



Submission

Have your say on the proposed Regulatory Standards Bill
13 January 2025 (Final)

1.0 Introduction

The McGuinness Institute welcomes the opportunity to submit on the discussion document *Have your say on the proposed Regulatory Standards Bill*. This document is described as a ‘discussion document’ (see page 5 of the document, ‘This discussion document sets out a proposal to introduce a Regulatory Standards Bill’). Please note in this submission, the Institute has used the term ‘consultation document’ to replace the term ‘discussion document’.

We would like to thank the Ministry for Regulation (MFR) for inviting feedback on their consultation document.

The Institute would welcome the opportunity to make an oral submission in support of this submission.

1.1 About the Institute

The Institute was founded in 2004 as a non-partisan think tank working towards a sustainable future for Aotearoa New Zealand. Project 2058 is the Institute’s flagship project focusing on Aotearoa New Zealand’s long-term future. Because of our observation that foresight drives strategy, strategy requires reporting, and reporting shapes foresight, the Institute developed three interlinking policy projects: *ForesightNZ*, *StrategyNZ* and *ReportingNZ*. Each of these tools must align if we want Aotearoa New Zealand to develop durable, robust and forward-looking public policies. The policy projects frame and feed into our research projects, which address a range of significant issues facing Aotearoa New Zealand. The 11 research projects are: *CivicsNZ*, *ClimateChangeNZ*, *EcologicalCorridorsNZ*, *GlobalConflictNZ*, *OneOceanNZ*, *PandemicNZ*, *PublicScienceNZ*, *ScenariosNZ*, *TacklingPovertyNZ*, *TalentNZ* and *WaterFuturesNZ*.

1.2 Why this proposed Bill is important

14% of Government Department Strategies (GDSs) in operation (32 out of 230) are required or referred to in legislation (see our *2023 GDS Index*).¹ This in itself makes this Bill important. New Zealand must ensure that GDSs are designed and managed to deliver optimal outcomes, are executed in a cost effective manner, and are reviewed and assessed frequently against lessons learned and the emerging national and international landscape.

The Institute acknowledges there may be areas in which New Zealand needs to improve policy and regulation and remove ‘red tape’. However, this is an ongoing issue that is not new to public policy. We are not confident that the statement in the Minister’s foreword – that ‘most of New Zealand’s problems can be traced to poor productivity, and poor productivity can be traced to poor regulations’ – is correct.² This sweeping statement disregards the numerous other problems New Zealand is facing, including climate change, social division, community wellbeing, issues with healthcare and education, and many more. Additionally, this statement does not explain what ‘New Zealand’s problems’ are, nor what types of regulations are ‘poor regulations’ and how the Bill will solve these problems.

New legislation should be based on evidence, and we consider the consultation document lacks that evidence. The Bill takes a very narrow approach to a complex and far-reaching system, and does not consider lessons learned from other initiatives to improve regulation or important economic, social and environmental factors that may be at play.

This initiative provides a useful opportunity to create a new public policy tool to improve New Zealand’s productivity; however the current Bill, as it stands, is not sufficiently targeted

to provide any specific benefits. In reality, the current lack of specificity and scope may unintentionally add to the problems New Zealand faces by creating more red tape rather than less.

The consultation document also creates confusion for readers due to its lack of specificity and repetitiveness. It does not bode well for this legislation if the consultation document is unclear about the Bill's purpose, lacks adequate research and is backward looking. The very department that is meant to solve this problem is showing signs in this consultation document of being part of the problem.

1.3 Summary of our submission

The Institute considers a great deal more research and stakeholder engagement is necessary before a draft Bill can be prepared. The Institute's submission is in four parts:

Part A: Critique of the consultation document and process

Part B: Concerns on the content of the proposed Bill

Part C: History and analysis of the current and proposed regulatory system

Part D: Analysis of what 'principles' are (and are not)

Key recommendations from each part are as follows:

Part A: Critique of the consultation document and process

See discussion in Part A. In particular, we believe the consultation document would have benefited from:

- an early draft of the Bill's interpretation
- a glossary to define key terms, particularly the 'principles' referred to
- diagrams to illustrate the current system and the proposed system
- an appendix including a detailed timeline
- less repetition to shorten the consultation document
- consistent use of terminology – e.g. principles, standards, criteria
- a shorter list of 'specific questions'. The list is extensive, extremely specific and off-putting for the public. The sheer number of questions asked, combined with the lack of information about their relative importance, is likely to be very confusing to people wanting to submit.

Part B: Concerns on the content of the proposed Bill

See discussion in Part B. In particular, we believe the content of the proposed Bill should include:

- MFR to be made responsible for existing regulatory stewardship strategies held by Government departments
- MFR to be required to maintain a central register of GDSs and for GDSs to be described as instruments in the Bill
- a clear statement of the Bill's purpose (including scope)
- a specific requirement for a strategy to be written that outlines how the MFR will go about delivering/executing on that purpose (the how), and which is required to be rewritten at least every five years, tabled in the house, and published on the website
- a review board to be established to provide feedback and a written statement on the strategy

- an operational report to be prepared by the MFR on what was actioned/improved, and a summary of this included in the department's annual report
- a set of clear principles, ideally no more than seven, which could be set out in secondary legislation, enabling them to be easily and quickly altered if best practice and the wider landscape changed (see our suggestions in Part B)
- reference to the Treaty/Te Tiriti included, to align with other constitutional legislation (especially if the Treaty Principles Bill is not passed in the House).

