SUBMISSION OF TE HUNGA RŌIA MĀORI O AOTEAROA THE MĀORI LAW SOCIETY

To: Finance and Expenditure Committee (**the Committee**)

Re: Regulatory Standards Bill[1]

Date: 14 June 2025

Context

1. Te Hunga Rōia Māori o Aotearoa (**Te Hunga Rōia**) was formally established in 1988. Since then, Te Hunga Rōia has grown to include a significant membership of Māori legal practitioners, parliamentarians, legal academics, policy analysts, researchers and Māori law students. Our vision is Mā te Ture, Mō te Iwi – by the Law, for the People. One of our objectives is to promote law reform for Te Ao Māori in a manner that is consistent with Te Tiriti o Waitangi.[2]

2. When making submissions, Te Hunga Rōia seeks to provide a kaupapa Māori based approach to legal analysis in its feedback on proposed law reform. Te Hunga Rōia does not attempt to represent all of the views of its constituent members.

3. Te Hunga Rōia welcomes the opportunity to make written submissions on the Regulatory Standards Bill. This submission builds on Te Hunga Rōia's earlier feedback on the Ministry of Regulation's Consultation Document, attached as **Appendix A**.[3] That earlier feedback identified several concerns, many of which are reiterated and expanded on in this submission.

4. Te Hunga Rōia confirms its wish to appear before the Committee to speak to this submission.

Summary of Position

5. Te Hunga Rōia opposes the Regulatory Standards Bill (**RSB**) in its entirety.

[1] *Regulatory Standards Bill* 155-1 (Government Bill).
[2] In this submission "Te Tiriti" will be used to refer to Te Tiriti o Waitangi 1840, being the Māori text, and "the Treaty" will be used to refer to the Treaty of Waitangi 1840, being the English text.
[3] Ministry for Regulation *Have Your Say on the Proposed Regulatory Standards Bill* (November 2024).

6. The Bill proposes a significant and fundamental constitutional shift in how laws are made, justified, and reviewed in Aotearoa New Zealand.

7. It seeks to elevate a contested and ideologically driven set of regulatory principles, drawn largely from neoliberal theory, to a position of broad and lasting influence over all current and future legislation. This far-reaching reform is being pursued without sufficient public scrutiny, constitutional consensus, engagement with Māori, or regard for the Crown's obligations under Te Tiriti o Waitangi. The Bill does not meet the standard of good law-making.

8. In particular, Te Hunga Rōia Māori is concerned that the Bill:

   a. **Deliberately omits Te Tiriti o Waitangi**, ignoring long-standing Cabinet and legislative guidance, and is developed in breach of Te Tiriti and the principle of partnership.

   b. **Entrenches contested ideology** under the guise of neutral regulatory standards, prioritising economic efficiency and individual rights over collective Māori rights, public wellbeing, and environmental integrity.

   c. **Creates constitutional asymmetry** by requiring strong justification for limits on economic rights, while imposing no equivalent scrutiny on Crown inaction or systemic failure to uphold Māori rights or address structural disadvantage.

   d. **Increases legal exposure for Māori entities**, enabling well-resourced actors to challenge Tiriti-aligned regulation and potentially undermine Māori governance arrangements and targeted policy initiatives.

   e. **Shifts constitutional influence to a politically appointed Board** that lacks independence, and is not required to include Māori representation or Treaty expertise - further marginalising Māori perspectives in law-making.

   f. **Fails the test of good law-making**, having been developed without meaningful consultation, cross-party support, or Treaty-consistent policy design.

9. The Bill's purpose, process, and underlying principles are constitutionally unsound. Its enactment would represent a serious regression in Tiriti-based and inclusive governance in Aotearoa. Te Hunga Rōia Māori therefore urges the Select Committee to recommend that the Bill not proceed.

Deliberate Exclusion of Te Tiriti

10. The RSB omits any reference to Te Tiriti, despite its foundational place within Aotearoa New Zealand's constitutional arrangements. This exclusion represents a deliberate regression from established legislative practice and constitutional norms. It sidelines the Crown's partnership obligations and fails to uphold its duty to actively protect Māori rights and interests in regulatory contexts.

