

Reference: 20250357

24 June 2025



Dear [REDACTED]

Thank you for your Official Information Act request, received on 19 May 2025. You requested the following:

On the RMA reforms

1. *Has Treasury provided any advice to Ministers on the financial or other implications of including a regulatory takings provision in the RMA reforms? This refers to the provision outlined in the factsheet accompanying Cabinet agreements on the RMA reforms.*
 - a. *If so, please provide a copy of this advice.*
2. *Have Treasury officials discussed the financial or other implications of including regulatory takings provisions in the RMA reforms?*
 - a. *If so, please provide any documentation or correspondence related to those discussions.*

On the proposed Regulatory Standards Bill:

3. *Has Treasury provided any advice to Ministers on the financial or other implications of including the “taking of property” principle in the Regulatory Standards Bill - in particular, the potential expectation that compensation may be required when legislation takes or impairs private property?*
 - a. *If so, please provide a copy of this advice.*
4. *Have Treasury officials discussed the financial or other implications of the “taking of property” principle in the Regulatory Standards Bill?*
 - b. *If so, please provide any documentation or correspondence relating to those discussions.*

On 26 May 2025 the request was refined to:

1. *Copies of any Treasury advice provided to the Minister of Finance or the Minister for RMA reforms on the financial or other implications of including a regulatory takings provision in the RMA reforms? This refers to the provision outlined in the [factsheet](#) accompanying Cabinet agreements on the RMA reforms.*

2. *Copies of any external discussions by Treasury officials on the financial or other implications of including a regulatory takings provision in the RMA reforms within the last twelve months?*
3. *Copies of any Treasury advice provided to the Minister of Finance on the financial or other implications of including the “taking of property” principle in the Regulatory Standards Bill within the last twelve months - in particular, the potential expectation that compensation may be required when legislation takes or impairs private property?*
4. *Copies of any external discussions by Treasury officials on the financial or other implications of the “taking of property” principle in the Regulatory Standards Bill within the last twelve months?*

Information being released

Please find enclosed the following documents:

Item	Date	Document Description	Decision
1.	1 October 2024	Cabinet Paper Briefing Regulatory Standards Bill 2024	Release in part
2.	29 October 2024	RSB Ministerial Consultation feedback	Release in part
3.	11 March 2025	Ministerial consultation - Replacing the RMA 1991	Release in part
4.	28 March 2025	Policy approvals for progressing a Regulatory Standards Bill	Release in part
5.	2 April 2025	RE Regulatory Standards Bill - EXP briefing	Release in full
6.	2 May 2025	Regulatory Standards Bill Cabinet Briefing 01.05.25	Release in part

I have decided to release the documents listed above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

- section 9(2)(h) – to maintain legal professional privilege, and
- section 9(2)(g)(ii) – to maintain the effective conduct of public affairs through protecting Ministers, members of government organisations, officers and employees from improper pressure or harassment.

Some information has been redacted because it is not covered by the scope of your request. This is because the documents include matters outside your specific request.

Information to be withheld

There are additional documents covered by your request that I have decided to withhold in full under section 9(2)(h) of the Official Information Act - to maintain legal professional privilege.

Item	Date	Document Description	Decision
7.	4 April 2025	Aide Memoire to MoF re Regulatory Standards Bill (003)	Withheld in full under s9(2)(h)
8.	16 April 2025	Report type T2025-1029 – Advice on the Regulatory Standards Bill	
9.	2 May 2025	Cover note on MFR major changes to the Cabinet Paper and examples	

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Yours sincerely

James Haughton
Acting Manager, Regions Enterprise and Economic Development

OIA 20250357

Information for release

1.	Cabinet Paper Briefing Regulatory Standards Bill 2024	1
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CABINET PAPER BRIEFING TEMPLATE 2024

