NZCTU
Te Kauae Kaimahi

Submission to the Finance and Expenditure Committee on the:

Regulatory Standards Bill

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi

23 June 2025

IN UNION, TOGETHER.
union.org.nz

Contents

This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU). With over 340,000 union members, the NZCTU is one of the largest democratic organisations in New Zealand.

The NZCTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (NZCTU), which represents approximately 60,000 Māori workers.

1. Executive summary

1.1. The NZCTU does not object to improving the quality of legislation. However, the Regulatory Standards Bill will not achieve this objective.

1.2. The principles reflect the marginal and extreme worldview of libertarianism, which prioritises individualism and private property rights above all else. These principles are out of step with the values that most New Zealanders hold and have no place in our constitutional settings.

1.3. Additionally, the selective nature of the "principles of responsible regulation" will add confusion and complexity to the regulatory management system, which already has a host of instruments and mechanisms for improving legislative quality. Indeed, it may negatively impact regulatory quality, as reviews of new and existing regulation are not required, under the Bill, to cover other important aspects of legislative design, such as consistency with Te Tiriti o Waitangi, evidence-based policy, enforceability, adaptability, equity, and many others.

1.4. Te Tiriti o Waitangi, the founding constitutional document of the nation, is nowhere to be found in the "principles of responsible regulation". This means that Ministers, the Regulatory Standards Board, and government agencies are not obliged to consider the consistency of new and existing legislation with Te Tiriti o Waitangi when conducting reviews. This is a significant and unacceptable revision of New Zealand's constitutional framework.

1.5. As set out in the regulatory impact statement (RIS) from the Ministry for Regulation, it is unclear whether the Bill will do anything to improve legislative quality; however, it is certain to have significant compliance costs for government agencies, running into tens-of-millions of dollars per annum. This will be a drain on time and resources, negatively affecting the ability of public agencies to deliver the services New Zealanders actually require.

1.6. Finally, and rather ironically, the Bill fails to meet its own standards of "good law-making" (principle 6). As made clear in the RIS, the Bill is not "expected to produce benefits that exceed the costs of the legislation to the public or persons"; nor do officials consider it to be "the most effective, efficient, and proportionate response to the issue concerned that is available".

1.7. Given the above problems, it is unsurprising that the Bill is widely opposed. In the pre-legislative consultation, approximately 88% of submitters opposed the proposed Bill while only 0.33% supported it. If we take only the submissions of organisations who submitted (which is perhaps a better representative sample), 82% opposed the proposed Bill and only 5.4% supported it. The MfR has advised against the Bill, as have other public sector agencies. The Waitangi Tribunal considers the government to have breached several Tiriti/Treaty principles in pushing forward with the Bill. And the Legislation Design and Advisory Committee has also advised strongly against the Bill.

1.8. It would be highly irresponsible and undemocratic for the government to push this Bill any further in the face of such strong opposition. This is the policy of a minor coalition partner, for which there is no popular mandate – the tail must not be allowed to wag the dog here.

1.9. **The NZCTU opposes this Bill in the strongest terms. We urge the Finance and Expenditure Committee to recommend the termination of this Bill.**

2. The principles are selective and ideological

2.1. According to clause 3 the core purpose of the Bill is to:

> *"(a) promote the accountability of the Executive to Parliament for—*
>
> *(i) the development of high-quality legislation; and*
>
> *(ii) the exercise of stewardship over regulatory systems"*

2.2. The Bill sets out "principles of responsible regulation" alongside mechanisms by which new and current legislation is to be assessed against these principles. These principles are intended to function in a similar way to the "principles of responsible fiscal management" found in section 26G of the Public Finance Act 1989.

2.3. There are three concrete problems here. First, we already have numerous guidelines and quality assurance mechanisms for the development of legislation. However, there is no one place in which all these standards and quality assurance mechanisms are collated (a problem that is acknowledged in the pre-legislative consultation document on this Bill). Instead of clarifying this situation, the Regulatory Standards Bill adds – and more problematically, elevates above all others - a set of additional principles against which legislation should be assessed. This will simply add further complexity to the regulatory management system – a criticism also raised by the expert Legislation Design and Advisory Committee in their submission on the pre-legislative consultation.