Part C: History and analysis of the current and proposed regulatory system

See discussion in Part C. In particular, we believe more research is needed to understand the history (e.g. what has worked and what has not); what other countries are doing; what options exist; and most importantly, what are the costs, risks and benefits of this proposal in comparison with other options. We question whether a more agile, durable and cost-effective outcome might be to use secondary legislation rather than enshrine a set of principles in an Act.

Part D: Analysis of what 'principles' are (and are not)

See discussion in Part D. In particular, we believe there is a high level of confusion in the consultation document as to what a set of principles looks like in practice. To contribute to this discussion, we have provided some more detailed comments for consideration.

2.0. Part A: Critique of the consultation document and process

Part A of the Institute's submission is a critique of *Have your say on the proposed Regulatory Standards Bill* (the 'consultation document')³ and of the rushed and confusing consultation process. As a body tasked with improving regulation, it is a concern that the MFR has presented to the public such a confusing piece of content.

The Institute has been in operation since 2004, and in this time we have engaged with a significant number of proposals. We have found this one particularly difficult to understand and, due to the unclear nature of the document, it is very hard to produce a detailed submission. We emphasise that it is difficult to respond to a Bill when detailed information on what the Bill will say is not provided, and that confusing consultation documents harm public consultation.

2.1 Concerns and suggestions

2.1.1 Inadequate consultation timing

The consultation period for this Bill is inadequate. It has been over the summer holiday period in New Zealand, which means many people will miss the opportunity to respond.

The Institute notes this consultation has also been largely overshadowed by the controversial and highly publicised *Treaty Principles Bill*, for which submissions were due on 7 January 2025. This Bill opened for comment on 19 November 2024, coinciding with the time the hīkoi arrived at Parliament in Wellington. Therefore, public conversation centred around the *Treaty Principles Bill*.

This Bill should have had a longer consultation period – one that was not just over the holiday period and also considered the timing of the *Treaty Principles Bill* so that the submissions were not due within a week of each other. As the Institute mentioned in our submission on the *Treaty Principles Bill*, both Bills are nationally significant and contain complexity. The Institute has submitted on both, however, we want to record that the timeline for submitting has placed pressure on individuals, organisations and groups by reducing the ability to provide detailed and informed responses.

We note that many officials working in government departments do not respond to OIAs in the period between 25 December to 15 January. In accordance with Section 2 of the Official Information Act 1982, these days 'are not considered to be "working days" for the purposes of calculating the 20 working day timeframe for providing an OIA response under the Act.⁷⁴ Hence, an inquiry sent in early January is not due a response until mid-February. Arguably, in the same spirit, officials inviting submissions from the public over the same timeframe should ignore those same dates when calculating the time made available to prepare a submission.

2.1.2 Unclear consultation document

The consultation document does signal potential revisions from the 2021 Bill, including adjustments to oversight mechanisms and compliance processes. However, the full wording of the Bill remains undisclosed. Documents for public consultation should be designed with the public in mind, written in plain English, and provide a very clear Bill for people to respond to.

Key issues with the consultation document include:

- It lacks a clear purpose statement. The purpose needs to be specific and the scope defined. This is essential to enable stakeholders to respond usefully. There is no definition of what problem the Bill is trying to solve, which makes it difficult to analyse whether it achieves that goal efficiently.
- It is 43 pages long, time-consuming to read and unnecessarily complex.
- It lacks a glossary, resulting in confusion and the risk of key terms being misinterpreted. Some definitions are included throughout the document, however, a glossary is recommended as an appendix or a separate section. This was one of the key areas people could have been asked to consult on.
- It ends with 35 specific questions. Not only is this an overwhelming number, but they are very difficult to answer without accurate information to base replies on.
- The amount of repetition throughout the document causes confusion. This is further discussed in Part D below, particularly in reference to the term ‘principles.’
- It lacks detail on how the current system works. Without context, it is hard to understand what the Bill is trying to achieve. For instance, there are existing regulatory strategies that are not referred to in the document (as discussed below in Part C).
- It fails to provide research and examples to illustrate the problem the Bill is trying to solve. This makes the context of the Bill difficult to understand and ties in with the lack of a clear purpose statement and lack of detail on how the current system works (as mentioned above). Research and examples could be as simple as a list of publications that the writers have reviewed, or international policies to use as a reference. Without this information, it is difficult to sense how the writers understand the current system. Based on the consultation document, our view is that they know some parts of the system but not the whole.
- The ‘principles’ mentioned in the document are unclear. The consultation document does not provide a table of principles, and it is not clear how principles are defined and what they mean. There are no definitions, lists or glossaries. For example, our Table 2 below may (or may not) clearly represent what principles are being consulted on. This is analysed in more detail below.
- It lacks a timeline on the history of the Bill. This Bill has had a long history, and has been over 20 years in the making (with mixed responses from politicians, businesses and the public over this time). On page 6, the document mentions, ‘In 2010, the Institute of Policy Studies at Victoria University of Wellington published a special edition of its Policy Quarterly journal, setting out the different views of a number of experts on the draft Regulatory Standards Bill proposed by the Regulatory Taskforce...’ It also states, ‘In 2011, the Regulatory Standards Bill drafted by the Taskforce was introduced to Parliament and considered by the Commerce Select Committee...’ As it is now 2025, it would be very useful to see what has changed in today’s context. The history is an important part of understanding the purpose of the Bill. In our view, the consultation document should have included a more concise and complete timeline.
- The diagram is unclear. Imagery should be used in the document to help clarify the Bill, however, the diagram on page 15 is complex and hard to understand. A screenshot is included below for reference. This diagram is not numbered and the note below it is unclear. For example,