<p>Approval to consult on a proposed approach to the Regulatory Standards Bill</p> <p>Hon David Seymour, Minister for Regulation Treasury contact: Kerry Fowle, Tom Hall, Jonathan Bass (legal), Amber Dickson (vote support) Sign out contact: Kerry Fowle (s9(2)(g)(ii))</p>
<p>Description:</p> <p>This paper is seeking Cabinet approval to release a discussion document on a proposed approach to the Regulatory Standards Bill. The proposal in the discussion document includes a policy framework and agency arrangements for regulation, which comprise:</p> <ul style="list-style-type: none">• principles of responsible regulation,• an assessment of both new and existing regulation for consistency with the principles, and• a recourse mechanism (the Regulatory Standards Board) for complaints about existing regulation and for regulatory reviews.
<p>Comments:</p> <p>The Treasury supports the goals of a more-disciplined approach to regulatory management. The key elements of the proposals outlined in the discussion document look broadly sensible (defined principles, focus on both the flow and stock of new regulation, enforcement mechanisms). However, as currently crafted, we consider the proposals may not achieve their goals and could impose costs on agencies that exceed the potential economic and societal benefits. They may also have a chilling effect on the development and retention of beneficial regulation.</p> <p>The discussion document only puts forward the Minister's preferred option for the Bill and does not consider the potential costs and benefits of a wider range of options (as outlined in the RIS and Crown Law advice).</p> <p>Principles: The proposed Bill would be foundational legislation with pervasive effects. 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. While the proposed principles for the Regulatory Standards Bill are intended to set a benchmark for good regulation, as noted in the submission, some go broader than comparable wording in current Legislation Guidelines and those relating to regulatory takings (and related compensation) go further than conventional policy in this area. If such principles do not have reasonable buy in for being representative of good regulatory practice, considerable agency resource may be absorbed by work to justify inconsistencies between both new and existing regulation and the principles of the Act, which over time may erode the credibility of the legislation (ie if inconsistencies are regularly assessed to be justifiable).</p> <p>While, as outlined below, the courts are now excluded from the complaints process, the codification of these principles will continue to influence the courts. (s9(2)(h))</p> <p>_____</p> <p>_____</p>

s9(2)(h)

Review Mechanisms: We support the intent of the proposals in the paper aimed at ensuring existing regulation is subject to the same scrutiny as new regulatory proposals. However, given the volume and pervasive nature of regulation, further guidance is required on the scope of the review process to ensure that the economic and societal benefits of the proposed process exceed the costs to agencies. For example, consideration could be given to providing Cabinet guidance on where reviews should focus to better align them with the government's wider goals. The proposals would also benefit from greater elaboration on how these reviews are intended to interact with other similar processes in place, including Ministry for Regulation sector reviews, Commerce Commission market studies, assessments of consistency with the Human Rights Act and the proposal for the new Regulatory Standards Board to initiate reviews at its own behest to ensure that the potential for duplication or inconsistency is minimised.

Recourse Mechanisms: Under the proposals, a Regulatory Standards Board would be able to investigate complaints of inconsistencies with the principles of the Act and deliver non-binding recommendatory findings. Without limits on the complaints the Board responds to, its work could be bogged down in responding to minor or vexatious complaints. Given the pervasiveness of regulation, the proposal should provide for an ability to restrict or limit the misuse of the complaint process so that the Board can focus on appropriate complaints relating to regulation and ensure that the benefits of having a recourse mechanism in place exceed its benefits.

Treasury Recommendation:

We recommend that Cabinet direct the Minister for Regulation to undertake further work to improve the robustness, focus and cost effectiveness of the proposals in the discussion document and respond to the key concerns expressed in agency feedback (annex five) before releasing it for consultation. This should include consideration of whether there are alternative approaches that could be included in the discussion document for consultation that would better manage potential risks eg the Ministry's preferred approach of building from current disclosure requirements (as outlined in the RIS). Further work should also consider whether the principles proposed are consistent with what is commonly accepted as good regulatory practice, both within New Zealand and internationally.

Fiscal Implications:

While there are no direct financial implications of the proposals in the paper, the RIS includes a preliminary estimate of the monetised cost of the proposal for the Ministry for Regulation and other government agencies of \$19 million to \$33 million per year. It proposes that these costs are met from baselines. This is likely to mean reduced education and enforcement activity or increased regulatory charges through cost recovery regimes, which should be identified in the discussion paper. s9(2)(h)