11. The omission is in direct contradiction to existing constitutional guidance, including:

    a. The Cabinet Manual that affirms that the Treaty is "a founding document of government in New Zealand" and that the Crown has a responsibility to consider Treaty implications in policy and legislative development.[4]

    b. The Legislation Design and Advisory Committee Guidelines (2022) that require that all legislation consider "the Treaty of Waitangi and the Crown-Māori relationship", and that legal drafters assess whether any provisions engage Treaty principles.[5]

    c. The Cabinet Office circular CO (19) 5 that mandates explicit consideration of Treaty implications when developing new legislation.[6]

12. The expectation that Te Tiriti should be considered as part of good law-making practice is both orthodox and long standing. As noted in our earlier submissions, the Rt Hon. Sir Geoffrey Palmer recognised and agreed as early as June 1986 that all future legislation referred to it "should draw attention to any implications for the recognition of the Treaty of Waitangi".[7]

[4] Cabinet Office, *Cabinet Manual 2023*.
[5] Legislation Design and Advisory Committee, *Legislation Guidelines* (2022 ed).
[6] Cabinet Office Circular CO (19) 5 "Te Tiriti o Waitangi / Treaty of Waitangi Guidance" (22 October 2019).
[7] Palmer KC, Rt. Hon. Sir Geoffrey, Māori, the Treaty and the Constitution (June 12, 2013). Māori Law Review, June 2013, Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 28.

13. That position has appropriately been reflected in decades of legislative practice and cross-party consensus.

14. By excluding Te Tiriti from the very definition of "good law-making" the Bill narrows the constitutional space for Tiriti to be honoured. It marks a departure from constitutional and legislative drafting best practice and amounts to a structural breach of the Crown's Te Tiriti obligations. Such an exclusion cannot be justified.

15. To be clear, Te Hunga Roia Māori does not consider that simply referencing Te Tiriti by way of including a Tiriti principle of good law making or otherwise would fix the fundamentally flawed nature of this Bill. The issues go deeper into the underlying assumptions, purpose and constitutional design of this Bill.

Neoliberal Bias and Ideological Entrenchment

16. The RSB codifies a narrow, neoliberal view of regulation that prioritises economic efficiency, private property rights, and minimal state intervention. The principles set out in clause 8 are drawn from the 2009 Regulatory Responsibility Taskforce, convened by the Act Party, which sought to constitutionally entrench market liberal norms.[8] These principles are presented as if universally agreed, but in fact reflect a particular and contested political agenda.[9]

17. The Regulatory Impact Statement acknowledges that the proposed principles are based on a particular theoretical perspective on regulation.[10] This framework elevates individual liberties and commercial interests over collective rights, social wellbeing, te taiao, and tikanga Māori.

18. Te Hunga Roia Māori has serious concerns about the ideological basis and practical implication of the proposed principles, including:

    a. **Consistency with the Rule of Law**: As lawyers we are committed to the Rule of Law. However, the way this principle is framed in the Bill raises concerns about its potential for misuse or weaponisation.

[8] Regulatory Responsibility Taskforce, *Report of the Regulatory Responsibility Taskforce* (August 2009) at 8-11.
[9] See for example Public Health Communication Centre *Regulatory Standards Bill Threatens Public Interest, Public Health and Māori Rights* (12 June 202%) https://www.phcc.org.nz/briefing/regulatory-standards-bill-threatens-public-interest-public-health-and-maori-rights.
[10] Ministry of Regulation, *Regulatory Impact Statement - Regulatory Principles Bill* (26 March 2024).

For example, the assertion that "every person is equal before the law" could reflect a formal approach to equality that ignores structural disadvantage. The current government has adopted a narrow interpretation of equality, leading to significant amendments across the legislative landscape that undermine Te Tiriti, erode Māori interests and rights, limit Māori participation in governance and dismantle targeted initiatives aimed at addressing inequity. In light of this limited interpretation and application of "equality" such principles risk being used as tools of assimilation, eroding the distinct status and rights guaranteed to Māori as tangata whenua and exacerbating existing inequities.[11]

b. **Liberties**: The principle of individual liberty, as framed in this Bill, fails to recognise the collective rights central to Māori identity. It marginalises the relational foundations of tikanga, which emphasise interdependence, collective responsibility, and the deep connections between people and whenua. This narrow focus fosters an isolating individualism that is inconsistent with Māori legal and philosophical traditions.

