Ministry for the Environment
Manatū Mō Te Taiao

Aide memoire: Departmental Commentary on the Regulatory Standards Bill

Date submitted: 20 March 2025
Tracking number: BRF-5985
Security level: Classification

Actions sought from ministers	
Name and position	***Action sought***
To Hon Penny SIMMONDS **Minister for the Environment** Hon Chris BISHOP **Minister Responsible for RMA Reform** Hon Simon WATTS **Minister of Climate Change**	For noting only
CC Hon Andrew HOGGARD **Associate Minister for the Environment**	For noting only

Appendices and attachments
1. Ministry for the Environment comments on draft Cabinet paper seeking policy approvals for progressing a Regulatory Standards Bill (March 2025)

[redacted]

Purpose

1. This aide memoire provides you with a summary of our departmental feedback on final policy proposals for the Regulatory Standards Bill (the Bill). We understand the Minister for Regulation is consulting you on these proposals concurrently with the Ministry for Regulation consulting departments.

2. The detail of our feedback is provided in Attachment 1, Ministry for the Environment comments on draft Cabinet paper seeking policy approvals for progressing a Regulatory Standards Bill (March 2025).

Background

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 the Regulatory Standards Act as soon as practicable. On 11 November 2024, Cabinet agreed to consult on a proposed approach to the Bill (CAB-24-MIN-0437 refers).

4. The policy proposals in the draft Cabinet paper (March 2025) seeking policy approvals for a proposed Bill are substantially the same as the consultation discussion document. The Ministry previously signalled concerns with the proposed principles of responsible regulation, noting they would conflict with the legislation and regulation of the environmental management system. We also expressed reservation about the need to mandate reviews or time limits as to when reviews of legislation are required, as opposed to reviews being triggered by the need to address particular problems or opportunities. Those comments were not addressed in the latest proposals for the Bill.

5. The Ministry has been engaging with the Ministry for Regulation and providing feedback as they developed both the consultation document, and final policy proposals following consultation.

Our Comment: Key Points

6. The Ministry supports the intention of the proposed Bill to improve the quality of regulation and acknowledges the impact poor quality regulation can have on economic, social, cultural and environmental outcomes. However, we are concerned about over-regulating a problem that may be more efficiently addressed through operational adjustments and leveraging existing tools. We do not consider the proposed Bill to be the most appropriate option to improve regulation, nor that it is consistent with the responsible regulation principles outlined in the proposed Bill itself.

7. The Ministry is concerned the framing of the proposals (particularly the focus on individual rights in the ‘liberties’ and ‘taking of property’ principles), conflict with the principles of New Zealand’s environmental and climate systems which often focus on precautionary principles and collective, rather than individual, interests. Our comment addresses the fundamental inconsistency of the ‘liberties’ and ‘taking of property’ principles at length, particularly between paragraphs 12 and 26 in Attachment 1.

8. We consider these conflicts caused by the Bill as proposed may:

    i. Inhibit or undermine the statutory environmental work of the Ministry, and the ability of our Ministers to deliver on their statutory responsibilities, and

    ii. Have financial sustainability implications for the Crown and local government, reversing the ‘polluter pays’ onus, increasing future costs due to inaction now, and placing increased uncertainty and transaction costs on firms and individuals that could hamper economic growth.

9. Further, it may impede the ability of current and future legislation (both primary and secondary) to implement Ministers’ and the Ministry’s respective obligations. Details of those are on included in paragraphs 5 and 6 of Attachment 1.

10. The proposals would also require consistency assessments or reviews against the principles of responsible regulation for:

    i. any proposed secondary legislation, unless excluded by way of a notice from the Minister of Regulation and approved by the House

    ii. all legislation (primary and secondary) that exists when the Bill takes effect must be reviewed for consistency with the new Act within ten years, unless that pre-existing legislation is repealed or revoked.

11. We are concerned the proposals will impose additional cost and resourcing implications for agencies that would prevent ministries from effectively responding to Government priorities and legislative programmes, as well as detracting from our capacity and ability to make substantive improvements to the systems we administer. Those costs would be made more significant if the mandatory retrospective reviews referenced in paragraph 6 above are progressed.