1. If the yellow boxes are all additions, are any of the blue boxes being removed?

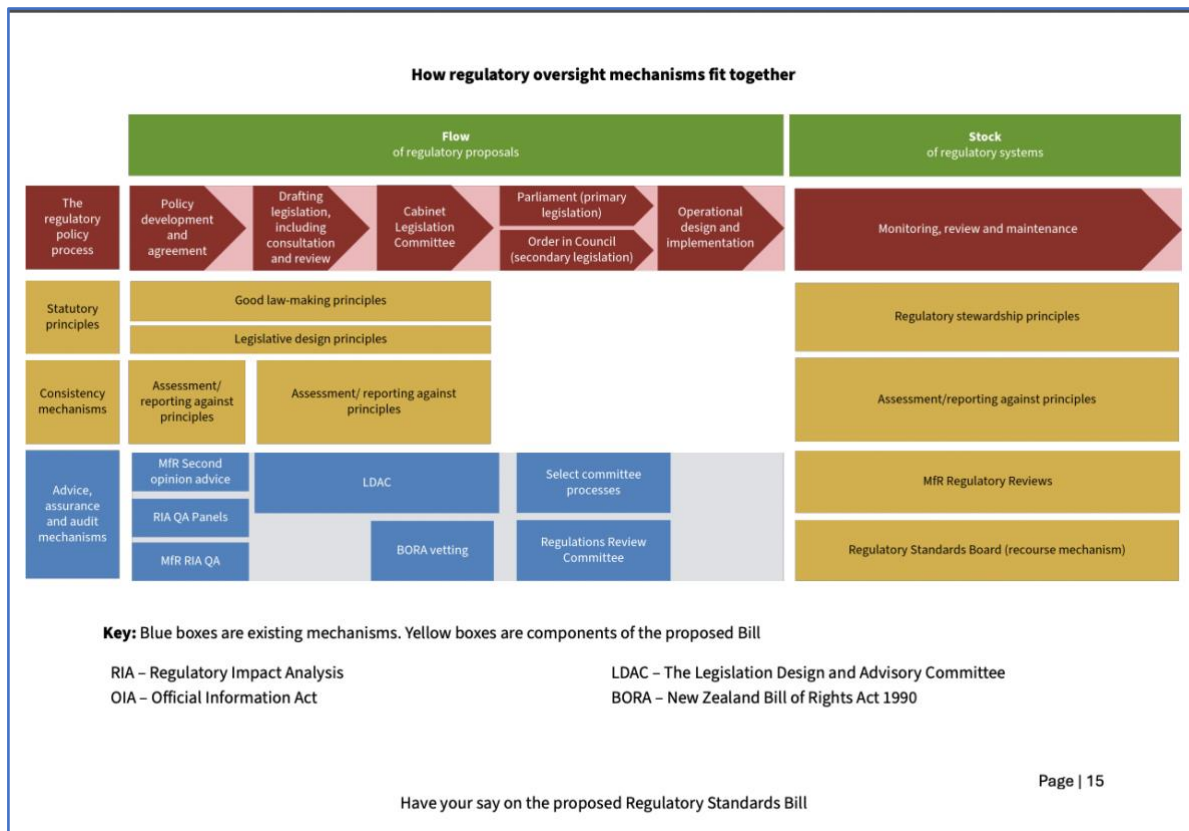
2. What do the pink boxes refer to?

3. What does it mean by flow and stock?

Although we are aware what those terms mean, they are relatively old and complex and are not explained in the consultation document. ‘Stock’ is referred to as stock of legislation and ‘flow’ is not mentioned at all – other than in the diagram. We are also concerned that the terms flow and stock are not applied appropriately. Stocks are at a point of time (e.g. number of Acts as at 31 December 2024), whereas flows refer to actions taken over a period of time (e.g. a report on legislation enacted over the last 12 months). Hence, Figure 1, in our view, does not make sense.

Figure 1: How regulatory oversight mechanisms fit together

Source: MFR Consultation document (p. 15)



The Institute’s key concern is that this public consultation document has not been designed with the public in mind, or to deliver feedback that can be fed back into the design of the regulatory system. For example, it would be interesting for MFR staff to review how many submissions responded to all questions, and how many respondents (like the Institute) decided not to answer any of the questions directly. The design of the consultation document has made it extremely difficult for MFR to analyse submissions and provide detailed feedback to Ministers. There is not only an opportunity cost, but a financial cost from not designing consultation documents in a clear, concise and useful format.