c. **Property Rights Protections**: The elevation of individual property rights within the Bill overlooks collective ownership and customary rights embedded in tikanga Māori. This framing is particularly offensive given the Crown's historical role in alienating Māori land through compulsory confiscation, takings, and systemic denial of customary interests. It is also deeply ironic that the Bill seeks to entrench property protections for some while the government seeks to undermine and limit Māori proprietary interests in the takutai moana – which are not protected and excluded from the compensatory provisions under the Bill.[12]

d. **Taxation and Charges**: The principle relating to taxation reflects a neoliberal orthodoxy that elevates economic efficiency over redistributive justice. In practice, this risks constraining the government's ability to address structural inequality and invest in policies that support Māori communities.

[11] See also the fuller exposition in the 'The Rule of Law' published in 2010, where Lord Bingham set out 8 Principles which he saw as being the key ingredients of the Rule of Law.
[12] The Marine and Coastal Area (Takutai Moana) Act 2011 is an "excluded Act" under the Bill. This means that a review of this legislation will not be required.

Prioritised in isolation, this principle would exacerbate existing disparities and entrench cycles of intergenerational disadvantage.

Good Law-Making: The Bill's conception of "good law-making" is incomplete and flawed. While it gestures towards public consultation, it offers no guarantee of Treaty-consistent engagement with Māori. Terms such as "public interest" and "benefits exceeding costs" risk being interpreted in ways that sideline minority and indigenous perspectives. Good law-making in Aotearoa must include alignment with Te Tiriti and the inclusion of Māori worldviews not merely economic calculus and emphasis.

19. Embedding these principles would marginalise Māori perspectives on law making, likely constrain kaupapa Māori policy design, and create structural resistance to regulation that advances Tiriti, environmental kaitiakitanga, or mana motuhake. The Bill risks entrenching a constitutional order that does not reflect the lived realities or aspirations of tangata whenua or many other communities in Aotearoa.

Omission of Key Public Values and Interests

20. The RSB is not only flawed in what it includes, but also in what it leaves out. While the exclusion of Te Tiriti is the most glaring omission, the Bill also disregards a range of values essential to Māori and to Aotearoa's evolving constitutional fabric. These include tikanga Māori, human rights standards, environmental protection, intergenerational wellbeing, climate change responsibilities, and the need to address structural inequality – including the persistent inequities faced by Māori communities.

21. These omissions have serious constitutional and practical implications. None of the principles listed in clause 8 require consideration of mana motuhake, kaitiakitanga, or the Crown's duty to actively protect Māori interests. Nor does the Bill recognise collective rights, whānau-centred wellbeing, or the significance of whakapapa-based obligations to people and place. Yet these core concepts underpin how Māori engage with the regulatory state and have been repeatedly affirmed by the Waitangi Tribunal and New Zealand Courts.[13]

[13] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019); *Te Rautaki o Te Urewera* [2017] NZEnvC 8; see also New Zealand courts recognising tikanga in cases such as *Takamore v Clarke* [2012] NZSC 116.

22. In this context, the Bill does not support inclusive or future focussed regulation. Instead, it seeks to entrench a narrow economic ideology that privileges individual property rights over Tiriti, community wellbeing, and environmental integrity. A regulatory framework that systematically excludes Māori worldviews and values cannot credibly claim to serve the public interest or meet the standard of "responsible regulation".

Risk of Legal Action and Liability Falling on Māori

23. The RSB creates new avenues for legal challenge by allowing individuals or entities to assess and question whether legislation or subordinate instruments are consistent with the principles set out in clause 8 of the Bill. While this is framed as an accountability mechanism, in practice it could be used by well-resourced corporates to challenge or delay regulation that protects the environment, upholds Treaty rights, or advances collective wellbeing.

24. The introduction of a formal consistency assessment regime, and the elevation of regulatory principles into legislation, increases the legal risks for iwi authorities, Treaty settlement entities, and kaupapa Māori organisations operating within or alongside statutory frameworks. This includes Māori partners in co-governance arrangements, statutory boards, or those delivering devolved services in areas such as health, housing, or resource management. These entities may become targets of litigation or be exposed to downstream compliance, procedural, or litigation costs that arise from consistency challenges – even when they are not the originators of the regulatory rule.