12. The Ministry identified the following solutions that could partially mitigate our concerns if the current proposed approach to the Bill proceeds:

    i. The Ministry works closely with the Ministry for Regulation in the development of guidelines to ensure it is clear how the Bill’s principles would be applied to environment and climate legislation and establish justification for consistency statement exemptions and non-compliance in specific instances.

    ii. The Ministry works closely with the Ministry for Regulation in developing new or amended legislation, especially the Resource Management Act replacements and any amendments to the Climate Change Response Act.

    iii. If the current liberties and taking of property principles are retained, an exemption is created for some of the legislation the Ministry administers so we can meet our domestic and international obligations, and potentially also for local governments taking actions under resource management legislation, including land use controls.

    iv. The exception to the liberties principle is expanded to include “…another person or public interests as determined through due consultative processes under specific legislation” with specific legislation listed (such as replacement resource management legislation and subordinate controls such as council plans) to allow consideration of collective public interests.

v. Guidance on the taking of property principle includes the potential for ‘sunset clauses’ and avoidance of retrospective compensation, to allow local governments to better manage impacts upon their finances, long-term planning, and rates implications on their communities and ratepayers.

vi. Balancing the free use of land (provided for under the liberties principle) with related liability in perpetuity.

vii. The consistency assessment exclusion list is expanded to include other Crown commitments related to Māori rights and interests, such as the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (the NHNP Act) and the Marine and Coastal Area (Takutai Moana) Act 2011.

13. We note that while these solutions could partially mitigate the conflicts identified, the proposed Bill and principles could undermine the intent of much of New Zealand’s environmental legislation (both current and proposed over the coming year) and impose significant resourcing costs to policy development.

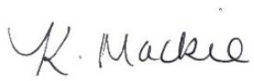
Next steps

14. The Ministry provided its departmental comment (Attachment 1 of this aide memoire) to the Ministry for Regulation on 14 March 2025.

15. The Minister for Regulation is seeking your feedback and will then progress a paper to Cabinet seeking agreement on final policy proposals.

16. We will continue to keep you informed of the Bill's progress, and particularly any amendments to policy proposals that address or further our concerns. We can arrange verbal briefings for you should you wish to discuss our concerns in more detail.

Signatures



Kathleen Mackie
General Manager – Strategy, Planning & Performance

20 March 2025

Hon Penny SIMMONDS
Minister for the Environment

Date:

Hon Chris BISHOP
Minister Responsible for RMA Reform

Date:

Hon Simon WATTS
Minister of Climate Change
Date:

Attachment 1: Ministry for the Environment comments on draft Cabinet paper seeking policy approvals for progressing a Regulatory Standards Bill (March 2025)

Ministry for the Environment comments on draft Cabinet paper seeking policy approvals for progressing a Regulatory Standards Bill (March 2025)

1. Thank you for the opportunity to provide feedback on the draft Cabinet paper seeking policy approvals for progressing a Regulatory Standards Bill (the proposed bill). Please include our comments as departmental comments in the Cabinet paper. Where relevant we have incorporated our previous feedback provided on the draft discussion document.

2. The Ministry for the Environment (MfE) is providing feedback as the regulatory steward and lead advisor for New Zealand's environmental management and climate change systems.

3. MfE supports the intention to improve the quality of regulation and acknowledges the impact poor quality regulation can have on economic, social, cultural and environmental outcomes. However, we would also caution against over-regulating a problem where operational adjustments might serve more effectively. For example, MfE has recently modified our operating model to strengthen our regulatory stewardship function, in recognition of the critical need for improved regulatory design and maintenance.

4. We consider the proposed bill, as framed, is deeply problematic in specific aspects relating to the Ministry's role under statute, and the role of local government in regulating land uses. We consider that core aspects conflict with the fundamental principles of the environmental management system, posing risks to the health, safety, economic, social, and environmental interests of current and future New Zealanders.

5. As framed, the proposed bill would restrict, inhibit or prevent some of the statutory environmental work of the Ministry and the ability of our Ministers and the Secretary for the Environment to deliver upon their responsibilities under law. Further, it may impede the ability of current and future legislation (both primary and secondary) to implement Ministers' and MfE's respective statutory interests (and obligations), namely:

    a. Resource management reform: enabling a more effective and efficient system, premised on private property rights within environmental limits, while also enabling councils to deliver on behalf of their communities by setting land use controls and addressing infrastructure needs.