The ambiguity in the consultation document does not bode well for a Ministry positioning itself as responsible for improving efficiency and effectiveness in government. The MFR must produce a higher standard of work if it is to be a trusted institution that improves our productivity and democracy.

3.0. Part B: Concerns on the content of the proposed Bill

Part B of this submission focuses on the content of the Bill and how it could be designed to improve efficiency and effectiveness of regulations. As mentioned in Part A above, it is difficult to respond in detail when the consultation document is confusing and we do not have a clear draft of the Bill. However, from our experiences working with government and our research on public policy, the Institute has the below concerns and suggestions.

3.1 Concerns and suggestions

3.1.1 Imbalance of power, including a lack of accountability and transparency

This Bill gives one Ministry a significant amount of power without the checks and balances required to provide accountability and transparency. We also note it is difficult to understand and respond to the Bill itself due to the issues mentioned in Part A above.

Any new Bill needs to incorporate public accountability measures. The role of cabinet should be clearly defined as the central decision-making body of executive government, and the role of Parliament should be clearly defined as regulatory oversight. The Bill is also unclear on the role of the auditor-general in this process, which should be clarified.

3.1.2 Could the Ministry for Regulation be required to publish a strategy on how it plans to deliver on its purpose, say, at least every three years?

To create clarity on what the MFR does and achieves, we recommend the MFR be required by legislation to develop their own strategy on how they will execute their purpose. This strategy should define their process and desired outcomes for delivering better regulatory stewardship.

Legislation should ensure MFR's strategy is:

- clearly defined
- publicly available
- updated every three years, and
- progress is reviewed and reported upon every three years.

These requirements will ensure MFR are held accountable and deliver what they promise. They will also enable Office of Auditor General, any other organisation, or the general public to review the quality of their approach and execution of that approach. This is particularly important given MFR's potential influence over all government departments without checks and balances on their powers (as discussed in Point 3.1.1 above).

3.1.3 Who is responsible for the existing regulatory stewardship strategies operated by Government departments?

As part of improving the regulatory process in New Zealand, the Institute recommends the MFR incorporate all active, existing regulatory stewardship strategies held by government departments.

These should be used to guide MFR's own strategy and should be listed in an appendix in the consultation documentation. This will ensure transparency so that readers/users have a full picture of the context in which MFR would operate.

When Treasury was overseeing the management of the Regulatory Management System in 2017, seven key regulatory departments were required to publish 'regulatory stewardship documents' to meet the government's expectation that departments 'maintain and publish up-to-date

information about their regulatory decision-making processes, including timelines and the information or principles that inform their regulatory decisions'.⁵

These seven departments were:

1. Ministry for the Environment (MFE)
2. Ministry of Business, Innovation and Employment (MBIE)
3. Ministry of Transport (MOT)
4. Department of Internal Affairs (DIA)
5. Inland Revenue (IRD)
6. Ministry for Primary Industries (MPI)
7. Ministry of Justice (MoJ)

These departments, with the addition of Land Information New Zealand (LINZ), have published descriptions and assessments of regulatory systems.⁶

The Institute's *2023 GDS Index* contains three regulatory stewardship strategies that are currently in operation and qualified as GDSs under our criteria.⁷

These are listed in Table 1 below by rank. Other strategies may exist, but they were either not brought to our attention by departments or they did not meet our criteria. This raises questions as to whether there are other strategies in operation.

We are unsure if MFR is aware of these regulatory strategies and, and if yes, whether they plan to continue to request such strategies from these eight or indeed other departments, in the future.

Further, their current ranks indicate that the transparency of regulatory strategies could be significantly improved.

Table 1: 2023 GDS Index regulatory strategies and their transparency scores

Source: McGuinness Institute⁸

Department	MBIE	LINZ	DIA
GDS Title	<i>Regulatory Systems Stewardship Strategy (2023)</i>	<i>Regulatory Stewardship Strategy (2018)</i>	<i>Regulatory Services Group Strategy (2021)</i>
GDS Number	GDS15–14	GDS09–03	GDS04–08
Rank out of 230	71 out of 230	136 out of 230	151 out of 230
1: Opportunities and Threats			
1.1 Identifies potential opportunities (out of 4)	2	3.5	2
1.2 Identifies potential threats (out of 4)	2	3.5	3.5
1.3 Contains a clear statement describing the problem (out of 8)	7	5	4
2. Capabilities and Resources			
2.1 Identifies current and future capabilities (out of 4)	4	3.5	3
2.2 Identifies capabilities it does not have but needs (out of 4)	3	3	1.5
2.3 Identifies current and future resources (out of 4)	4	2	1
2.4 Identifies resources it does not have but needs (out of 4)	3	0.5	0