2.4. The second problem is that the principles set out in clause 8 are highly selective. There are six categories of principles: rule of law; liberties; taking of property; taxes, fees, and levies; role of courts; and good law-making. These principles focus excessively on the potential impact of legislation on individual liberties and the exercise of property rights.

2.5. There are many other, far more widely accepted, principles that are inexplicably absent here, including whether legislation is consistent with Te Tiriti o Waitangi, other existing legislation, and international treaties, and whether it is evidence-based, enforceable, adaptable, equitable, practical, and sustainable, among other desirable attributes.

2.6. Thus, as the MfR outlines in the RIS, the Bill may result in "greater transparency of whether legislation meets the *specific standards expressed as principles of responsible regulation*" (our emphasis) in the Bill. This, of course, is not the same thing as supporting the development of high-quality legislation. Indeed, as the MfR continues: "Given the selective nature of the principles and the fact that they do not include many aspects of regulatory quality [...] it is difficult to assess the impact on overall regulatory quality".

2.7. In other words, there is little evidence to suggest the Bill will support "the development of high-quality legislation". Indeed, we are concerned that the Bill will have the effect of reducing regulatory quality. This is because government Ministers, agencies, and the Regulatory Standards Board will be compelled to assess legislation only against the flawed and selective principles of clause 8, which are given primacy over other, more sensible and commonly used, principles. This means there will be significant holes in what will become the central standard by which the quality of legislation is to be assessed.

2.8. **In dismissing this Bill, we encourage the Committee to enquire as to why so many widely accepted principles of good legislation are not listed in clause 8.**

2.9. The third problem, and of the greatest concern, is that many of the principles are explicitly ideological in nature. Although the sponsoring Minister has attempted to dress them up as neutral standards of good regulatory practice, they plainly reflect, and seek to embed in lawmaking, libertarian beliefs about individual and private property rights.

2.10. The Bill frames regulation as *prima facie* negative for individual liberties and the exercise of property rights, which are seen to have primacy over other concerns such as collective wellbeing, social cohesion, environmental sustainability, and so on. This, we believe, is fundamentally out of step with the values of most New Zealanders and therefore has no place in our constitutional framework. Seeking to embed these claims in our constitutional framework is an alarming case of overreach from the government.

2.11. The highly ideological nature of these principles will also undermine the Bill's success, should it become law. For better or for worse, the "principles of responsible fiscal management" have been successful because of a high level of bipartisan support for them. No such bipartisan support exists for the principles outlined in the Regulatory Standards Bill.

2.12. We find it unacceptable that Te Tiriti o Waitangi, the founding constitutional document of the nation, is nowhere to be found in the "principles of responsible regulation". This means that Ministers, the Regulatory Standards Board, and government agencies are not obliged to consider the consistency of new and existing legislation with Te Tiriti when conducting reviews. This is a significant and unacceptable revision of New Zealand's constitutional framework. It effectively incentivises government to ignore Te Tiriti when creating legislation.

2.13. As noted in the Waitangi Tribunal's *Interim Regulatory Standards Bill Urgent Report*, some aspects of the Bill are in direct conflict with Te Tiriti. For example, there is a significant danger that the sub-principle that "all persons are equal before the law" would create a barrier against progressing policy to address the long-standing inequities experienced by Māori. Equal treatment can often fail to create equal outcomes; this is especially so in cases where historical injustices, such as the injustices of colonisation experienced by Māori, have undermined the possibility for substantive equality to flourish. Differential treatment under the law can therefore be necessary to correct historical injustices. As noted in the Tribunal's report, "The Crown has an all-important obligation, in the context of the long and painful history of colonisation, to actively pursue equitable outcomes for Māori". There is a risk that the sub-principle "all persons are equal before the law" will conflict with this obligation.[1]

2.14. We also remind the Committee that the Waitangi Tribunal considers the government to have breached the Tiriti/Treaty principle of partnership by failing to pursue targeted engagement with Māori on the Bill. It also considers the government to have breached the principle of active protection by continuing to push forward with the Bill despite heavy opposition from Māori and significant concerns raised by officials regarding its potential constitutional implications. The Tribunal has noted that enacting this Bill without targeted consultation with Māori would also breach these same principles.