    b. National Direction under the Resource Management Act 1991 (RMA) and any future planning or resource management legislation: National direction forms an important part of the Resource Management Act and would also play a large part in any reformed system. These instruments are considered secondary legislation and provide consistency across the country and support local decision making. These could be considered as 'impairment' under the proposed bill as drafted, impeding personal liberties relating to property use and 'taking of property' even if important to public interests and reflecting the physical characteristics of the land.

    c. National Adaptation Framework: Supporting adaptation measures to be taken by all affected parties, including placing restrictions on use of land and other assets where detrimental to individual, government and community interests or future safety.

    d. Under much of our legislation, and specifically the Environment Act 1986, our responsibility to:
        i. consider and protect the interests of future generations,

ii. manage collective and common resources and assets,
iii. address and regulate externalities,
iv. support decision-makers to balance different values across interested parties,
v. collect and manage levies, management and user charges for common pool resources, and
vi. regulate activities that cause foreseeable future harm so as to mitigate future costs and impacts due to delayed action or inaction.

e. The continued operation of, and our other regulatory responsibilities and functions under legislation including (but not limited to):
vii. the Environment Act 1986;
viii. the Resource Management Act 1991 (and future replacement);
ix. the Fast Track Approvals Act 2024;
x. the Climate Change Response Act 2002;
xi. Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
xii. the Hazardous Substances and New Organisms Act 1996
xiii. The Soil Conservation and Rivers Control Act 1941
xiv. The Waste Minimisation Act 2008
xv. Other regulations and secondary legislation under these and other Acts.

6. We have several specific concerns about unintended consequences the proposed bill may cause New Zealanders, and its impact on the ability of our Ministers, Chief Executive, and the Ministry to deliver their ministerial and statutory responsibilities. Concerns include:

a. Fundamental conflict between the proposed principles and the purpose of the Environment Act 1986 including the obligation to ensure that, in the management of natural and physical resources, full and balanced account is taken of: the intrinsic values of ecosystems; the values placed by individuals and groups on the quality of the environment; the principles of the Treaty; the sustainability of natural and physical resources; and the needs of future generations.[1]

b. Inherent conflict between the focus on individual rights in the liberties and taking of property principles, and the nature of environmental and climate legislation which is often focused on precautionary principles and collective, rather than individual, interests.

c. Inherent conflict between the liberties and taking of property principles, and the intention of major reforms currently underway in respect of resource management, and the National Adaptation Framework.

d. The liberties and takings of property principles may have the perverse effect of reversing the 'polluter pays' principle, which could see the public bearing the costs generated by polluters and resource users

e. Regulatory takings requirements may have financial sustainability implications for the Crown and local government, should they be required to compensate for infringing on private property rights in the greater interest of public good, such as imposition of

[1] Refer to the preamble to the Environment Act at (c) for more detail

managed retreat or infrastructure capacity management, including potential retrospective application to past decisions on land use controls.

f. The potential for increased uncertainty and/or higher transaction costs for firms (due to litigation) and individuals (i.e., through council rates) making investments as a result of the above inherent conflicts, which could hamper economic growth.

7. The report of the Expert Advisory Group established to advise Ministers and officials on matters related to Resource Management Act 1991 (RMA) Reform recommends the consideration of regulatory takings in some circumstance. The Ministry considers that the reform of the resource management system is the appropriate place for regulatory takings to be considered so that the right balance is struck.

8. A number of the principles of the RM reform set by Cabinet are in line with the intentions of this Bill. These include:
    a. narrowing the scope of the effects that legislation controls
    b. providing for greater use of national standards to reduce the need for resource consents and to simplify council plans
    c. provide faster, cheaper and less litigious processes within shorter, less complex and more accessible legislation.

9. If the current proposal for the bill proceeds, we recommend the following solutions to manage the significant conflict raised in this feedback:

    a. MfE is involved in the development of guidelines to ensure it is clear how the proposed bill's principles would be applied to environment and climate legislation, and justification for consistency statement exemptions and non-compliance in specific instances;

    b. MfE works closely with MfR to develop new or amended legislation, and specifically the Resource Management Act replacements and any amendments to the Climate Change Response Act.

    c. If the current liberties and taking of property principles are retained, an exemption is created for some of the legislation MfE administers so we can meet our domestic and international obligations, and potentially also for local governments taking actions under resource management legislation, including land use controls;

    d. The *liberties* principle is expanded from *"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*" to* "another person or public interests as determined through due consultative processes under specific legislation". Specific legislation could then be listed, including the replacement resource management legislation and subordinate controls such as council plans.