25. This is especially concerning given the role of Māori in public decision making and service delivery. For example, iwi-led environmental management and kaupapa Māori health providers often operate under statutory instruments or delegated authority. The Bill would allow opponents of these models to contest the regulatory framework on which they rely – framing them as inconsistent with the "principles of responsible regulation" while sidestepping Treaty and tikanga considerations altogether.[14]

[14] See examples of such legal challenges in *New Zealand Māori Council v Attorney-General* [2013] NZCA 128 (regarding co-governance and Treaty protections); Waitangi Tribunal, *He Whakaputanga me te Tiriti – The Declaration and the Treaty* (Wai 1040, 2020).

26. The proposed compensatory provisions in the "taking of property" principle are particularly concerning in this regard as they provide that "the compensation is provided, to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment".[15] This potentially exposes a broad range of Māori organisations to the threat of compensatory claims for the protection of Tiriti-based rights with respect to te taiao, health, hāpori Māori and more.

Public and Māori Opposition Ignored

27. The RSB has been introduced in the face of overwhelming public and Māori opposition. According to the Ministry for Regulation's own Summary of Submissions, nearly 23,000 submissions were received during the consultation period. Of those, 88% opposed the Bill.[16]

28. Opposition came from a wide cross section of society, including iwi and hapū, Māori organisations, legal academics, community groups, and members of the public. 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. The Ministry of Regulation summarised this concern in clear terms:[17]

> *The majority of submitters, both individuals and organisations – expressed concern that the Bill would prioritise individual property and economic rights over collective rights and Treaty obligations.*

29. Despite this widespread and well articulated position, the Government proceeded to introduce the Bill into Parliament with no substantive changes to its core provisions. This not only reflects a disregard for public input, but also a failure to meet the standards of Treaty based engagement and democratic accountability. The Select Committee must take seriously the scale and content of this opposition. To ignore it would reinforce the very concerns the majority of submitters raised - that this Bill represents an attempt to reshape New Zealand's constitutional foundations without meaningful public dialogue or respect for Tiriti.

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[15] *See above at n 1*, at cl 8.
[16] Ministry for Regulation, *Summary of Submissions: Draft Regulatory Principles and Oversight Mechanism* (April 2024) at 3.
[17] *See above at n 16*, at 5.

Failure to Engage Appropriately

30. The Crown's approach to the development of this Bill reflects a failure to engage with Māori in a manner consistent with Te Tiriti o Waitangi. Despite the Bill's significant constitutional implications, the Crown undertook no targeted consultation with Māori before Cabinet made key decisions about its content. No attempt was made to co-design or seek early input into the proposed regulatory framework. This falls well short of the Crown's duty to act in good faith, to actively protect Māori rights and interests, and to ensure Māori participation in decisions that affect them.

31. This failure was confirmed by the Waitangi Tribunal in its urgent inquiry into the Bill. The Tribunal found the Crown's consultation process to be "fundamentally flawed" and in breach of the principles of Te Tiriti. It noted that the Crown chose not to engage in targeted consultation with Māori despite official advice to do so, and despite the strength and scale of concerns raised during public consultation by those representing Māori interests. Rather than pause or revise its approach in response to these findings, the Crown proceeded to introduce the Bill unchanged - a decision that reflects a disregard for both Tribunal recommendations and the Crown's partnership obligations under Te Tiriti.[18]

32. The Crown's conduct to date demonstrates a broader failure to uphold constitutional standards of democratic and Treaty-consistent engagement. It further undermines the legitimacy of the Bill and its alignment with constitutional best practice.

The Regulatory Standards Board

33. Although presented as a mechanism for regulatory oversight, the proposed Regulatory Standard Board lacks both independence and legitimacy. Board members are to be appointed solely by the Minister for Regulation, with no safeguards to ensure impartiality, transparency, or public accountability.[19]

[18] Waitangi Tribunal *Interim Regulatory Standards Bill Urgent Report* (Wai 3000, 16 May 2025) at [74], [79], [82]-[84].
[19] *See above at n 1,* cl 38; Ministry for Regulation *Preliminary Treaty Impact Analysis for the Proposed Regulatory Standards Bill* at [43]-[47]: Ministry for Regulation *Regulatory Impact Statement: Proposed Regulatory Standards Bill* at [54]-[56].