2.15. **In dismissing this Bill, we encourage the Committee to consider whether the elevation of the "principles of responsible regulation" over other factors such as collective wellbeing and consistency with Te Tiriti o Waitangi reflects widely held beliefs and values in New Zealand.**

2.16. **Given this is the policy of a minor coalition partner, but will reshape New Zealand's constitution in a fundamental way, we further encourage the Committee to consider whether the government has a democratic mandate for this Bill.**

2.17. We comment on some of the principles in more detail below.

3. Liberties

3.1. This principle is a significant departure from established democratic and legal practice in New Zealand and around the world.

3.2. The principle identifies individual liberty as supreme over other equally important values such as collective welfare, equality, and social cohesion. This is an extreme and unbalanced position that is directly contrary to deeply held cultural values in New Zealand and to aspects of our constitutional framework, such as Te Tiriti o Waitangi.

3.3. The principle inappropriately elevates property rights alongside (a select number of) human rights. For example, under this principle, a landlord's right to profit from a rental

[1] Waitangi Tribunal, *Interim Regulatory Standards Bill Urgent Report*, 16 May 2025, p. 26.

property is functionally equivalent to a tenant's right to "personal security" (in the form of the right to shelter).

3.4. This is a gross category error. Unlike "life, liberty and the security of the person" (Article 3 of the Universal Declaration of Human Rights), property ownership is not a natural right that is fundamental to our existence and moral agency. This is well recognised in moral philosophy, human rights law, and the constitutional framework of most developed countries. Elevating property rights to have the same status as fundamental human rights would make New Zealand an international oddity and damage our reputation.

3.5. The principle also incorrectly frames government regulation as concerned with trade-offs between different individual's capacity to exercise their liberty. But much regulation is about protecting or enhancing wider *collective goods*, such as environmental sustainability, public health, social cohesion, and macroeconomic stability, among others. Sometimes these public goods are threatened or undermined by the exercise of personal liberties and property rights. Yet the protection of these public goods cannot be reduced to providing for or protecting "any such liberty, freedom, or right of another person".

3.6. Competition policy serves as a good illustration. The government may regulate to break up a monopoly (or to set market conduct rules aimed at preventing the emergence of monopolies in the first place). Under the liberties principle, this would be a diminishment of a person's (in this case a corporate's) "rights to own, use, and dispose of property". Yet it isn't clear that this diminishment is "necessary to provide for, or protect, any such liberty, freedom, or right of another person". Instead, the purpose of breaking up or preventing a monopoly is to secure the wider *collective benefits* that come from properly competitive markets. These benefits include affordability of goods and services, stronger innovation, and greater consumer choice.

3.7. This same logic applies across a huge range of government policy: restrictions on greenhouse-gas emissions are often restrictions on people's ability to use their property as they see fit, but are aimed at protecting against the catastrophic societal risks that climate change brings; financial stability policy places restrictions on banks' abilities to dispose of their financial resources as they see fit so as to mitigate systemic financial risk; mask-wearing or social distancing requirements reduce a person's liberty, but may serve to prevent health system collapse during a pandemic; pollution controls limit how people can utilise their property, but protect common goods such as clean water and air, the beneficiaries of which may be future generations; redistribution of wealth directly curtails a person's property rights but supports social cohesion, political stability, and lower rates of poverty and crime; and so forth. In all these examples, restrictions posed on individual liberties are desirable not necessarily because they protect other individual's liberties, freedoms, or rights, but because they deliver *collective goods*.

3.8. Overall, the liberties principle reflects a naïve understanding of political and moral philosophy that is unbecoming of a mature democracy such as our own.

