Greater Wellington
Te Pane Matua Taiao

By email

17 June 2025

Committee Secretariat
Finance & Expenditure Committee
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Tēnā koutou

Regulatory Standards Bill – Greater Wellington Regional Council Submission

1. Te Pane Matua Taiao / Greater Wellington Regional Council makes the following submission to the Finance & Expenditure Committee on the Regulatory Standards Bill (the Bill).
2. Te Pane Matua Taiao opposes this Bill and recommends the immediate withdrawal of the Bill in its present form.
3. Te Pane Matua Taiao requests the opportunity to speak to this submission.

Summary of key points

4. The key points of our submission are as follows. The Bill:
    a. Constrains government and regulators from acting in society's collective interest;
    b. Undermines Te Tiriti o Waitangi and constitutes executive government overreach;
    c. Attempts to solve a problem that doesn't exist;
    d. Will impact on local government, creating legal risks, inefficiency, complexity and increased costs for us, our partners and communities; and
    e. Will lead to worse social, environmental and economic outcomes.

Introduction

5. As a regional council, Te Pane Matua Taiao cares for our regional environment, protecting forests, biodiversity and wildlife. We deliver sustainable public transport, manage regional parks, and the region's supply of clean and healthy drinking water. We reduce the risk of flooding, including through significant infrastructure projects. We lead regional level responses to emergencies such as earthquakes and flooding. Te Pane Matua Taiao does these things and more – to protect and grow our region.
6. When making submissions, Te Pane Matua Taiao engages constructively to protect and enhance our ability to achieve the best outcomes for our region, in the most efficient and effective way. In doing so, we seek to retain and improve the legislative levers that advance our ability to uphold Te Tiriti o

Waitangi, including our 30-year partnerships with mana whenua and the rights and interests of our partners and Māori. These partnerships continue to be critical to our shared success protecting our environment and managing significant network infrastructure, while meeting the cultural, social and economic needs of our communities.

The Bill constrains the ability of government and regulators to act in society's collective interest

7. The Bill narrowly defines what constitutes good regulation to a contested, market driven set of principles which prioritise formal equality, individual and corporate property rights, economic efficiency and minimum state intervention. The Bill's premise that these principles can be universally applied to assess whether proposed and existing legislation is good, or responsible, is flawed. Of particular concern is the Bill's reframing of regulation as fundamentally about the limits on the use and exchange of private property, and, its elevation of these contested principles over collective rights, social and environmental wellbeing and tikanga Māori.

8. The many values that guide policy, such as allocative efficiency, harm minimisation, wise stewardship, and ecological integrity, are inherently complex, multi-dimensional and often subject to different interpretations. Attempting to impose an ideologically narrow template for judging all existing and future legislation will fail to account for this complexity and could stifle the development of necessary and nuanced policy responses.

9. This imposition of a narrow, rigid framework, coupled with future compensation claims for the 'taking or impairment of property rights' (discussed in paras 19-22 below), would significantly limit the ability of future governments and local government to respond flexibly and effectively to evolving societal needs, such as climate change. The cost benefit analysis requirements set out in Section 8 clause K are also concerning. Cost-benefit analysis (CBA) is useful only in certain situations and could add significant costs and unnecessarily delay to the law-making process.

10. The Bill limits discretion, including for local or regional authorities to apply judgement appropriate to their districts or regions. This results in a fundamental shift from a dynamic, responsive legislative process to a constrained one, potentially leading to legislative paralysis or sub-optimal policy outcomes that fail to address complex public good challenges.

11. While the Bill explicitly states that its principles are not enforceable in court, and failure to comply with the Bill would not affect the power to make legislation or its validity, a deeper analysis reveals an effective mechanism for influencing and constraining public power. If Parliament formally enshrines specific principles of good law-making into legislation, courts will be compelled to acknowledge and consider these standards in their interpretations, even if they cannot directly invalidate laws for non-compliance.

12. The Bill also mandates that Ministers must provide a public explanation for any inconsistencies between proposed legislation and the Bill's principles. This requirement compels Ministers to justify any deviation from the Bill's narrow template to a Board appointed by the Minister of Regulation. This effectively creates a strong political and potentially interpretive constraint on future legislation, subtly altering constitutional practice by establishing a de facto set of guiding principles established

by the executive arm of government that future governments will be pressured to adhere to, irrespective of their non-binding legal status.

13. The overall approach outlined above undermines the inherent authority of future Parliaments and democratic processes. This is also expected to flow down into the bylaw and policy process at local government level and Te Pane Matua Taiao acknowledges and supports the Taituara submission in this respect.

Constitutional issues and Te Tiriti o Waitangi

14. The Bill's omission of Te Tiriti o Waitangi undermines the status and import of Te Tiriti as a cornerstone of our constitutional arrangements. It lacks mechanisms to uphold Māori rights and interests in the regulatory system and usurps the collective, intergenerational kaitiaki responsibilities central to a Te Ao Māori worldview.

