



# Te Wai Māori

TE WAI MĀORI TRUST'S RESPONSE TO CONSULTATION ON THE  
REGULATORY STANDARDS BILL



## Te Wai Māori Trust Response to Consultation on the Regulatory Standards Bill

### Introduction

1. This document is Te Wai Māori Trust's response to the Regulatory Standards Bill (the RSB).
2. Te Wai Māori Trust ('Te Wai Māori' / the 'Trust') was established under the Māori Fisheries Act 2004 to advance Māori interests in freshwater fisheries. Protecting Māori interests in freshwater fisheries ultimately means protecting ecosystems and habitat to ensure quality water and abundant species and empowering our people to uphold their responsibilities regarding freshwater fisheries. We are borne out of the Deed of Settlement reached between the Crown and Māori in 1992 (the 'Māori Fisheries Settlement') and are therefore an entity of Te Kāhui o Te Ohu Kaimoana (Te Ohu Kai Moana Group)<sup>1</sup>.
3. Te Wai Māori works on behalf of the beneficiaries of the Māori Fisheries Settlement, this includes iwi from throughout Aotearoa represented by 58 mandated iwi organisations ('MIOs'). MIOs are constituted under the Māori Fisheries Act 2004. Te Wai Māori Trust's response does not usurp or detract from any responses made independently by iwi or hapū, or any other pathway iwi and hapū may pursue to affirm their rights that may be affected by these proposals. However, given its statutory function Te Wai Māori Trust considers it appropriate to outline key areas of concern.
4. Te Wai Māori engages with a range of organisations and government agencies seeking to ensure that Māori rights and interests in freshwater are upheld and iwi and hapū are recognised in government processes and resource management decision-making.
5. To progress the statutory purpose and objectives of Te Wai Māori Trust we engage in statutory regimes that will be affected by the RSB.
6. Our response addresses:
  - (a) the background to Te Wai Māori Trust;
  - (b) our position in opposition to the Regulatory Standards Bill (**strongly opposed**);
  - (c) some background to the Regulatory Standards Bill;
  - (d) a statement of key matters of concern; and
  - (e) a recommendation that the Bill be abandoned.
7. Broadly, Te Wai Māori indicates its support for the findings in the Waitangi Tribunal's Interim Regulatory Standards Bill Urgent Report<sup>2</sup> and requests the Select Committee recommend the Bill

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<sup>1</sup> Alongside Te Ohu Kai Moana Trustee Limited as trustee of Te Ohu Kai Moana Trust and Te Pūtea Whakatupu Trust (which trades as Tapuwae Roa).

<sup>2</sup> Waitangi Tribunal, (2025), *The Interim Regulatory Standards Bill Urgent Report – Pre-publication Version*, Wellington: NZ, [https://forms.justice.govt.nz/search/Documents/WT/WT\\_DOC\\_230792542/RS%20Bill%20W.pdf](https://forms.justice.govt.nz/search/Documents/WT/WT_DOC_230792542/RS%20Bill%20W.pdf).

progress no further in the House.

8. We do not wish to be heard on this response (we would prefer time is afforded to iwi and hapū groups who wish to be heard orally).