4. Taking of property

4.1. Both "property" and "impair" are ill-defined. This means the clause can be interpreted to cover any perceived negative impact that a regulation might have on an individual or corporate's capacity to use their portfolio of tangible and intangible property.

4.2. This would include regulations that are viewed as negatively impacting an individual or corporate's ability to generate profit. We note that such an interpretation is favoured by business groups and appears to be the sponsoring Minister's intention. In this way, the principle echoes investor–state dispute settlement mechanisms that are found in free trade agreements internationally. These mechanisms afford private corporations' undue power to contest legislation passed by government in the public interest.

4.3. If adhered to, the requirement that "fair" compensation is provided to the owner for any impairment of their property would make many policy decisions simply impossible. There are numerous examples of where this would be contrary to the public interest. For example:

- *Labour rights and standards.* Legislation that improves workplace health and safety, lifts wages, or provides for better terms and conditions for workers can increase operational costs for businesses. Under the taking of property principle, businesses would be entitled to compensation for any increase in operational costs relating to legislation such as the Minimum Wage Act, elements of the Employment Relations Act, the Health and Safety at Work Act, and others. Even more absurdly, the workers who benefit from these labour rights and protections would be expected to pay this compensation.
- *Public health measures.* The Level 4 restrictions used in 2020 were successful in preventing the spread of Covid-19 among an unvaccinated population, which would have overwhelmed the health system and caused thousands of deaths. According to the Regulatory Standards Bill, though, in the event of a future public health emergency such as this, any loss of income incurred by individuals or businesses because of public health measures should be compensated by the government at a "fair" rate. In the event of another pandemic that requires a similar response, it would be fiscally prohibitive to implement the necessary public health measures while adhering to this principle.
- *Environmental protections*. These will usually limit how individuals and businesses can use their property – for example, by restricting what they can extract from the land or how they deal with waste. These protections are nevertheless often critical to collective welfare as they protect common resources and sources of life. Under the taking of property principle, however, any cost incurred by an environmental regulation would have to be compensated. Again, this would be fiscally prohibitive for the government in many cases.
- *Economic protections*. The government recognises it is desirable to limit farm to forest conversions in New Zealand. Although it can be individually rational for someone to

convert a farm to forestry, if this is done on a large scale it will have significant negative impacts for New Zealand economy and society – for example, it will undermine our food security, our ability to earn foreign exchange, and our ability to maintain rural communities. The government has therefore legislated to restrict farm to forestry conversions for certain categories of land. To be consistent with the "taking of property" principle, however, the government would have to compensate any farmer who can show they have been negatively financially impacted by this decision.

4.4. It is well-understood that unfettered use of private property can have negative impacts, not just for other individuals but for society at large. It is therefore a well-established principle internationally that government must be able to regulate the use of private property in line with the public interest – such as in the above examples (which may of course change over time as cultural values, social mores, and political coalitions evolve). The idea that people should always be compensated for any restriction on their use of property is an undue constraint on the government's ability to regulate in the public interest.

4.5. If adhered to, this principle would also have the effect of locking in and compounding the current unequal distribution of wealth in New Zealand. This is because it would make it fiscally prohibitive for government to pursue policies that redistribute wealth, as any redistribution from wealthy to poor households would have to be offset by "fair" compensation. We do not believe this is consistent with deeply held cultural values in New Zealand, a country that sets great store in the principle of substantive equality.

4.6. Finally, resource-rich corporations and wealthy individuals would surely use this principle to contest a vast range of future and current legislation. This would create a potentially huge compliance burden for Ministers, government agencies, and the Regulatory Standards Board in following up on these complaints.

4.7. In these respects, even setting aside its moral naivety, the "taking of property" principle would be simply unworkable in practice. In many cases, government would be forced to choose between either not regulating in the public interest, because it would be too expensive to do so, or creating or maintaining legislation that is "inconsistent" with this principle. In the first case, New Zealand society would be worse off. In the second case, the government would be forced to waste precious time and energy justifying why it is breaking with this principle. In neither case would the quality of legislation be improved.