3. Vision and Benefits (Purpose)			
3.1 Provides a clear aspirational statement as to what success would look like (out of 8)	4	2	4
3.2 Identifies who the beneficiaries are (out of 4)	3	1.5	1
3.3 Describes how success will be measured (out of 4)	2	2	4
4. Approach and Focus (Strategy)			
4.1 Breaks down the purpose into a number of strategic goals/objectives (out of 4)	3	3	4
4.2 Identifies a range of strategic options (out of 4)	2	2	2
4.3 Describes the chosen approach (out of 4)	2	2	2
4.4 Highlights the risks, costs and benefits (out of 4)	0	2.5	1.5
5. Implementation and Accountability			
5.1 Identifies who is responsible for implementation (out of 4)	2	3	3
5.2 Identifies who will report on its progress (out of 4)	2	1.5	0
5.3 Explains how progress will be reported (out of 4)	2	2	1
5.4 Discusses whether the GDS will undergo a review (out of 4)	0	1	0
6. Alignment and Authority			
6.1 Discusses predecessors to the strategy and identifies any lessons learnt (out of 4)	3	1.5	3
6.2 Aligns with its department's SOI (out of 6)	0	0	3
6.3 Aligns with its department's annual report (out of 6)	6	0	0
Total (/96)	56	45	43.5

Note: To understand more about the transparency scores for GDSs, see the McGuinness Institute's methodology for the *2023 GDS Index*.⁹

3.1.4 Could the Bill include a requirement for the Ministry for Regulation to maintain a central register of government department strategies (GDSs) and for GDSs to be described as instruments in the proposed Bill?

Legislation is central to regulation. However, only 14% of GDSs (32 out of 230) in operation are required or referred to in legislation.¹⁰ Appendix 8 of the *Institute's 2023 GDS Index Methodology* contains a comprehensive list of these 32 GDSs.¹¹

It is recommended more GDSs be mandated by law to ensure a higher level of due diligence, ownership, durability and accountability.

As part of improving the regulatory process in New Zealand, the Institute recommends the MFR, as a regulatory body, should be responsible for collating and measuring GDSs.

The Institute started the *GDS Index* research project in 2014 and it has been regularly updated ever since. This *GDS Index* aims to illustrate how New Zealand might strengthen GDSs to be more effective, responsive, measurable, comparable and durable through public consultation, engagement and ownership.

One of the recommendations in the *2023 GDS Index Handbook*, recommendation 2, suggests that the MFR maintain a central register of GDSs.¹² It is important that GDSs are transparent and visible. Having the MFR maintain a central register for GDSs would improve efficiency and effectiveness.

3.1.5 Should the Bill incorporate a reference to the Treaty/Te Tiriti (to align with other constitutional legislation, especially if the Treaty Principles Bill is not passed in the House)?

As part of our research into this Bill, we (along with many other parties) noted the *Preliminary Treaty Impact Analysis* statement includes the below note that the Treaty/te Tiriti is not included in the principles considered under this Bill:

7. Of significance is that the proposals do not include a principle related to the Treaty/te Tiriti and its role as part of good law-making, meaning that the Bill is effectively silent about how the Crown will meet its duties under the Treaty/te Tiriti in this space. While this does not prohibit the Crown complying with the Bill in a manner consistent with the Treaty/te Tiriti, we anticipate that the absence of this explicit reference may be seen as politically significant for Māori and could be perceived as an attempt by the Crown to limit the established role of the Treaty/te Tiriti as part of law-making.¹³

The Institute would like to note we do not have specific expertise on Treaty/te Tiriti matters in New Zealand, however, this would be very inconsistent with New Zealand's other legislation and would mean a number of important voices are not heard in legislation.

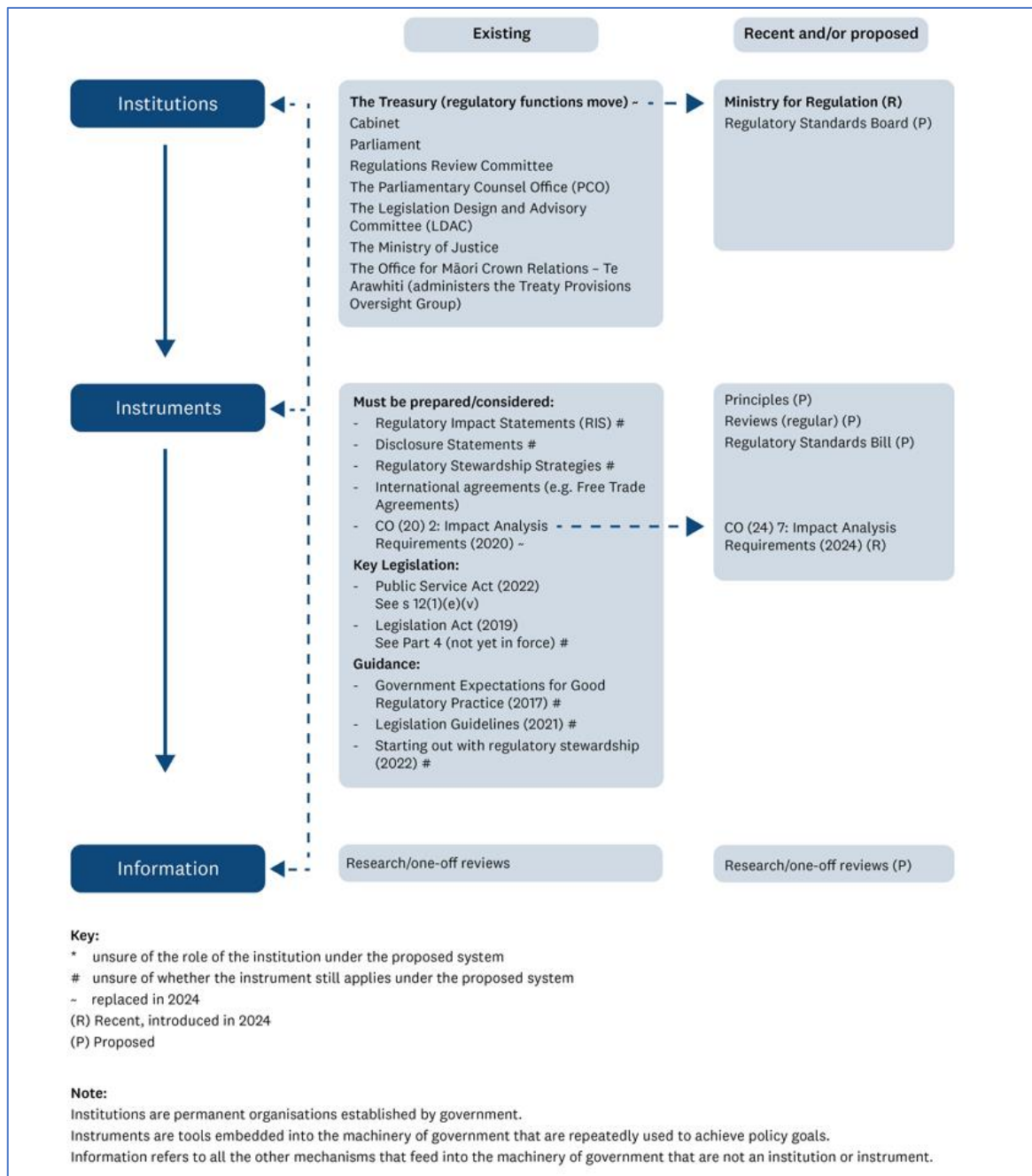
4.0. Part C: History and analysis of the current and proposed regulatory system