15. As discussed above, we acknowledge the findings of the Wai 3470 Waitangi Tribunal – and Ministry of Regulation advice – that the Bill has constitutional significance. We agree with the claimants that this Bill forms a 'regulatory constitution' that breaches Te Tiriti, despite not creating constitutionally superior law.[1] We also support the submission of Te Hunga Rōia Māori, including that the Bill 'narrows the constitutional space for Te Tiriti to be honoured' and reverses long-standing constitutional guidance and bi-partisan agreement that Te Tiriti should be considered as part of law-making practice.[2]

16. We submit that the explicit exclusion of Te Tiriti by the executive arm of government before engaging in good-faith dialogue about protecting Te Tiriti in our constitution, is a breach of the Crown's obligations to Te Tiriti and to international instruments including the UN Declaration on the Rights of Indigenous Peoples. This omission cannot be addressed by including Te Tiriti as a principle of good law-making, because the Bill's emphasis on formal equality, individual and corporate property rights, creates a framework that may disadvantage Māori and undermine crucial equity initiatives.

17. We support the recommendation of the Wai 3470 Tribunal that the Crown immediately halt the Bill until good-faith dialogue with Māori, and indeed all New Zealanders occurs, including on whether the legislation is necessary and its potential impacts, particularly on Te Tiriti protections and Government measures to pursue equitable outcomes for Māori.[3]

18. We also acknowledge and support the concerns and positions of our partners on this Bill, including the submissions of Te Rūnanga o Toa Rangatira and Rangitāne o Wairarapa on the Ministry of Regulation's earlier consultation document.

The 'Regulatory Takings' clause

19. A particularly concerning aspect of the Bill for Te Pane Matua Taiao is its inclusion of a principle requiring compensation for the taking or impairment of property. The Bill provides that legislation

[1] Waitangi Tribunal, Interim Regulatory Standards Bill Urgent Report, Wai 3470, 16 May 2025, pp. 12, 25.
[2] Te Hunga Rōia Māori, submission on the Regulatory Standards Bill, 14 June 2025, p. 4.
[3] Waitangi Tribunal, p. 28.

should not take or impair, or authorise the taking or impairment of, property without the consent of the owner unless there is a good justification for the taking or impairment; and fair compensation for the taking or impairment is provided to the owner. In addition, it further provides that compensation should be granted, to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment. However, there is no bright line guidance as to what constitutes 'property' or a 'taking'.

20. A fundamental principle of modern environmental law and policy is the 'polluter pays' principle, where those who cause pollution or environmental harm bear the costs of remediation or prevention. The Bill's regulatory takings clause, however, reverses this principle. For instance, if a future government were to enact regulations to protect rivers, requiring a dairy corporation to reduce its pollution or stocking rates, and this action was deemed to impair the corporation's property, the Bill implies some form of compensation may be payable. This creates a perverse incentive structure where the public, through taxpayer funds, would effectively subsidise the costs of environmental protection, rather than the polluters internalising those costs. This represents a significant and potentially detrimental shift in legal and economic responsibility, which could lead to increased environmental degradation or unsustainable public expenditure, as governments become financially liable for measures intended to protect the collective good.

21. This clause coupled with the establishment of the Regulatory Standards Board (the Board), effectively empowers companies to directly challenge laws. Although the Board's recommendations are non-binding, they would still carry substantial political weight. This would compel Ministers to either amend or withdraw laws deemed inconsistent with the principles. This mechanism effectively grants commercial entities significant leverage over legislation, shifting the burden of proof onto the government and the public. This creates a chilling effect not only through the threat of potential litigation but also through the burden of constantly justifying public good over private profit, potentially leading to legislative paralysis in addressing, for example, urgent environmental issues.

22. Councils would carry the considerable burden of being required to appropriately regulate, in an uncertain 'regulatory takings' landscape, without a bright line for what constitutes 'property' or 'taking', while being pressured to avoid litigation and costly compensation claims against their own organisation and the Crown to the eventual disadvantage of the tax and ratepaying general public. International experience, particularly from the United States where the 'takings' provisions appear to be drawn, demonstrates that such clauses lead to extensive, costly, and unpredictable litigation, diverting resources and hindering effective governance.

The Bill attempts to solve a problem that doesn't exist

23. The absence of a clearly defined and demonstrable problem that the Bill seeks to address was highlighted as a key issue in the Ministry for Regulation's analysis of public feedback on the Bill's discussion document. It is a principle of good legislative design not to legislate if it is not needed.

New Zealand already possesses mechanisms for ensuring regulatory quality, and existing processes could be refined or improved without the need for such a far-reaching legislative overhaul.

24. Large parts of the Bill impose additional systems and powers to do what is already achieved through existing systems. The Bill's new layers of scrutiny – including Consistency Accountability Statements, and a new oversight body – risk overlapping with or complicating existing legislative review processes. This could increase the administrative burden, diverting resources from core functions to compliance with new procedural requirements, without necessarily yielding commensurate improvements in regulatory quality. In addition, the Ombudsman's office has the powers to do similar work to a regulatory standards board. It would be preferable that their independent role is expanded to take on regulation as well.

