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Policy Approvals for Progressing a Regulatory Standards Bill

Hon David Seymour, Minister for Regulation

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Description:

This paper is seeking Cabinet approval on an approach to a Regulatory Standards Bill to improve regulatory quality and to issue drafting instructions to the Parliamentary Counsel Office on the basis of that approach.

The proposal outlined in the paper has only a small number of substantive changes from the proposal outlined in the discussion document that was consulted on through December/January, namely:

- The Bill now proposes that all secondary legislation (with limited exemptions) would automatically be subject to consistency assessment requirements. This differs from the previous approach, which only included secondary legislation, including local government bylaws, if specified in a notice under the Act.
- In addition to the requirement to develop and periodically report on a plan to review existing legislation, the Bill now includes a requirement introducing a ten-year time limit for existing legislation to be reviewed (with the same exemptions as above).
- The Bill now requires additional regulatory principles consistency assessments to be done during the legislation process of a Bill – when it is provided to a Select Committee and if a Bill is changed through an amendment paper.

Comments:

The Treasury supports the goal of more disciplined regulatory management. The key elements of the proposal – legislated principles, a focus on both the flow and stock of regulation and enforcement – are consistent with the Government's approach to fiscal management. However, the proposed design of the Bill reduces the likelihood it will meet its intended goal of improving overall regulatory quality, could impose costs on agencies exceeding the potential economic and societal benefit, and may also have a chilling effect on the development and retention of beneficial regulation. This is because:

- Not all of the principles proposed in the legislation are broadly accepted as good regulatory practice. For example, some principles go broader than comparable wording in current Legislation (LDAC) Guidelines. Those relating to regulatory takings and related compensation go further than conventional policy in this area and could adversely impact the cost and speed of government infrastructure projects and public works in the future.

- The requirement to assess the consistency of existing legislation with the principles proposed in the legislation is likely to divert resources away from other activities important for good regulatory stewardship (especially as the scope of review is expanded to secondary legislation). Consistency reviews would primarily focus on the law as written. This is a narrower approach than the

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current stewardship approach adopted by most agencies, which considers system-level interactions (ie between different rules, organisations and their practices in a specific area/sector) to ensure that regulatory systems are effective and remain fit for purpose over time. If resources shift from system-based assessments to consistency reviews so they can be funded through baselines, emerging issues and implementation difficulties are less likely to be picked up. This could increase the likelihood of system failure.

- A mandatory ten-year review for existing legislation (with limited exemptions) would be less supportive of your Going for Growth agenda than more targeted reviews focussed on areas where regulatory issues are most likely to dampen competitive drivers for innovation, business dynamism and productivity growth or where new regulation could enable innovation.

- The enforcement mechanisms proposed in the Bill may increase policy uncertainty, and impact investor confidence. In particular:

    - Under the proposals, a Regulatory Standards Board would independently assess consistency of legislation with the proposed regulatory principles and deliver non-binding recommendatory findings at the direction of the Minister or on its own accord. This could lead to either a very selective approach to review that does not meet expectations (for example, from those making complaints) or an unmanageable workload for departments.

    - s9(2)(h) [redacted]

In the Regulatory Impact Statement accompanying the Cabinet paper, the Ministry for Regulation outlines an alternative approach to the Bill (the Ministry's preferred option), which addresses many of these concerns in a way that Treasury considers is more likely to be enduring. Our experience with the Public Finance Act indicates some measure of cross-party support for the underlying principles in such an Act is desirable to ensure the legislation is workable and effective over time.

The Bill itself represents a significant shift in regulatory governance, with potentially pervasive impacts on government, the economy and broader society. This reinforces the importance of a robust design to reduce risks and increase the likelihood of achieving its intended goals.

Treasury Recommendation:

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We recommend that Cabinet direct the Minister for Regulation to undertake further work on the Ministry for Regulation's preferred approach to the Bill and report back to Cabinet with an assessment of the relative effectiveness of the two approaches in terms of their likely durability, cost effectiveness and alignment with the Government's broader economic and social objectives.
Fiscal Implications: The proposed changes will have fiscal implications for all agencies responsible for administering primary or secondary legislation. The draft paper does not estimate these costs, but the draft RIS anticipates a cost to government agencies of \$50-\$60 million per year. The draft Cabinet paper states that responsible Ministers and agencies "will need to consider how to manage any residual resourcing implications within baselines including trade-offs against other priorities in the absence of additional funding." Initial costs from the Bill entering into force as planned from 1 January 2026 (with consistency requirements brought in by Order in Council no more than six months later) would need to be met within baselines. This is likely to mean a reduction in other regulation-related outputs, such as policy, education and enforcement activity, or increased regulatory charges through cost-recovery regimes. Over time, agency costs may filter through as cost pressure bids. The Ministry for Regulation would also incur additional costs. These are estimated to be between \$1.04 million to \$1.17 million per annum for costs associated with the Regulatory Standards Board, and between \$1.1 million and \$1.4 million for the Ministry's system oversight role. These costs will be managed within baselines. Further consideration could be given to the cost effectiveness of establishing a Regulatory Standards Board, given the Minister can request the Ministry for Regulation to undertake a review and there is already a Regulations Review Select Committee.