### **Te Wai Māori Trust**

9. Te Wai Māori is an independent trust established under the Māori Fisheries Act 2004 (the 'Māori Fisheries Act'). The purpose of Te Wai Māori is to advance Māori interests in freshwater fisheries.<sup>3</sup> Te Wai Māori is also statutorily mandated to:<sup>4</sup>
  - (a) Undertake or fund research, development, and education related to Māori interests in freshwater fishing; and
  - (b) Promote the protection and enhancement of freshwater fisheries habitat in lakes, rivers, and other water bodies, particularly those that have traditionally supported iwi and whose shores have been the location of their marae; and
  - (c) Promote the establishment of freshwater fisheries; and
  - (d) Use its resources to bring direct or indirect benefit to Māori in respect of their freshwater fishing interests.
10. Our core values are te mana o te wai, whakapapa, and kaitiakitanga. These values stem from the natural order of the Te Wai Māori worldview and they guide our mahi. First and foremost, we value freshwater and all that is encompassed in its ecosystems. The inherent right for water in its natural and undisturbed state must be respected. Each water body has its own mauri. The species that inhabit our waterways also have their own mana. Whakapapa recognises our interdependence which binds us as tangata that share and cohabit the environment with other life forms; and kaitiakitanga, our obligation and responsibility to care for Papatūānuku, and the taiao.
11. Māori do not distinguish land from lakes, lagoons, rivers, wetlands, freshwater species and their associated beds. They are considered part of an undivided living whole. Ensuring the health and wellbeing of freshwater is essential for the continued health and wellbeing of freshwater fisheries. Healthy waterbodies are a direct source of mahinga kai for Māori and the use of mahinga kai is an important expression of cultural identity and values, passed down through generations.
12. Healthy freshwater fisheries depend upon the upholding of responsibilities to ensure the health and wellbeing of freshwater environments (including surrounding terrestrial and riparian habitats).
13. The long-term outcomes the Trust works toward include:
  - enhancing the health and wellbeing of indigenous fisheries and their environment;
  - increasing iwi and hapū capacity and capability in freshwater fisheries and their ability to take

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<sup>3</sup> See s 94 of the Māori Fisheries Act 2004.

<sup>4</sup> See s 95(b) of the Māori Fisheries Act 2004.

- responsibility for the health and wellbeing of freshwater fisheries;
- promoting and sharing indigenous fisheries expertise, knowledge and understanding; and;
- increasing the quality and range of information to iwi and hapū on freshwater fisheries and their interests thereof.

## Our Position

14. Te Wai Māori is **strongly opposed** to the Regulatory Standards Bill.

## Background

15. In November 2024, the Ministry for Regulation consulted on a proposal for the Bill through its discussion document “Have your say on the proposed Regulatory Standards Bill.” Submissions received through that consultation process helped further develop the proposal before the RSB was enacted.
16. The timeframes for this public consultation were extremely brief and coincided with the Treaty Principles Bill, placing an unreasonable burden on submitters, in particular iwi, hapū, Māori submitters, to respond to both policies. We consider there was a lack of substantive detail explaining the rationale for the Regulatory Standards Bill at that time. In addition, government documents (including the preliminary Treaty Impact Analysis) were heavily redacted. The redactions prevented Māori from understanding the advice that had been presented to the government in relation to consistency with Te Tiriti.
17. Officials advised the Minister for Regulation that inserting a te Tiriti/Treaty principle into the proposed Bill would be consistent with existing best practice guidance on law-making. Officials also recommended that any decision on the approach be developed in collaboration with iwi/Māori.<sup>5</sup> This advice was disregarded. The disregard for Te Tiriti o Waitangi is anathema to existing statutory and policy best practice. We note that the Cabinet Manual affirms that the Crown has an obligation to consider Treaty implications in policy and legislative development. In particular, the Cabinet Manual acknowledges the Treaty “may indicate limits in our polity on majority decision-making”.<sup>6</sup> Furthermore, the Cabinet Manual emphasises that Ministers “must draw attention to any aspects of a bill that have implications for, or many be affected by, (a) the principles of the Treaty of Waitangi”.<sup>7</sup>
18. Despite a number of constraints, the Ministry received 23,000 submissions on its discussion document. Submissions analysis showed that 20,108 submissions (around 88 per cent) opposed the proposal, including 114 made on behalf of iwi and/or hapū. Te Tiriti/the Treaty was raised in approximately 65% of all submissions.
19. On 5 May 2025, Cabinet agreed that the Bill be drafted for introduction to the House in mid-May 2025. The Regulatory Standards Bill was then introduced to the House of Representatives on Monday 19

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<sup>5</sup> Waitangi Tribunal, (2025), *The Interim Regulatory Standards Bill Urgent Report – Pre-publication Version*, Wellington: NZ, [https://forms.justice.govt.nz/search/Documents/WT/WT\\_DOC\\_230792542/RS%20Bill%20W.pdf](https://forms.justice.govt.nz/search/Documents/WT/WT_DOC_230792542/RS%20Bill%20W.pdf), p 8. Ministry for Regulation ‘Briefing Paper: The Regulatory Standards Bill and the Treaty of Waitangi’ 13 September 2024.