5. Taxes, fees, levies

5.1. Clause (d) is simply redundant, as it is stating that existing law should be followed. Clause (e) and (f) essentially replicate already established principles of good legislative design – see the *Legislation Guidelines: 2021 Edition*.

5.2. Given this redundancy and replication, it is difficult to understand why these are included in the "principles of responsible regulation" where other equally foundational principles

– such as those outlined in the Bill of Rights Act 1990 – are not. This approach of reaffirming some widely accepted principles while ignoring others will simply add confusion to the Regulatory Management System.

5.3. More perniciously, the inclusion of this set of principles in the Bill serve to imply to the New Zealand public that these are not already important parts of legislative design. This is cynical politics.

6. Good law-making

6.1. Clause (k) requires that "legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons". Again, this is naïve. Experience shows that public policy is often not reducible to definitive calculation of the costs and benefits, nor how those costs and benefits are apportioned. It is certainly worthwhile to conduct cost–benefit analyses where possible. But the reality is that we often can't quantify the costs and benefits or work out in advance what the trade-offs will ultimately be.

6.2. More fundamentally, the costs and benefits of a given regulation are not equally experienced, and whether a policy is considered beneficial is typically in the eye of the beholder. An obvious example is that an employer may strongly *approve* of regulations that prohibit strikes by workers under certain circumstances but may strongly *disapprove* of minimum wage regulations. On the flipside, the people who work for that employer may strongly *disapprove* of regulations that prohibit strikes by workers under certain circumstances, while they may strongly *approve* of regulations guaranteeing a minimum wage. Judging whether the benefits outweigh the costs is ultimately a political question that must weigh, among other things, moral judgements on justice, equality, and liberty – and the trade-offs between them. (As above, it must also consider not just how one person exercising their liberty may negatively affect the ability of another person to exercise theirs, but also the wider negative externalities that may be created by enabling certain behaviours.)

6.3. Clause (l) requires that "legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available". This is also naïve and will be unworkable in practice. For most public policy issues, there is reasonable disagreement over what the most "effective, efficient, and proportionate" solution is – a large proportion of political debate centres precisely on this issue. What one views to be the most effective, efficient, and proportionate response is a product not just of empirical analysis, but also of the underlying paradigm that one is starting from and the values that one holds.

6.4. Further, different solutions will have different advantages and disadvantages, and will often have to trade effectiveness, efficiency, and proportionality off against one another. A solution that is maximally proportionate may not be maximally effective, for example.

6.5. Legislation will also often reflect a compromise between different interests in society and therefore won't be able to meet this standard. For example, the agricultural sector is not currently covered by the NZ Emissions Trading Scheme. Climate experts advise that this undermines the effectiveness, efficiency, and proportionality of the scheme. The reality is that this is a compromise position that reflects to some extent the strength of farmers as an influential political lobby in New Zealand politics.

6.6. Finally, if we are to take the principles of "good law-making" seriously, they should first be applied to the Regulatory Standards Bill itself. Is the Bill "expected to produce benefits that exceed the costs of the legislation to the public or persons"? The answer from officials, experts, and most submitters to the pre-legislative consultation is clearly "no".

6.7. The MfR estimates that the annual cost of compliance for the Bill will be $18 million. We note this is a conservative estimate – it is the "minimal level of resource" the MfR expects would be needed. The Regulatory Standards Board will also incur annual costs to the Crown of over $1 million, and the additional responsibilities of the MfR will cost over $1 million a year. It is also likely that costs will be incurred via the use of the complaints system (clause 32) by private actors.

6.8. By contrast, the potential benefits are highly uncertain. According to the MfR, the Bill is "expected to result in greater transparency of whether legislation meets the *specific standards expressed as principles of responsible regulation*" (our emphasis), which, as we outline above, is not the same thing as improving the quality of legislation.