Title of paper	Approval to consult on a proposed approach to the Regulatory Standards Bill
Minister and agency	Minister for Regulation Ministry for Regulation
Description	The paper sets out a policy framework and agency arrangements for regulation. These comprise: <ul style="list-style-type: none"> • principles of responsible regulation, • an assessment of both new and existing regulation for consistency with the principles, and • a recourse mechanism for complaints about existing regulation and for regulatory reviews.
Comments	<ul style="list-style-type: none"> • The Treasury supports the goals of a more-disciplined approach to regulatory management. At a high level, key elements of the proposals, such as defined principles for responsible regulation and a focus on the stock as well as the flow of regulations, will promote welfare-enhancing regulation. • However, as currently set out, we consider the proposals have a high risk of not achieving their goals and could generate excess costs. We recommend these concerns are addressed before the proposals in the paper are progressed. • The proposed Bill would be foundational legislation with pervasive effects. Our experience with the Public Finance Act indicates some measure of cross-party support is desirable to ensure the legislation is sustainable over time. The paper does not discuss this. • Some of the proposed principles for responsible regulation go broader than comparable wording in current LDAC Guidelines. Principles relating to regulatory takings go further than conventional policy in this area. If such principles do not have reasonable buy in, considerable agency resource may be absorbed by work to justify inconsistencies between new and existing regulation and the principles of the Bill, which over time may erode the credibility of the legislation. • Given the volume and pervasive nature of regulation, the proposed mechanisms for reviewing existing legislation risk becoming overwhelmed and losing focus. One response could be setting a clear (Cabinet) direction of what reviews should focus on (aligned with government's wider goals), and sequencing reviews of existing regulations accordingly. A similar legislative direction could be provided for the types of complaints the Regulatory Standards Board should focus on. • There is a risk that the paper's focus on the costs of regulation and responding to complaints will lead agencies to be excessively cautious in promoting economically-efficient regulation. An example of this is the very broadly crafted, and arguably impractical, proposed requirements to compensate for the "taking or impairing" of property. This could, for example, slow and increase the cost of infrastructure development. • Responding to complaints about regulations will involve costs and resources for agencies and may be open to misuse. The proposal should provide for an ability to restrict or limit the misuse of the complaint process.
Consulting Minister's due date	29 October 2024
Cabinet or Cabinet Committee	EXP

<p>Fiscal implications</p>	<p>The RIS includes a preliminary estimate of the monetised cost of the proposal to the Ministry for Regulation and other government agencies as \$19 million to \$33 million per year. It proposes that these costs are met from baselines. ^{s9(2)(h)} [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] We recommend the preliminary estimates of costs, and the risk of Treaty-related costs, should be included in the Financial Implications section of the paper.</p>
<p>Recommended action</p>	<p>We recommend that the Minister of Finance discuss the above concerns with the Minister for Regulation and propose that they are addressed before the paper is progressed, with the goal of making its proposals more robust, focussed, cost-effective and sustainable.</p>

	Withheld - out of scope of request
Consulting Minister's due date	Tuesday 11 March
Cabinet or Cabinet Committee	ECO
Fiscal implications	Withheld - out of scope of request
Recommended action	Withheld - out of scope of request

DRAFT ONLY (subject to finalisation of Cabinet paper)

Policy Approvals for Progressing a Regulatory Standards Bill

Hon David Seymour, Minister for Regulation

Treasury contact: Kerryn Fowlie, Tom Hall, Jonathan Bass (legal), Amber Dickson (vote support)

Sign out contact: Kerryn Fowlie §9(2)(g)(ii)

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

DRAFT ONLY (subject to finalisation of Cabinet paper)

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)



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:

DRAFT ONLY (subject to finalisation of Cabinet paper)

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.

From: Kerry Fowlie [TSY]
Sent: Wednesday, 2 April 2025 11:30 am
To: ^Parliament: Yi Jin
Cc: Tom Hall [TSY]; Jonathan Bass [TSY]; Amber Dickson [TSY]; Lily MacMillan [TSY]; Struan Little [TSY]; Chris Chapman [TSY]; James Beard [TSY]
Subject: RE: Regulatory Standards Bill - EXP briefing

Hi Ji

With thanks to Jonathan and Ken, please find some additional information on the regulatory takings principle in the proposed Regulatory standards Bill.

Responsible regulation Principle 7(c) in the proposed Regulatory Standards Bill concerns the taking of property, and it requires that legislation should not take or impair, or authorise the taking or impairment of, property without consent, unless there is a good justification and fair compensation paid for the taking or impairment.

The taking of private property is often required for major infrastructure projects. The Public Works Act 1981 provides a mechanism for acquiring private property for these projects and offers compensation for such acquisitions. The above regulatory principle is more onerous for the Crown than the Public Works Act, requiring a good policy justification for the acquisition and that fair compensation will be paid. The nature of what constitutes fair compensation is ambiguous and open to dispute, raising the risk of challenges. There is a high possibility that persons affected by a public works acquisition would rely on this principle to complain or challenge the acquisition of their property.