    e. Guidance on the *taking of property* principle includes the potential for 'sunset clauses' and avoidance of retrospective compensation, consistent with the approach taken in overseas jurisdictions' resource management systems to allow local governments to better manage consequential impacts upon their finances, long-term planning, and rates implications on their communities and ratepayers.

f. Balancing the free use of land under the liberties principle with the related liability in perpetuity, for example, in the case of development of land subject to 'impairments' that cannot be regulated under the proposed bill.

g. The consistency assessment exclusion list is expanded to include other Crown commitments related to Māori rights and interests, including but not limited to the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (the NHNP Act) and the Marine and Coastal Area (Takutai Moana) Act 2011.

10. However, regardless of the solutions above, we reiterate the potential undermining and undercutting of the intent of much of our legislation (current and proposed over the coming year) should the proposed bill and principles proceed in their current form.

11. Further, we do not consider the proposed bill to be the most appropriate option to improve regulation or that it is consistent with the responsible regulation principles outlined in the proposed bill itself. Existing processes and tools such as the Cabinet Office manual, and Regulatory Impact Statements can be used more efficiently than regulation. A better approach is the package preferred by the Ministry for Regulation in the RIS, which would build on existing tools to support regulatory system stewardship.

Our key concerns

Principles of responsible regulation – liberties and taking (including 'impairment') of property

12. The *principles of responsible regulation for liberties and taking of property* are narrowly focused on individual rights and interests. This may constrain or prevent achievement of common resource and public good outcomes managed within the environment and climate systems, and impose costs on Government (central and local) and direct and consequential costs for the public (i.e., through rates, more costly or missing infrastructure).

13. These principles are at odds with precautionary principles underpinning New Zealand environmental law and international obligations, and the functions of the Ministry in advising the Minister under the Environment Act 1986.

14. Environmental and climate change legislation, by its nature, is focused on collective rather than individual interests, and often longer-term rather than short-term or immediate interests than current existing property rights; or on broader environmental concerns and community interests rather than simply individual property impacts. For example, the proposed principles are inconsistent with:

    a. *The Hazardous Substances and New Organisms Act*[2] (HSNO): HSNO's purpose is to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms. HSNO sets out powers, functions and duties for the Minister, the Authority and enforcement officers, and requires hazardous substances (including, for example, petrol, fireworks) be approved before they can be imported, manufactured, supplied or used.

       The functioning of HSNO would appear to conflict with the proposed liberties principle. HSNO requires regulatory freedom to control substances and organisms that can impact broader society, neighbouring landowners, and the natural

environment through the spread of contamination. This necessitates a strong regulatory framework that restricts the ability of individuals (and others) to create, import, and use such hazardous substances without due risk assessment and controls.

b. *The Resource Management Act 1991* (RMA) along with planned placement legislation: The purpose of the RMA is to promote the sustainable management of natural and physical resources. This means the RMA is focussed on mechanisms and means to manage the use, development, and protection of natural and physical resources in a way or at a rate, which enables people and communities to provide for their well-being and health and safety, while also sustaining the potential of natural and physical resources to meet future needs; safeguarding the life supporting capacity of air, water, soil and ecosystems; and avoiding, remedying or mitigating adverse effects on the environment. The RMA includes several regulations, national level planning instruments, and provides for the functions and duties of regional and district councils, and regional policy statements and district plans.

   It appears that significant parts of the RMA, including the purpose and principles, would be inconsistent with the *liberties* and *takings of property* principles. Secondary legislation under the RMA would also likely be similarly inconsistent. An example of this is the Resource Management (National Environmental Standards for Commercial Forestry) Regulations 2017, which regulate commercial forestry activities, and appear to clash with the proposed principles of Liberties and Taking of Property principles. Unless there is an exemption for such legislation, current or future legislation administered by MfE and proposed by responsible Ministers, would be inconsistent with fundamental principles of "responsible" regulation as proposed in a bill.