34. Critically, there is no requirement for Māori representation nor any obligation to include expertise in Te Tiriti, tikanga Māori or Māori legal frameworks – despite the fact that the Board's functions are likely to have significant implications for Māori rights, whenua, and governance arrangements.

35. In the absence of mandated Māori participation and Treaty expertise, the Board risks perpetuating structural exclusion. It will lack the credibility to assess laws that impact Māori communities and Treaty relationships and may entrench regulatory standards that marginalise Māori and Māori perspectives. This undermines the Crown's duty to ensure Māori participation in decisions that affect them and erodes confidence in the Bill's constitutional integrity.

36. Whilst the Board's recommendations are formally non-binding, the Bill compels Ministers to respond and justify any inconsistency with the regulatory principles set out in clause 8. This requirement is clearly intended to exert pressure on lawmakers and shift our constitutional culture of law making towards alignment with the prescribed standards. That these standards are non-binding should not obscure the fact that the Bill seeks to entrench a new set of normative benchmarks developed without Māori input, yet likely to constrain or override Māori rights and interests.

Conclusion

37. Te Hunga Rōia Māori opposes the Regulatory Standards Bill in its entirety. The Bill represents a serious constitutional overreach, seeking to entrench a narrow, ideologically driven definition of "good law-making" while excluding the foundational place of Te Tiriti o Waitangi, tikanga Māori, and collective Māori rights from its regulatory vision.

38. It departs from well-established legislative and constitutional practice by omitting Te Tiriti, failing to engage with Māori meaningfully, and disregarding overwhelming public and Māori opposition. It has ignored constitutional guidance, breached basic principles of Tiriti engagement, and dismissed the findings of the Waitangi Tribunal's urgent inquiry. The proposed Regulatory Standards Board also lacks the independence, cultural competence, and Treaty grounding necessary to function as a credible oversight body.

39. Hypocritically, the Bill undermines the very principles of good law-making it purports to advance, by proceeding without robust consultation, evidence-based policy development, or adherence to constitutional conventions. The process, like the Bill itself, fails to meet the standard of inclusive, Treaty-consistent, and democratic law making. The Bill is fundamentally flawed in purpose, structure, and effect.

40. Te Hunga Rōia therefore urges the Select Committee to reject and abandon the Regulatory Standards Bill.[20] Its passage would not only erode the constitutional status of Te Tiriti but could deepen existing inequities. Responsible regulation must begin with inclusion, integrity, and respect for the constitutional partnership between Māori and the Crown. This Bill fails that standard.

41. We would like to acknowledge the members of Te Hunga Rōia Māori o Aotearoa who contributed to this feedback. Please direct any pātai to Law Reform at lawreform@maorilawsociety.co.nz

Natalie Coates I Tai Ahu
Tumuaki / Co-Presidents
14 June 2025

[20] We also reaffirm the concerns and recommendations made in our feedback on the consultation document, attached as Appendix A to this document.

Appendix "A"

SUBMISSION OF TE HUNGA RŌIA MĀORI O AOTEAROA – THE MĀORI LAW SOCIETY

To: Ministry of Regulation
Re: The Proposed Regulatory Standards Bill ("**proposed Bill**")[21]

Context

1. Te Hunga Rōia Māori o Aotearoa (**Te Hunga Rōia**) was formally established in 1998. Since then, Te Hunga Rōia has grown to include a significant membership of Māori legal practitioners, parliamentarians, legal academics, policy analysts, researchers and Māori law students. Our vision is Mā te Ture, Mō te Iwi – by the Law for, for the People. One of our objectives is to promote law reform for Te Ao Māori in a manner that is consistent with Te Tiriti o Waitangi (**te Tiriti**)[22].

2. When making submissions, Te Hunga Rōia seeks to provide a kaupapa Māori based approach to legal analysis in its submissions on proposed law reform. Te Hunga Rōia does not attempt to represent all of the views of its constituent members.

3. Te Hunga Rōia welcomes the opportunity to make written submissions on the proposal to introduce the "Regulatory Standards Bill" (**RSB**).[23] Te Hunga Rōia wishes to be heard orally on this submission.