We consider more research is required to understand the history of regulation (e.g. what has worked and what has not), what other countries are doing, what options exist, and most importantly, what the costs, risks and benefits of this proposal are in comparison with other proposals.

It is important to understand the system in which this Bill is anticipated to operate so that we can analyse how it will add value and if it will deliver what it proposes. The Institute has summarised our understanding of New Zealand’s current regulatory review ecosystem in Figure 2 below.

Figure 2: New Zealand’s Regulatory Ecosystem

Source: McGuinness Institute



4.1 Concerns and suggestions

4.1.1 Better quality diagrams and illustrations are required

To illustrate how the MFR might have approached this area of research, we have prepared our diagram for consideration (see Figure 2 above). In practice, the Institute would prefer our diagram (see Figure 2) instead of the diagram shown in Figure 1 (see consultation document (p. 15)).

4.1.2 Roles and terminology need to be defined more comprehensively and clearly

Government departments should be accountable to MFR, and MFR should be accountable to Cabinet and Parliament. MFR should make clear the process and timeline by which regulatory changes are made and when regulatory systems will be reviewed.

Key terms: Treasury consider the regulatory system to be composed of three main components: rules, organisations and their practices.¹⁴ This closely resembles the Institute's three elements of public policy: instruments, institutions and information.

Cabinet: Key components of the RMS are generally set by Cabinet, with there being a few components set out in law. For example, the Public Service Act (which specifies that chief executives have responsibility for stewarding the legislation their agencies administer); the Legislation Act (which provides for the role and responsibilities of the Parliamentary Counsel Office (PCO)); and a growing range of international agreements, or treaties, that include obligations for good regulatory practices or regulatory transparency.

Regulatory Impact Statements: These are required by agencies wanting to take a regulatory proposal to Cabinet. A RIS summarises, based on the findings of the agency's regulatory impact analysis, an agency's best advice on a regulatory proposal to both its Minister and Cabinet. They are published on the department's website.

Treasury/MFR: The strategic co-ordination of the RMS was the Treasury's responsibility and is now MFR's.¹⁵ Government Expectations for Good Regulatory Practice (2017), published by Treasury, sets out general guidance on the features of a good regulatory system, and explains what agencies should be doing to meet their regulatory stewardship obligations. This includes the expectation that departments 'maintain and publish up-to-date information about their regulatory decision-making processes, including timelines and the information or principles that inform their regulatory decisions'.¹⁶ MFR is one of the five central public service agencies, alongside DPMC, Public Service Commission, the Treasury and Social Investment Agency.

Government Departments: Departments are expected to:

- monitor, review and report on existing regulatory systems
- undertake robust analysis and implementation support for changes to regulatory systems
- follow good regulatory practice.

4.1.3 More history in the form of a timeline is required

Treasury has a timeline that should be updated and added to this consultation document and ideally uploaded on to the MFR website.¹⁷

Timeline:

- **2016:** the first 'regulatory stewardship strategies' were published by six key regulatory government departments.