The process to develop and introduce the Bill breached Te Tiriti o Waitangi

25. The process used to develop and introduce the Bill was inadequate and inconsistent with established legislative norms. The Bill was taken to Cabinet and introduced to Parliament within days of the Waitangi Tribunal's urgent report being released, notwithstanding the broad public and Māori opposition, and the Tribunal's recommendation to halt progress until good-faith dialogue with Māori could occur.

26. The Crown's process has been found to breach Treaty principles of partnership and active participation by failing to meaningfully consult with Māori before making key decisions. This has caused prejudice, including deep stress and uncertainty and damage to the Māori Crown relationship.[4]

Impacts on Council, mana whenua, communities and outcomes

27. As discussed above, the Bill introduces considerable risks and inefficiencies for local government and effectively challenges our ability to act in the public good, which will cost governments, councils and communities more in the long term.

28. The Bill if passed, will create onerous and duplicative processes which will effectively clog up the law-making process. It reverses the burden of proof for passing a new law, placing the entire burden on government to provide unnecessarily detailed justification for the need for every new Act and regulation as discussed earlier in our submission. Existing regulations are also subject to review and four yearly reports are required. Government departments and councils would be subject to legal review if they do not satisfy the detailed requirements of the Act. In this way, the Bill if enacted, would create a risk of frivolous litigation.

29. The Bill also heightens the legal risks for our mana whenua partners who may be operating within or alongside statutory frameworks, such as governance partners, statutory boards, or partners exercising their kaitiakitanga delivering devolved services in resource management. They may be

[4] Waitangi Tribunal. P. 27.

subject to litigation or subject to downstream costs arising from consistency challenges to us as regulator.[5]

30. We set out below some of the potential negative consequences of the application of the Bill on Council's core functions, including our ability to protect our environment and deliver positive outcomes for and with our communities. The constraints on our ability to uphold Te Tiriti o Waitangi and potential impacts on mana whenua and our partnerships are woven throughout:

Environment - conservation, biodiversity and pest control
• The Bill's focus on short-term measurable benefit may impact our ability to invest in innovative or long-term initiatives like predator control, replanting programmes, mātauranga Māori and mātauranga-ā-iwi driven conservation practices, or protection of taonga species with no immediate economic value. • Māori approaches to conservation including their right to exercise kaitiakitanga could be challenged by the Bill's focus on individual rights over collective obligations. • The restrictions on new regulatory powers could slow our responses to unforeseen or emerging threats to biodiversity.
Environmental Regulation
• The Bill's push for nationally consistent, minimal rules could constrain councils' discretion to use precautionary limits or adopt stricter standards in sensitive areas. • Efforts to regulate (e.g. high-emitting industries) might be challenged or require compensation for lost profits.
Water
• Any efforts to address long-standing inequitable rights to water access for example, for Māori landowners or under-serviced rural communities, could be stopped, as inconsistent with the Bill's emphasis on formal equality, or identical treatment for all. • In the same way, the following could be challenged: partnerships with communities, iwi and hapū to govern and manage water, and, Māori and public input into water planning if they are not considered 'materially affected'. • Attempts to uphold Te Mana o Te Wai or incorporate tikanga into freshwater regulation could be undermined by a framework that prioritises uniformity and individual rights. • We could be constrained in restricting water use to restore the health of the waterways, or during drought or pollution events if such measures are judged as unfairly impacting certain users.

[5] Te Hunga Rōia Māori, p. 7.

Climate change and infrastructure for resilience
• In elevating a narrow economic reading of regulation with efficiency and cost-limitation tests, the Bill could put broad constraints on our ability to invest in: long term resilience infrastructure upgrades, Māori-led climate initiatives, equity-based adaptation initiatives, low-emissions public transport, and progressive social procurement policies e.g. hiring locally, involving Māori suppliers and paying the living wage.
Transport
• The Bill could curtail New Zealand's ability to expand public transport for the public good, including but not limited to: supporting community-led transport initiatives e.g. connecting to marae and papakāinga; cross-subsidising services in less profitable areas or where there is a higher need e.g. rural areas, disability access upgrades; and initiatives to reduce transport emissions. • These initiatives could be challenged as being 'unequal treatment', and/or inconsistent with centralised efficiency metrics or cost-benefit assessments.

31. In conclusion, we note that Parliament voted down the Te Tiriti o Waitangi Principles Bill. We are clear in our minds that it did not do this with the understanding that a second, equally as offensive, trojan horse would be injected into the Parliamentary Chamber.

Relief sought

- Te Pane Matua Taiao seeks that the Bill be withdrawn in its current form.
- We wish to speak to our submission.
- The primary point of contact for any matters arising from this submission is Verity Smith, Principal Advisor, Te Pane Matua Taiao, verity.smith@gw.govt.nz.

Nā māua noa, nā,

Daran Ponter
Chair
Greater Wellington Regional Council

Hikitia Ropata
Chair - Te Tiriti o Waitangi Komiti
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