Introduction

4. The stated intention of the proposed RSB is to improve the quality of legislation by establishing fundamental principles for "responsible regulation". The concept of "regulation" effectively captures everything that Parliament and by extension the Executive does that influences the lives of people – not only passing primary and secondary legislation, but developing and reviewing policy proposals in the process of law creation. If enacted, any form of a RSB would have an extremely wide-ranging effect on how law is made in Aotearoa.

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[21] Ministry of Regulation *Have Your Say on the Proposed Regulatory Standards Bill* (November 2024).
[22] *Te Tiriti o Waitangi* 1840.
[23] *As above at n 1*.

5. Whilst the principle of "good quality law making" is commendable, it is already recognised and accepted as constitutional best practice. There have been multiple attempts to pass such a Bill, and the reasons for it having not passed remain valid. Further, official advice illustrates that the Bill is not required.[24] Aotearoa is already recognised as having a world-class regulatory system. Instead of addressing a legitimate policy problem, the proposed RSB instead is attempting to enshrine the particular neo-liberal political ideology propounded by the Act Party.

6. These principles favour select community interests, including businesses and private property, at the expense of other legitimate interests.

7. The proposed principles in the RSB discussion document do not include any reference to Te Tiriti o Waitangi. This deliberate omission marginalises Māori voices, undermines the Crown's constitutional obligations to Māori and disregards collective rights. Moreover, when they are practically applied, they have problematic consequences for our law.

8. The lack of engagement with Māori on the proposed RSB further reflects a disregard for the Crown's partnership obligations and suggests an approach that undermines the intent and spirit of Te Tiriti. The proposed Bill exemplifies the Crown's failure to uphold the agreement it entered with Māori under Te Tiriti.

Te Tiriti o Waitangi: No protection for Te Tiriti o Waitangi

9. The proposal does not include a clause related to Te Tiriti o Waitangi as part of good law-making. This appears to be an attempt to limit the established role of Te Tiriti as part of the law-making process. It indicates that Te Tiriti is simply not a significant consideration in good law making. The Ministry and Minister of Regulation were provided with advice warning the proposals contained in the discussion document did not include any principles relating to the Treaty/Te Tiriti and its role as part of good law-making.[25]

10. This omission appears at odds to established standards within the law and policy making process. The Cabinet Office Manual describes the Treaty as

[24] Ministry of Regulation *Preliminary Treaty Impact Analysis for the Proposed Regulatory Standards Bill* (2024) at [7].
[25] *As above at n 4, at 7.*

"an integral part of New Zealand's constitutional framework",[26] and provides that:[27]

a. The Treaty of Waitangi, which may indicate limits in our polity on majority decision making. The law sometimes accords a special recognition to Māori rights and interests, particularly those covered by Article 2 of the Treaty. And in many other cases the law and its processes should be determined by the general recognition in Article 3 of the Treaty that Māori belong, as citizens, to the whole community. In some situations, autonomous Māori institutions have a role within the wider constitutional and political system. In other circumstances, the model provided by the Treaty of Waitangi, of two parties negotiating and agreeing with one another, is appropriate. Policy and procedure in this area continues to evolve.

11. In fact, considering Te Tiriti as part of good law-making practice has long been orthodox. As noted by the Rt Hon. Sir Geoffrey Palmer, Cabinet recognised and agreed as early as June 1986 that all future legislation referred to it "should draw attention to any implications for the recognition of the Treaty of Waitangi".[28] This has appropriately been reflected in law-making practice.

12. We note, in particular:

a. The discussion document explains the current proposed principles are based on the previously attempted Regulatory Standards Bill 2021.[29] [30] The 2021 Explanatory Note of the RSB notes that its principles "are distilled from sources such as the *Legislation Design Advisory Committee Guidelines* (**LDAC**), the common law, and Parliament's Regulations Review Committee".[31] The proposed principles of the RSB continue to cherry pick from those sources. One of the primary purposes of LDAC in 2021 was to bring some clarity and consistency to Treaty considerations in legislation drafting. Part 5 of LDAC therefore sets out extensive guidelines on consideration of Te Tiriti in