- **2017:** this became seven departments:
 1. Ministry for the Environment (MFE)
 2. Ministry of Business, Innovation and Employment (MBIE)
 3. Ministry of Transport (MOT)
 4. Department of Internal Affairs (DIA)
 5. Inland Revenue (IRD)
 6. Ministry for Primary Industries (MPI)
 7. Ministry of Justice (MoJ)
- **2018:** there was a move away from these strategy documents towards a more collaborative and adaptable approach. Regulatory stewardship information is now more often contained on a department's website. 'Moving the information out of a strategy document makes it easier for departments to update the system information. Departments are encouraged to update the information periodically and as new information is available.'¹⁸

4.1.4 Treasury's principles are arguably a lot clearer and on point

In 2020, Treasury identified four common dimensions to assess regulatory systems: effectiveness; efficiency; durability and resilience; and fairness and accountability.

The departments have started to assess the fitness-for-purpose of their regulatory systems using common dimensions of effectiveness; efficiency; durability and resilience; and fairness and accountability.¹⁹

Interestingly, the need for principles may have derived from the 2014 Productivity Commission paper, mentioned in the consultation document. It made the following recommendation:

R14.2 The Treasury should:

- **articulate a set of principles to encourage departments to focus effort on reviews that have the largest anticipated benefits;**
- set up an ongoing preliminary assessment process to identify areas requiring attention (these assessments could be undertaken by the responsible departments, or by a central department or even by a new agency); and
- specify targets such as overall yearly expenditure, or a target number of reviews, to force identification of the reviews with the largest potential benefits.²⁰ [bold added]

We consider the four common dimensions above could be treated as principles and should be front and centre of MFR's approach. Given Treasury's previous role, it would be good to understand more about how these four common dimensions were used and if they were effective.

4.1.5 More international research is required

MFR may have undertaken some research into what other countries are doing to manage and improve the quality and effectiveness of regulations, but we did not come across this in the documents. This is an important area to study and learn from.

5.0. Part D: Analysis of what ‘principles’ are (and are not)

The Institute is not confident that the consultation document demonstrates an understanding of the distinction between principles, criteria and standards. For this reason we have included the following section to explain our thinking.

5.1 A brief discussion on what makes a principle a principle

5.1.1 The literature

There is a lot of academic literature on this topic as it is complex and far-reaching. Below are learnings from a recent Harvard article.²¹

Principles are created for the small number of situations when a rule will not work; hence principles are designed to deal with ambiguity or communicate the rationale behind difficult choices. They allow for flexibility, whereas rules do not. A successful set of principles is therefore one that helps decision-makers make difficult decisions, such as when choices need to be made over trade-offs or competing priorities.

A 2023 Harvard Business Review article referred to principles as the beacons for decision-making. The authors found that strong principles share five critical attributes:

1. Distinctive (unique and specific to the institution)
2. Debatable (can be disagreed with)
3. Transferable (can be applied to multiple problems)
4. Integral (core to what an organization does)
5. Company-defining (are norms that come to the forefront in crucible moments). We have replaced this with challenge-defining moment

The Harvard article identified three types of principles:

1. Stakeholder principles (how decisions are made when faced with conflicting needs of external parties)
2. Operational principles (how decisions are made when faced with ambiguity over internal operations)
3. Organisational principles (how decisions are made when the organisation faces ambiguity)

It is useful to see some thinking in the consultation document on the types of principles (refer to Table 2 below), however much more detailed information is required. Importantly, the principles must align with the purpose of the legislation. Refer to the Institute’s strategy pyramid below which shows the connection between purpose, strategy and execution. It is essential to clarify the purpose of this Bill so we can consider whether it has the required strategy and execution to achieve this objective.

5.1.2 A New Zealand example

A simple example of how principles guide decision-making can be found in the 2018 NZ Conceptual Framework. Rather than being principles set in an Act, the principles could take the form of an Authoritative Notice issued by the New Zealand Accounting Standards Board of the External Reporting Board pursuant to section 12(c) of the Financial Reporting Act 2013.

Note the ‘consideration’ of principles is an important aspect that distinguishes principles from rules:

- 7.6 Effective communication in financial statements is also supported by considering the following principles:
- (a) entity-specific information is more useful than standardised descriptions, sometimes referred to as ‘boilerplate’; and
 - (b) duplication of information in different parts of the financial statements is usually unnecessary and can make financial statements less understandable.²²

Most importantly, principles should be developed in advance of decision-making and can then be used to guide decision-makers when faced with difficult decisions. Principles should also be reviewed frequently in order to ensure they are relevant to existing or emerging challenges. For this reason, we question whether it is appropriate for the principles to be enshrined in an Act, when secondary legislation may deliver a more agile, durable and cost-effective outcome.

However, it is important to keep in mind that any principles should align with the overarching purpose of the system (see Figure 3).

Figure 3: The Strategy Pyramid

Source: McGuinness Institute²³



5.1.3 Principles referred to in the consultation document

Table 2 lists the proposed principles mentioned in the consultation document. It is unclear if the principles are principles of responsible regulation, standards for good regulation or a set of criteria.

We note that the Bill’s consultation document is unclear and repetitive.