   Planned replacement legislation will have many similar provisions in terms of protecting and providing for public interests and enabling development within environmental limits, but will also be designed to address some of the issues addressed through the proposed Regulatory Standards bill, such as private property rights narrowing controls to improve speed and ease of consenting.

c. *The Climate Change Response Act 2002 (CCRA)* is the legal framework to enable New Zealand to meet its international climate change obligations. Fundamentally, this is a regime to constrain the activities of individuals and entities to manage climate change and its effects. As such it appears to be inconsistent with the *liberties* principle in the proposed bill. In order to address future impacts of human activity, it is important not to prevent the Government (and MfE) from considering future interests and effects, including downstream costs and increased costs due to delayed action or inaction; and to enable the regulation of activities that cause reasonably foreseeable future harm. The temporal dynamics of atmospheric composition are such that actions today have lasting effects for hundreds and thousands of years. Limiting the ability of government to act today passes costs on to future generations.

d. *The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012,* promotes the sustainable management of the EEZ and continental shelf and protects the environment from pollution by regulating or prohibiting the discharge of harmful substances and the dumping or incineration of waste or other matters. Under the

Act, New Zealand is effectively custodian of a large area of ocean on behalf of the international community, requiring the actions of private individuals to be constrained and managed to protect this environment though our obligations under international treaty and law. It is unclear what is meant by property rights in the proposed bill, but there are risks that the principle of *liberties* could be inconsistent with this legislation.

e. *The Waste Minimisation Act 2008 (and legislation such as the Litter Act)* establishes a waste disposal levy and provides tools for managing waste materials, including product stewardship. It appears that this Act would be inconsistent with the *liberties* and *takings of property* principles; and may also be inconsistent with the Taxes, fees and levies principle.

15. The proposed principles cannot be read consistently with the purposes of the *Environment Act 1986* which prioritises collective rights (e.g. current communities as a whole and the needs of future generations) over individual rights. We are concerned how certain statutory responsibilities are to be reconciled with these principles, such as section 31 and 32 of the Environment Act which sets out the functions of the Ministry for the Environment.

16. More specifically, the liberties principle does not have a public interest qualification. The takings of property principle (which extends to impairing or authorising the taking or impairment of property without owner consent), may have the perverse effect of reversing the 'polluter pays' principle for negative externalities, potentially resulting in the public, Government or local government bearing the cost of the externality. This is particularly pertinent to emissions controls, as well as discharges and resource use.

17. We also expect conflict between some of the principles, including the *liberties* and *takings of property* principles, and the major reforms we are undertaking for Minister Bishop with respect to resource management reform, and for Minister Watts for the National Adaptation Framework. Both reforms rely on strategic, long-term planning, controls over land, activities and resources, or emissions (among other things), and appropriate sharing of costs. We are concerned that the regulatory takings principle would impede the ability of resource management national direction, spatial planning and adaptation planning to protect the Crown, local governments, and communities from costs associated with reducing exposure to hazard risks, reducing environmental harm and nuisance and the costs of infrastructure provision.

18. More broadly, it is unclear how these principles would apply to legislation or regulations that require broader costs or fees to be imposed for purposes such as infrastructure provision, or broader environmental management considerations. An example of this is the Soil Conservation and Rivers Control Act, working in tandem with other legislation such as the Local Government (Rating) Act, to empower councils to undertake works and to levy those across landowners at a catchment level, which are interconnected and independent biological systems that cannot be managed on a property-by-property basis.

Principles are inconsistent with MfE administered legislation

19. MfE reiterates our concerns that applying some of the principles in the proposed bill, which are narrowly focused on individuals' rights and interests, will have significant impacts on the environmental management and climate systems we manage. These systems involve common resources and public goods, where rights are often undefined, and people hold a range of values that require balancing by decision-makers. These systems are managed for

multiple outcomes including minimising public harm and externalities, supporting the government to comply with obligations under international law, for their intrinsic values and to ensure public goods are available for future generations.

20. We also support concerns identified in the draft RIS by the Ministry for Regulation that the principles outlined in the Cabinet paper are selective (they do not cover all aspects of good legislative design and lawmaking included in the Legislation Guidelines) and some of them are novel concepts that do not align with accepted legal values and concepts in New Zealand.

21. The *liberties principle* as currently worded does not include a public interest qualification. There are many examples where there are public interest reasons for diminishing personal liberties such as:

    a. managing pollution,
    b. consumer protection (such as land purchasers),
    c. providing infrastructure,
    d. ensuring the long-term sustainability of New Zealand's resources capital and use,
    e. protecting the interests of children and future generations and
    f. enabling the Crown and local governments to manage liability related to hazard management and adaptation (i.e., managed retreat).