<sup>6</sup> Cabinet Office Manual 2023, page 2.

<sup>7</sup> Ibid at [7.68].



May 2025. This Bill is derived from the commitment in the New Zealand National – ACT New Zealand coalition agreement to pass a Regulatory Standards Act to ‘improve the quality of regulation.’

20. The principles of responsible regulation are listed in clause 8 of the RSB. They are centred around individual property rights, liberties, not taking or impairing other people’s property, minimising government spending and taxes and working out who bears the cost and economic benefit of any legislation. The principles are based on extreme free-market, neo-liberal ACT Party values that override other social and political imperatives, such as environmental protections, climate change, community wellbeing, social equity, Māori rights and interests and broader human rights considerations. They put private property rights over and above other universally accepted standards of good lawmaking.
21. The stated intent of the Regulatory Standards Bill is to create a new set of principles by which every law and piece of regulation (including secondary law such as decisions of councils) can be assessed against to ensure consistency with these principles. Our key concerns are covered in more detail below.

## Key concerns

### Inadequate policy process

22. Te Wai Māori supports the Waitangi Tribunal’s findings in Wai 3470 the Interim Regulatory Standards Bill Urgent Report released on Friday 16 May 2025. This was issued in response to a number of claims made in January 2025, including the Wai 3440 claimants, who represent the Toitū te Tiriti movement.
23. The Tribunal noted that the Crown is required to conform to the principles of good government when exercising its kāwanatanga powers. Specifically the Crown is required to engage in transparent policy making, in partnership with Māori. This is especially true for constitutionally significant policy.<sup>8</sup>
24. There was no targeted consultation with Māori on the proposed Bill despite official advice and the strength and scale of concerns raised through the public consultation process by those representing Māori interests. The Minister of Regulation refused to engage with Māori prior to public consultation on this policy against the advice of his own officials.<sup>9</sup> The Tribunal found that the Crown’s actions in progressing the Bill without targeted and meaningful engagement with Māori, was in breach of the te Tiriti principle of partnership and violated its obligations to consult with Māori in good faith.
25. The Tribunal also found that by progressing the policy in the face of clear opposition by Māori and concerns raised by officials regarding the constitutional significance of the proposed Bill constituted a breach of the principle of active protection. As noted above, almost 90 per cent of submissions on the discussion document did not support the proposals in the document. Alarming, the submissions analysis process saw officials ‘qualitatively analyse’ only 939 submissions of the almost 23,000 lodged. There is a real risk therefore that submissions in the policy development stage can and will be ignored by the Crown.

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<sup>8</sup> Waitangi Tribunal, (2025), *The Interim Regulatory Standards Bill Urgent Report – Pre-publication Version*, Wellington: NZ, [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_230792542/RS%20Bill%20W.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_230792542/RS%20Bill%20W.pdf), p 8.

<sup>9</sup> Wai 3470, p 8.

26. The policy process used to develop the Bill is in breach of the Treaty principles of good government, partnership, and active protection. The RSB has been introduced to the House despite overwhelming opposition in the absence of meaningful and targeted consultation with Māori. The policy process used to develop the Bill is therefore in breach of the Treaty principles of good government, partnership, and active protection.<sup>10</sup>
27. The Tribunal also found that these breaches have caused significant prejudice to Māori and the Crown's actions have demonstrably damaged the relationship between Māori and the Crown.
28. Te Wai Māori has fundamental concerns about the way in which the RSB has been developed at speed, without appropriate consultation and engagement with iwi and hapū, and with inadequate opportunity for public scrutiny.