The Bill aims to establish high-quality regulatory standards to help ensure that regulation keeps up with societal change, and drives productivity, **by codifying principles of good regulatory practice**. The aim is for future regulatory proposals, as well as existing regulations, to comply with these principles, unless lawmakers justify why they are failing to meet the standard. (p. 3)

The Bill also establishes a Regulatory Standards Board (the Board). The Board will assess complaints about existing regulation that is inconsistent with the principles, issuing nonbinding recommendations and public reports. Where a statement of inconsistency is made by the Board, the governing Minister must respond to justify deviation from principles. The findings, justification arguments, and relevant documents will be made publicly available to ensure transparency. (p. 3)

...a benchmark for good regulation through a set of **principles of responsible regulation**. (p. 20)

How would **standards for good regulation** be set? It is proposed that the Bill would set out a set of principles that the **Government would consider when developing legislative proposals or exercising stewardship over regulatory systems**. The principles would be in primary legislation, consistent with the Taskforce’s view that this was necessary to give the principles sufficient weight. These principles of responsible regulation would **act as a set of criteria** against which new regulatory proposals or existing regulation could be assessed. (p. 20)

Table 2: The proposed principles mentioned in the consultation document

Source: Adapted from MFR consultation document (pp. 21-23)

From the consultation document (note this text has been reformatted but not altered)	
Three broad categories	Proposed principles
1. Principles relating to the design and content of legislation	1. Rule of law
	2. Liberties
	3. Taking of property
	4. Taxes, fees and levies
	5. Role of courts
2. Principles relating to good law-making	6. The importance of consulting, to the extent practicable, the persons or representatives of the persons that the Government considers will be substantially affected by the legislation.
	7. The importance of carefully evaluating: <ul style="list-style-type: none"> - the issue concerned - the effectiveness of - any relevant existing legislation and common law - whether the public interest requires that the issue be addressed any options (including non-legislative options) that are reasonably available for addressing the issue - who is likely to benefit, and - who is likely to suffer a detriment, from the legislation.
	8. Legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons.
	9. Legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available.

3. Principles relating to regulatory stewardship	<p>10. Legislation should continue to be the most effective, efficient, and proportionate response to the issue concerned that is available.</p> <p>11. The system should continue to be fit for purpose for the people, area, market, or other thing that is regulated.</p> <p>12. Unnecessary regulatory burdens and undue compliance costs should be eliminated or minimised.</p> <p>13. Any regulator should have the capacity and the capability to perform its functions effectively.</p> <p>14. Any conflicts or adverse interactions with other regulatory systems should be eliminated or minimised.</p> <p>15. The importance of monitoring, reviewing, and reporting on the performance of the system.</p>
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This unclear terminology results in many unanswered questions, including:

1. Are these really principles, or are they intended to be (i) criteria or (ii) standards? From the reader's perspective it appears there is a mix of all three.
2. Who is to use the principles? The consultation paper refers to:
 - a. the Government, when writing law 'Government would consider when developing legislative proposals or exercising stewardship over regulatory systems (p. 20),
 - b. the new Regulatory Standards Board, 'to assess complaints about existing regulation that is inconsistent with the principles, issuing nonbinding recommendations and public reports' (p. 3),
 - c. Citizens to bring complaints (see directly above, p. 3),
 - d. All of the above

Has the consultation document missed the roles and responsibilities of other stakeholders, such as:

- The Parliamentary Counsel Office (PCO)
- The Legislation Design and Advisory Committee (LDAC)
- The Ministry of Justice
- The Office for Māori Crown Relations – Te Arawhiti administers the Treaty Provisions Oversight Group
- The Office of the Auditor-General?

The 'principles' referred to in the Bill's consultation document do not meet the test of five critical attributes (distinctive, debatable, transferable, integral and able to assist during a challenge-defining moment) above.

We have several concerns around the use of 'principles' in the consultation document, including:

- There are too many (15 principles is excessive).
- They are not specific (titles such as Rule of Law and Role of Courts are too broad).
- There is no explanation of how they might be applied (no examples).
- They tend to be goals (e.g., should be) rather than principles. For example, the consultation document text (see principle 10 in Table 2 above), states: Legislation *should be* the most effective, efficient, and proportionate response to the issue concerned that is available and [principle 12] 'Unnecessary regulatory burdens and undue compliance costs *should be* eliminated or minimised'.

- They describe, rather than guide how to deal with ambiguity. (e.g., principle 15: ‘The importance of monitoring, reviewing, and reporting on the performance of the system’).
- There is a lack of clarity over ‘who’ is using the principles and for ‘what’ purpose.

A few final thoughts:

- Clear definitions. There needs to be clarity over whether the word ‘principle’ is appropriate and if it is used it should be clearly defined.
- A concise list. Include around seven principles.
- Examples. Alongside each principle should be at least one practical example to illustrate how the principle might be used to help guide decisions.

6.0. Conclusion

The Institute does not support this Bill as it is written.

The problem the Bill is trying to solve must be more clearly defined, otherwise success cannot be measured.

What is intended by the term 'principles' requires much further investigation.

Good research is sorely needed, including understanding what is working (or not working) in other similar countries (e.g. UK, Australia and Canada).

We question whether it is appropriate for the principles to be enshrined in an Act, when secondary legislation may deliver a more agile, durable and cost-effective outcome.

There is a real risk this Bill will cause unnecessary confusion; waste time and money; and deliver poor outcomes for Government, individuals and businesses.

Endnotes

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