[26] *Cabinet Manual* (2023 ed, Department of the Prime Minister and Cabinet, Wellington, 2023) at 155.
[27] *As above at n 6, at 23.*
[28] Palmer KC, Rt. Hon. Sir Geoffrey, Māori, the Treaty and the Constitution (June 12, 2013). Māori Law Review, June 2013, Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 28.
[29] As above at n 1, at 20.
[30] *Regulatory Standards Bill* 2021 (27–1).
[31] *Regulatory Standards Bill* 2021 (27–1) (explanatory note).

the development of legislation. It notes that "the development process of policy and legislation, as well as the final product, should show appropriate respect for the spirit and principles of the Treaty". [32] LDAC provides helpful and fairly detailed guidance on how legislation can comprehensively consider Māori interests, including "if legislation has the potential to come into conflict with the rights or interests of Māori under the Treaty, additional measures should be considered to ensure recognition of the principles of the Treaty or the particular rights concerned".[33] The proposed RSB principles continue to ignore these key principles from LDAC as well as common law developments that have emphasised the importance of Te Tiriti and tikanga.

b. Furthermore, the Cabinet Office itself asks policy makers to consider how a policy proposal demonstrates "good government within the context of the Treaty." It provides extensive guidance and asks questions, including whether policy "appropriately acknowledges the right of government to make laws with the right of Māori to retain authority over certain things".[34] Again, these appear to have been ignored by the Ministry of Regulation in the discussion document.

13. This fundamental disregard for Te Tiriti is extremely concerning and reflects the sentiment and approach taken by the government in the Treaty Principles Bill.[35]

14. The proposed omission of Te Tiriti marginalises Māori voices and interests. It also denies Māori the opportunity to contribute their values, knowledge, and perspectives to the development of a fair and inclusive regulatory framework. The refusal to embed Te Tiriti reference or principles into the proposed Bill widens the gap between the Crown's commitments under Te Tiriti and its actions in governance.

Critique of the Proposed Principles

15. The seven proposed principles outlined in the discussion document prioritise individual liberties, property rights, and economic efficiency, reflecting a neoliberal framework that disregards collective Māori rights and

[32] *Legislation Guidelines: 2021 edition* (Legislation Design and Advisory Committee, Wellington, 2021) at cl 5.
[33] *As above at n 6, at cl 5 Part 6.*
[34] Cabinet Office Circular CO 19(5) "Treaty of Waitangi Guidance for Agencies" (22 October 2019) at [27]–[28]
[35] *Principles of the Treaty of Waitangi Bill* 2024 (94–1)

values.[36] These principles not only fail to align with the obligations of Te Tiriti but also threaten to erode the protections and rights of Māori. Te Hunga Rōia remains concerned given the Ministry of Regulation have highlighted the principles for any proposed Regulatory Standards Bill are to be similar to that of the 2021 RSB.[37] Te Hunga Rōia therefore holds the following concerns if the principles are to remain the same or similar:

e. **Consistency with the Rule of Law**: The principle as articulated and defined emphasises legal clarity and equality. However, the need for substantive equality is becoming increasingly recognised. Substantive equality recognises historical injustices and systemic inequities, requiring proactive measures to achieve equitable outcomes for Māori. By focusing solely on formal equality, the principle ignores disparities and undermines the Crown's obligations under Article 3 of Te Tiriti.[38] Legal consistency must account for the status of Māori as Treaty partners and their distinct cultural and legal frameworks. Without explicit acknowledgment of these frameworks, the principle can become an instrument of assimilation, eroding the distinct rights Māori have fought for and contained in Te Tiriti.

f. **Property Rights Protections**: This principle prioritises the protection of individual property rights, but fails to recognise collective ownership and customary rights central to tikanga Māori. Such omissions disregard the cultural and historical significance of whenua to Māori communities. The elevation of individual property rights is particularly offensive in light of the Crown actions across the course of history to alienate Māori whenua and its associated resources. It is also ironic given the current efforts by the government to undermine Māori proprietary interests in the takutai moana. It appears as though only some property interests are worth protecting. More than simply being offensive, it is also problematic. The impact of any proposed principle contained in the RSB on legislation that refers to collective or customary title rights, such as the Marine and Coastal Area (Takutai Moana) Act 2011 and the Māori Land Act 1993, is unclear.[39]

g. **Taxation and Charges**: This principle reflects a neoliberal agenda that prioritises economic considerations over social and cultural

