

Submissions on the Regulatory Standards Bill by the Auckland Women Lawyers' Association

- 1 The Auckland Women Lawyers' Association (**AWLA**) firmly opposes the Regulatory Standards Bill (**Bill**). AWLA is of the view that the Select Committee should recommend to the House that the Bill be abandoned.
- 2 AWLA is a representative charitable organisation for lawyers identifying as women in the Auckland region. Our constitution sets out, inter alia, the following objectives:
 - (a) To advocate for and work toward the reform of the law and its administration, particularly as it affects women and children;
 - (b) To participate as a collective body in matters of interest to the legal profession; and
 - (c) Any other matters that AWLA determines to be an objective.
- 3 Submitting on this Bill is within the scope of AWLA's objectives due to the significant constitutional implications and foreseeable consequences of the Bill.
- 4 The Crown's pursuit of the Bill, and its dismissal of Treaty partners in the process, has and will continue to significantly damage the Crown-Māori relationship in Aotearoa. AWLA considers that it will have a negative impact on women and children – wāhine and tamariki Māori, as well as non-Māori women and children who call Aotearoa home.
- 5 These submissions respond to the Bill, specifically identifying concerns with its:
 - (a) introduction of important constitutional standards without serious consideration being given to the constitutional implications of codification;
 - (b) legal framework and failure to achieve its purpose;
 - (c) deliberate exclusion of Te Tiriti o Waitangi and entrenchment of contested ideology under the guise of neutral regulatory standards;
 - (d) failure to meet the test of good law-making, having been developed without meaningful consultation, cross-party support, or Treaty consistent policy design.

Constitutional implications

- 6 It is incongruous for the Bill to contain the expressions regarding the liberties of the person, personal security, and property. These are essentially a restatement of the Fifth and Fourteenth Amendments to the United States Constitution and section 7 of the Canadian Charter of Rights and Freedoms. Those are matters that were carefully considered but omitted from the New Zealand Bill of Rights Act 1990 during the course of its drafting. It would be unusual to introduce such important concepts as "standards" in the Bill now and without the accompanying comparable consideration

- 7 The Bill creates a perverse imbalance in the law-making process by including some foundational constitutional principles or important principles of legislative design and leaving out others.
- 8 The Bill's intention is that any proposed legislation will have to be held up to the aforementioned principles, however there are any number of principles the Bill could accord to legislation and yet individual and property rights is where it is narrowly focused. The Bill is incongruous for what it does *not* contain. It purports to embody abstract aspirations for good legislation and regulation but only includes principles about "liberties" and "property", and glaringly omits standard matters such as environmental concerns, New Zealand's international obligations, and Te Tiriti o Waitangi. The latter principles having been indisputably integrated into Aotearoa's legislative context.
- 9 Against this background, it would be unusual to introduce such important concepts as "standards" in the Bill. In any event, they are not appropriately progressed in this context. They are not "low-consequence" principles that can be incorporated into legislation without serious consideration being given to the constitutional implications of codification. If these liberties are to be enacted as part of our law of fundamental values at all, then they belong in a Bill of Rights. Debate about their enactment should happen in a transparently constitutional setting.

Regulatory Standards Board

- 10 The Bill creates a Regulatory Standards Board (**Board**) which would carry out inquiries as to whether Acts or secondary legislation are inconsistent with the principles of responsible legislation and report to the regulatory standards Minister on those inquiries. The proposed Board lacks independency and legitimacy. Its members are to be appointed by the Minister for Regulation, with no safeguards to ensure impartiality, transparency, and public accountability.
- 11 There is no requirement for the Board to include diverse representation to account for the varying interests of groups that will be affected by both the scope and the outcome of its inquiries, which blatantly risks structural exclusion.

Failure to achieve its purpose

- 12 In AWLA's view, it is astonishing that a Bill which purports to promote good law-making and high-quality regulation should fail to meet its own standards.
- 13 In its general policy statement, the Bill states its purpose as: *"The Regulatory Standards Bill aims to reduce the amount of unnecessary and poor-quality regulation by increasing transparency and making it clearer where legislation does not meet standards. It intends to bring the same discipline to regulatory management that Zealand has for fiscal management."*
- 14 The Bill contains a lack of clarity about what constitutes "quality". AWLA considers that the quality of Aotearoa's legislation and other regulation is variable, in different ways and for a range of reasons. For example, some regulation is poorly drafted or poorly designed. This can be due to the haste with which the regulation is progressed and made; poor policy choice; or that the regulation offends against higher order constitutional principles.

- 15 When addressing regulatory quality and the quality of law-making, the desired social, economic and environmental goals of governments are not typically characterised as questions of quality. These goals are often subjective, value-laden and highly contested. A central feature of democratic politics should include disagreements between reasonable people acting in good faith about what social, economic or environmental goals should be enacted in legislation.. The “quality” of a given legislative or regulatory proposal in the sense of its merits is appropriately resolved through a fair and transparent democratic process.
- 16 The Bill as drafted does not achieve its purpose for setting out regulatory quality requirements in legislation. Legislation mandating regulatory quality requirements will only be effective if it changes the behaviour of the people to whom the law is addressed.
- 17 The principles for good law-making and requirements and guidance for good legislative and regulatory design are already set out in the Legislation Design and Advisory Committee’s (**LDAC**) *Legislation Guidelines* and Cabinet’s *Impact Analysis Requirements*. To the extent that these matters are not achieved in practice, that is an institutional problem that needs to be responded to through established institutional measures.
- 18 Good law-making is ultimately an outcome of a good electoral system, a good political culture, and the employment of a well-educated and properly resourced professional civil service. Each of these can be furthered without new legislation and certainly. The measures in the Bill simply do not provide the means to achieving that goal.
- 19 The Bill needlessly restates legal rules or legal principles that apply in any event:
 - (a) The principles of the “Rule of Law” and the “Role of Courts” oversimplify and restate foundational values in a context that will ultimately trivialise them. The Bill places basic tenets of our democracy in a “Regulatory Standards Bill”, as part of a mechanism that contemplates discounting or disregarding them for so long as doing so is accompanied by the requisite certification. Recourse is confined to complaining to a statutory board with no ability to subsequently provide a meaningful remedy.
 - (b) The principles relating to “Taxes, fees and levies” are redundant. These are already the subject of section 22 of the Constitution Act 1986 or are well-established features of legislative design.
 - (c) As mentioned, the LDAC’s Legislation Guidelines and Cabinet’s Impact Analysis Requirements already contain the “good law-making” principles.