An example of this type of concern was demonstrated in the *YMCA North Incorporated v Auckland Council* litigation last year. In that dispute about the appropriate compensation for sub-surface land beneath YMCA's property, compulsorily acquired under the Public Works Act as part of the \$5.5 billion City Rail Link project, the YMCA sought \$17 million as compensation for the sub-surface land. There was a lot at stake in this potentially precedent-setting case, given the number of properties acquired for the purposes of the City Rail Link project. The High Court confirmed there was no evidence to support this level of compensation and awarded just over \$800,000. The pre-election fiscal update (PREFU) had reported a new risk for this and other property claims relating to the project. Our concerns with the regulatory taking principle in the Bill relates to its potential impact on such judgements.

Ngā mihi nui
Kerry

From: Yi Jin <Yi.Jin@parliament.govt.nz>
Sent: Wednesday, 2 April 2025 9:48 am
To: Kerry Fowlie [TSY] <Kerry.Fowlie@treasury.govt.nz>
Cc: Tom Hall [TSY] <Tom.Hall@treasury.govt.nz>; Jonathan Bass [TSY] <Jonathan.Bass@treasury.govt.nz>; Amber Dickson [TSY] <Amber.Dickson@treasury.govt.nz>
Subject: RE: Regulatory Standards Bill - EXP briefing

ASAP/today if possible 😊

From: Kerryn Fowlie [TSY] <Kerryn.Fowlie@treasury.govt.nz>
Sent: Wednesday, 2 April 2025 9:47 AM
To: Yi Jin <Yi.Jin@parliament.govt.nz>
Cc: Tom Hall [TSY] <Tom.Hall@treasury.govt.nz>; Jonathan Bass [TSY] <Jonathan.Bass@treasury.govt.nz>; Amber Dickson [TSY] <Amber.Dickson@treasury.govt.nz>
Subject: RE: Regulatory Standards Bill - EXP briefing

Thanks Yi, we'll do our working across Treasury as no one team is likely to have the answer. When would you like the info by?

K

From: Yi Jin <Yi.Jin@parliament.govt.nz>
Sent: Wednesday, 2 April 2025 9:42 am
To: Kerryn Fowlie [TSY] <Kerryn.Fowlie@treasury.govt.nz>
Cc: Tom Hall [TSY] <Tom.Hall@treasury.govt.nz>; Jonathan Bass [TSY] <Jonathan.Bass@treasury.govt.nz>; Amber Dickson [TSY] <Amber.Dickson@treasury.govt.nz>
Subject: Regulatory Standards Bill - EXP briefing

Hi Kerryn

MoF had a question on the below sentence from the EXP briefing (especially the highlighted text)

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.

MoF is interested in any more detail on this point that can be provided by TSY, especially given the Government's focus on infrastructure and their wider reforms (fast track etc) which could interact with the above.

Would you/your team be able to provide the requested information today?

All the best,
Yi

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CABINET PAPER BRIEFING

<p>Policy Approvals For Progressing A Regulatory Standards Bill Hon David Seymour, Minister for Regulation</p> <p>Treasury contact: Jonathan Bass, Special Counsel Sign out contact: Jenny Catran Chief Legal Officer and Treasury Solicitor</p>
<p>Description: The paper seeks final Cabinet decisions on the Regulatory Standards Bill and to provide drafting instructions to the Parliamentary Counsel accordingly.</p> <p>The Bill is intended to provide transparency when the Government makes regulations and departs from the selected regulatory standard principles(the Principles).</p>
<p>Comments:</p> <ul style="list-style-type: none">• s9(2)(h)•••••
<p>Treasury Recommendation:</p> <ul style="list-style-type: none">• Treasury's concerns set out in the Joint Briefing still apply to the Bill.• s9(2)(h)•

s9(2)(h)

s9(2)(h)

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Fiscal Implications:

The proposed changes will have fiscal implications for agencies responsible for administering legislation. The Cabinet paper does not estimate these costs, but the RIS anticipates a cost to government agencies of around \$18 million per year. The estimate reflects the cost of producing Consistency Accountability Statements for new legislation and reviewing existing primary legislation. It assumes that around half of existing primary legislation is reviewed within the first ten years of the Bill coming into effect, and that approximately 1 FTE is required for each review. The estimate in the RIS does not include the cost of reviewing existing secondary legislation, which will be largely excluded initially. The Cabinet paper notes that the scheme may be extended to a broader range of secondary legislation over time.

The draft Cabinet paper states 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.” 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.