[36] *As above at n 1, at 20.*
[37] *As above at n1, at 20.*
[38] Article 3 of *Te Tiriti o Waitangi* 1840.
[39] *Marine and Coastal Area (Takutai Moana) Act* 2011.

obligations, limiting the government's ability to implement redistributive policies that address systemic inequities. Prioritised in a vacuum, this principle risks exacerbating disparities faced by Māori, perpetuating cycles of disadvantage and diminishing their capacity to achieve self-determination. By ignoring the collective nature of Māori, this principle could marginalise their unique socio-economic realities and needs.

h. **Liberties and Freedoms**: The principle emphasises individual liberties while failing to account for collective rights integral to Māori identity and governance structures. This narrow focus undermines protections for Māori cultural practices and legal frameworks rooted in tikanga. The principle ignores the relational nature of tikanga, which prioritises communal responsibilities alongside individual freedoms. This oversight diminishes the value of community-oriented governance central to Māori traditions and fosters an isolating individualism that disregards the interconnectedness of people and land.

i. **Good Law-Making**: Good law-making should include consistency with Te Tiriti o Waitangi. While the principle as proposed highlights the importance of consultation, it provides no guarantees for meaningful engagement with Māori. Tokenistic consultation falls short of the partnership standard required under Te Tiriti. The lack of a requirement for Treaty impact assessments in regulatory processes undermines informed and equitable decision-making, disregarding the intergenerational impacts of regulatory decisions on Māori. This absence reflects a failure to consider the long-term consequences of legislation on Māori rights and wellbeing, further entrenching systemic inequities.

j. **Regulatory Stewardship**: The Ministry of Regulation introduced this principle and indicated that this principle is likely to form part of any draft RSB. This emphasis on efficiency and minimising regulatory burdens does not account for the specific needs and rights of Māori. Effective stewardship must incorporate a Tiriti and tikanga centered approach that recognises the interconnectedness of people, land, and future generations. This principle risks perpetuating inequities rather than addressing them, further marginalising Māori interests in regulatory systems. Stewardship must actively include and elevate Māori perspectives to ensure the sustainability and inclusivity of

regulatory frameworks. Failing to do so will only entrench disparities and exclude Māori voices from shaping policies that affect their communities.

Recourse Mechanism – Regulatory Standards Board

16. The proposed recourse mechanism outlined in the discussion document allows individuals to challenge regulations that violate the proposed principles. While accountability mechanisms are vital, the limitations of this recourse mechanism raise significant concerns for Māori and all New Zealanders including the following:

    a. The absence of provisions ensuring Māori representation within the decision-making process undermines the principle of partnership and the Crown's duty to actively protect Māori interests. Without express representation, the process risks perpetuating exclusion and inequity.

    b. Further, the Minister of Regulation appoints the Members for the recourse mechanism. This is undoubtedly dangerous, given the individual Minister has the ability to select Members that align with their own or party agenda.

Conclusion

17. Te Hunga Rōia Māori strongly opposes any form of a proposed RSB.

18. The discussion document on the proposed RSB reflects a deliberate attempt to entrench a governance framework that prioritises economic efficiency and individual property rights over collective wellbeing and social equity. It is at odds with the holistic and intergenerational perspectives inherent in tikanga Māori, which emphasise the interconnectedness of our people, whenua, and future mokopuna.

19. Any form of a RSB not only disregards the foundational and constitutional partnership established by Te Tiriti but actively works against it, exacerbating the very disparities the Treaty seeks to rectify in modern times. By ignoring the principles of partnership, active protection, equity, and tino rangatiratanga, the Bill demonstrates disregard for the Crown's obligations to Māori. As a result, the RSB undermines the Crown's constitutional obligations. It fails to acknowledge historical injustices and perpetuates systemic inequities that disproportionately affect Māori communities.

20. Moreover, this approach reinforces the structural inequalities that the Treaty principles aim to address, leaving Māori further marginalised in New Zealand's governance framework.

21. The proposed RSB perpetuates a vision of governance that is antithetical to the principles of equity and justice. It represents a step backward in the Crown's relationship with Māori and a missed opportunity to create a more inclusive and equitable regulatory system.

22. Te Hunga Rōia Māori o Aotearoa seeks that the proposed RSB Bill does not proceed.