Exclusion of Te Tiriti o Waitangi and entrenchment of contested ideology

- 20 The Bill omits any reference to Te Tiriti o Waitangi, despite its foundational place within Aotearoa’s constitutional arrangements. It fails to acknowledge nor meet the Crown’s partnership obligations and its duty to actively protect Māori rights and interests in regulatory contexts. Accordingly the Bill, if enacted into legislation, constitutes a clear and definitive breach of such obligations.

- 21 The Bill is also in direct contradiction with the Cabinet Manual that affirms Te Tiriti as “a founding document of government in New Zealand” and states that the Crown has a responsibility to consider Treaty implications in policy and legislative development. Further, the LDAC guidelines require that all legislation consider “the Treaty of Waitangi and Crown-Māori relationship”, and that legislation drafters consider and assess whether any provisions engage Treaty principles.
- 22 There is general understanding and expectation that Te Tiriti should be considered as part of good law-making practice. That position has been reflected in decades of legislative practice and cross-party consensus. The exclusion of Te Tiriti from the Bill itself and the policy considerations foundational to the Bill mark an overt departure from constitutional and legislative drafting best practice and amounts to a breach of the Crown’s Te Tiriti obligations which are not justified.
- 23 The Regulatory Impact statement acknowledges that the proposed principles in the Bill are based on a particular theoretical perspective on regulation (based on a neo-liberal view of regulation that prioritises economic efficiency, private property rights and minimal state intervention which are Act party principles). The framework of the Bill elevates individual liberties and commercial interests over collective rights, social well-being and tikanga Māori.
- 24 The Bill purports to uphold the Rule of Law by asserting that “every person is equal before the law”. AWLA recognise that this reflects a formal approach to equality that ignores structural disadvantage, directly impacting women and minority groups. The current government has adopted a narrow interpretation of equality, leading to significant amendments across the legislative landscape that undermine the mahi of women and minorities, Te Tiriti, and erode Māori interests and rights. In light of this, AWLA is concerned that this Bill will exacerbate existing inequities.
- 25 Research shows that when children know who they are and feel strong in their cultural identity, they succeed. The Education and Training (Early Childhood Education Reform) Amendment Bill is an example of how regulation reform can include “low consequence” changes such as maintaining a constant indoor temperature of 18 degrees to high consequence changes such as the removal of legal requirements for Early Childhood Education centres to acknowledge Māori as tangata whenua, to support children’s right to cultural confidence and to teach about Te Tiriti o Waitangi.
- 26 It is ironic that the Pay Equity Amendment Act 2025, which was recently rushed through the Parliament under urgency, would not have met the principles set out in this Bill. It is highly hypocritical for this coalition Government to propose a Bill that expressly states that the law should not retrospectively affect a person’s rights, when it has recently extinguished the rights of 33 claimant groups to pay equity by the enactment of retrospective legislation.
- 27 These examples highlight the risk Parliament faces when considering inadequately considered law founded on narrow ideological motives that omit key public values and interests.

Lack of consultation and support

- 28 The Bill has been introduced in the face of overwhelming public opposition. The Ministry of Regulation's own Summary of Submissions record that nearly 23,000 submissions were received during the consultation period, and over 88% of those opposed the Bill.
- 29 Opposition came from a wide cross-section of society. Many submitters specifically criticised the Bill's failure to uphold Te Tiriti, its ideological bias towards neoliberal regulatory principles, and the risks it poses to inclusive, equitable, and accountable law-making. Despite this, the Government proceeded to introduce the Bill, reflecting a flagrant disregard for public input, and a failure to meet Treaty-based engagement and democratic accountability.
- 30 The Select Committee must take the scale of opposition to this Bill seriously. To ignore it would reinforce the very concerns the majority of submitters raised – that this Bill attempts to change Aotearoa's constitutional foundations without meaningful public dialogue or respect for Te Tiriti.
- 31 Despite the Bill's significant constitutional implications, the Crown has not undertaken targeted consultation with Māori before Cabinet made key decisions about its content. The Waitangi Tribunal confirmed this failure in its urgent inquiry into the Bill when it found that the Crown's consultation process was "fundamentally flawed" and in breach of the principles of Te Tiriti. It found that the Crown chose not to engage in targeted consultation with Māori despite official advice to do so. This lack of consultation undermines the legitimacy of the Bill and highlights its failure to implement constitutional best practice.

AWLA opposition to the Bill

- 32 AWLA opposes the Bill in its entirety. It represents a serious constitutional overreach and fails to achieve its purposes both in policy and operation. It excludes the foundational place of Te Tiriti o Waitangi and tikanga Māori and has breached basic principles of constitutional guidance and engagement with Crown partners. The Board it proposes to form lacks independence and the requirement for diversity to function as a credible oversight body.
- 33 The Bill hypocritically undermines the principles of good law-making it attempts to advance by ignoring constitutional conventions and proceeding without robust consultation and evidence-based policy development.
- 34 AWLA urges the Select Committee to reject and abandon the Bill.

Nāku noa, nā



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