6.9. Put simply, although the Bill will not support regulatory quality, it will cost the Crown a lot of money. On the best analysis we have, then, the potential benefits of the legislation do not come close to exceeding the costs.

6.10. Second, is the Bill "the most effective, efficient, and proportionate response to the issue concerned that is available"? Again, the answer from officials, experts, and most submitters on the pre-legislative consultation is "no".

6.11. According to the Bill's explanatory note, its purpose is to "reduce the amount of unnecessary and poor-quality regulation by increasing transparency and making it clearer where legislation does not meet standards". Again, it will only do this in relation to the selective standards of the principles of responsible regulation – it provides no mechanism for assessing the quality of legislation against a host of other (more important and justifiable) standards. It is therefore not the most effective response to the issue concerned. The Bill is also using legislation for a problem where it is not strictly required and where certain matters are already covered by existing legislation. So the Bill is not the most efficient or proportionate response either.

6.12. Over the past year the government has shown a consistent willingness to disregard or dismiss as irrelevant the advice of officials and experts in their field when it comes to matters of public policy. The government has also used urgency without good rationale to push through controversial legislation – the sudden amendments made to the Equal Pay Act in May 2025 are a case in point. Ignoring expert advice and rushing the legislative process are both recipes for poor regulation. In this respect, the government's record of

action is wholly inconsistent with the *stated purpose* of the proposed Bill. This only increases the sense that the Bill is a cynical attempt to embed libertarian political values in New Zealand's constitutional framework and has little to do with improving regulation.

7. The Bill concentrates power in the hands of the Minister for Regulation

7.1. Section 27 of the Bill empowers the Minister for Regulation (currently Hon David Seymour) and Attorney-General (currently Hon Judith Collins) to issue guidance on applying the "principles of responsible regulation", how legislation should be reviewed, and other matters. This would afford significant power to these individuals to influence how government agencies apply the Bill. Given the current Minister for Regulation's deregulatory bias, it is reasonable to expect that this power would be used to interfere with areas of regulation that the Minister is opposed to.

7.2. We are strongly opposed to the Regulatory Standards Board being established. Clause 38 provides that the Board will be appointed by the Minister for Regulation. Clause 29 empowers the Board to examine if existing legislation is consistent with the "principles of responsible regulation", and also to undertake reviews of consistency accountability statements produced for a new piece of legislation.

7.3. Given the current Minister for Regulation's clear and publicly stated bias against regulation, it is reasonable to expect the Board will be comprised mostly if not entirely of people with a deregulatory bias, and who share the Minister's extreme libertarian worldview. We find it remarkable that such a blatantly political instrument is being proposed in a Bill that is ostensibly about supporting "high-quality legislation".

7.4. We are also concerned that the complaints system (clause 32), will be used by wealthy individuals and corporate actors to challenge regulation they don't like, but which is in the public interest. These complaints can be expected to influence the Board's decisions on launching inquiries, which will waste precious public sector time and resource.

7.5. We are also concerned by Part 3 of the Bill, which affords the Ministry for Regulation significant powers to compel information from other government agencies in order to conduct regulatory reviews. There is a risk that this will be used excessively, which would increase the compliance burden for government agencies.

8. Conclusion

8.1. This Bill is a poorly disguised attempt to embed libertarian political principles – which prioritise individual liberty and property rights above all else – in New Zealand's constitutional framework.

8.2. This Bill will do nothing to improve the quality of legislation in New Zealand. What it will do is reshape New Zealand's constitutional framework in a way that doesn't align with the

vast majority of New Zealanders' values, while costing the Crown tens-of-millions of dollars a year in needless compliance activities.

8.3. **The NZCTU urges the Committee to recommend the termination of this Bill, which properly belongs amidst the rubbish heap of history. If the government is serious about wanting to improve the regulatory management system, then it should consider the range of vastly preferable options that have been identified by experts and officials.**

8.4. The NZCTU thanks the Finance and Expenditure Committee for the opportunity to submit on this Bill.

For further information, please contact

Jack Foster

Policy Analyst, NZCTU

jackf@nzctu.org.nz