated to ensure that Parliament can make informed decisions.
- vii. To ensure that local government regulation is excluded from the scope of the Bill and the functions of the Board.

The Council wishes to be heard in relation to its submission.

Signed by the Executive Leadership Team on behalf of Northland Regional Council



Bruce Howse
Pou Taumatua – GM Corporate Services and Chair ELT

Dated: 23 June 2025