22. The liberties principle is incredibly broad in its potential application, and does not allow for any exemptions in the case of collective community interests or the interests of future generations, but only where it impedes the liberty, freedom or right of another person. This does not recognise the need for governments (local or central) to also regulate property use in order to protect the interests of the communities they represent. This is particularly pertinent to the concept of 'nuisance', for example, controlling activities to reduce noise, odour, and other negative externalities.

23. The *taking of property principle* as currently written may be difficult to apply, particularly when the boundary of what does and doesn't represent a property right is unclear. It is also unclear what is meant by 'impairment' of property. For instance, would provisions in the RMA, or in regulations, that imposed rules or zones, or prohibited certain uses of property, be an 'impairment' of property? The examples below illustrate the implications of this principle for the environment and climate systems:

    a. The principle appears to reverse the polluter pays principle which applies in situations where current land uses are causing pollution and would require the publicly funded compensation for the loss of private benefits arising from polluting public resources. We question if this is the intention?

    b. The principle appears to suggest that legislation that imposed controls or restrictions over use of land or property; could be an 'impairment' such that it was inconsistent with that principle.

    c. It also appears that legislation that restricts use of land for certain purposes (ie ability to convert highly productive land to forestry) for climate change purposes, could be inconsistent with that principle.

    d. The principle may also have implications for the climate adaptation policy and the Government's approach to sharing the costs of adaptation which is currently being developed. This principle then creates an obligation on the Government and/or local

government to pay compensation for restrictions on land use necessary to reduce exposure to natural hazards arising from climate change.

24. National direction regulation could be considered as implying 'impairment' under the proposed bill as drafted, impeding personal liberties relating to property use and 'taking of property' even if important to public interests and reflecting the physical characteristics of the land.

25. For example, a local government may look to recognise a property constraint or 'impairment' (per the proposed bill wording) for overland flow, denying a consent for development on the property due to the upstream likelihood of flooding on other properties in the catchment should this overland flow be blocked by proposed development.

26. The draft bill places the onus of costs and the expectation of development approval back on councils and ratepayers. This removes the onus on property owners to accept the limitations of their property or their investment, which is the actual intent of a free market, rather than transferring costs onto the public (including future generations) to bear.

Te Tiriti and Māori rights and interests

27. The Treaty is not subject to any of the proposed regulatory principles. Given the prominence of the Treaty in LDAC guidelines and Cabinet office guidance for developing legislation, the proposed bill gives an incomplete picture of what must be considered in making law. No explanation for this is given – of particular importance is how tikanga rights have been recognised by the courts.

28. The population implications section of the Cabinet paper notes a Treaty Impact Assessment (TIA) has been completed but contains no detail of the analysis. It should note that the analysis highlights the absence of a principle related to Te Tiriti meaning the proposed bill would be silent about how the Crown will meet its obligations under Te Tiriti. 9(2)(h)

29. We support the exclusion of Treaty Settlement Bills or any other bill that provides redress for Treaty of Waitangi claims from the consistency assessment requirements against the principles of responsible regulation.

30. However, we would encourage expanding this exclusion to other similar Crown commitments related to Māori rights and interests - such as the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (the NHNP Act). Ministers have treated the NHNP Act (and customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011) similarly to Treaty settlements in other recent policy development such as the Fast-track Approvals Act 2024, and it may be appropriate to provide advice to Ministers on doing the same here. Secondary legislation under such statutes should also be excluded.

31. With regards to Treaty settlements, the TIA notes the possibility of amending existing regulation if inconsistent with the proposed bill. This could impact Treaty settlements. There is a case existing settlement acts should be excluded from the operation of the proposed bill given they are binding contracts between PSGEs and the Crown, and the commitment in the NZ First National coalition agreement to uphold settlements. There are also issues with applying the principles to future settlement legislation.

32. We suggest that the proposal for membership of the Regulatory Standards Board should include expertise in relation to the Treaty and Māori rights and interests.

Opportunity cost of focusing on legislation review rather than more active regulatory stewardship

33. We support encouraging agencies to more actively steward their regulatory systems to improve the quality of regulation over time and manage their stock of legislation. We note the proposal to mandate reviews of all current legislation (primary and secondary) against the principles of responsible regulation within 10 years of commencement.

34. Regardless of whether reviews and timing are mandated or not, the proposals will impose additional cost and resourcing implications for agencies that would impact government priorities and legislative programmes, as well as detracting from our capacity and ability to make substantive improvements to the systems we administer through implementation support and operational policy.