#### **Impact on constitutional arrangements**

29. Regarding the substance of the Bill, the Tribunal found that (if enacted), the Bill would be of constitutional significance, as it seeks to influence the way Parliament makes law, and therefore is inherently relevant to Māori.
30. Te Wai Māori agrees with the Tribunal's finding that the three aspects of the Bill that are most concerning:
  - (a) The potential impact of the Bill on Aotearoa New Zealand's constitutional arrangements, specifically its creation of a 'regulatory constitution.'
  - (b) The lack of an exemption in the Bill for Treaty-related legislation (beyond Treaty Settlement legislation), as well as the lack of a Treaty of Waitangi legislative design principle; and
  - (c) The inclusion of a 'rule of law' legislative design principle that includes the subprinciple that 'every person is equal before the law.'<sup>11</sup>
31. In our view, it should be made clear that the Māori Fisheries Act is an 'excluded Act' under the Bill, and therefore not subject to periodic reviews. The Māori Fisheries Act is not listed in Schedule 3 of the Treaty of Waitangi Act. While the Māori Fisheries Act "completes implementation of the agreements in the Deed of Settlement between the Crown and Māori in respect of Māori claims to commercial fisheries", it is not entirely clear whether it provides "redress for Treaty of Waitangi claims" - the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 gave effect to the Deed of Settlement and settled fisheries claims brought by Māori as opposed to the Māori Fisheries Act, and section 20 of the Fisheries Act 1996 is the mechanism that provided for allocation of 20% of settlement quota.
32. The Waitangi Tribunal in its report noted that the Bill is of specific interest for Māori given its constitutional significance and the relevance of kāwanatanga and tino rangatiratanga to the process of law-making.
33. The Regulatory Standards Bill is not just regulatory – it shapes how future laws are made, potentially altering Aotearoa New Zealand's legal framework without fully accounting for Māori rights. The Bill

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<sup>10</sup> Wai 3470, p 29.

<sup>11</sup> Wai 3470, p 18.

effectively creates a 'regulatory constitution' by designing a partially entrenched legislative framework with which all new (and existing) legislation is expected to comply, unless an exemption is granted. The Bill elevates the principles of responsible regulation (which represent the ACT Party's libertarian views) and requires legislation and policy to be constitutionally considered against those particular values.<sup>12</sup>

34. The Bill's principles serve as the ideological measuring stick against which all legislation must be measured. A resulting possible effect of the RSB is 'regulatory chill' where governments will be pressured against making laws to protect people, the environment or indigenous rights.
35. The principles are fundamentally at odds with the te Tiriti principles developed by the Tribunal and courts over the last 50 years. The RSB will create legal and procedural barriers for advancing policies that seek to give effect to obligations under te Tiriti.

### **Insufficient Treaty safeguards**

36. Exemptions for Treaty settlement legislation in the RSB are insufficient. Māori rights extend beyond settlements into various legal domains that this Bill could affect.
37. The principles of responsible regulation and regulatory stewardship in Part 2 of the RSB omit any reference to Te Tiriti o Waitangi despite recommendations by officials that a 'regulatory responsibility principle' recognising the Treaty be included<sup>13</sup> and raising concerns about the Bill's chosen 'good law-making' principles.
38. The omission of Te Tiriti and in fact any reference to Māori rights and interests, coupled with the emphasis on individual rights and liberties and equality before the law, risks disrupting existing relationships between the Crown and Māori. For example, these principles could be interpreted to prevent Māori participation provisions under the Resource Management Act or other environmental initiatives designed to provide for Māori involvement and participation. For example, Mana Whakahono-ā-Rohe, the section 33 transfer of powers under the RMA, and Joint Management Agreements. The Bill could not only be used to justify removing Māori from environmental decision-making processes, but also, it could stymie any future consideration for inclusion, thereby limiting the ability of iwi and hapū to take responsibility for the health and wellbeing of freshwater fisheries.

### **Failure to recognise systemic inequities**

39. The Regulatory Standards Bill establishes a set of principles by which lawmakers are required to assess primary and secondary legislation – both current and future. This includes a 'rule of law' principle in clause 8(a) that has a subprinciple that every person is equal before the law.
40. The concept that every person is equal before the law fails to acknowledge the systemic inequities that Māori have experienced. The Tribunal emphasised the particular importance of the principle of equity in its inquiry. It was noted that the emphasis on formal equality failed to acknowledge that equal treatment does not create equal outcomes, especially when there has not been equality from

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<sup>12</sup> Wai 3470, p 19.

<sup>13</sup> Wai 3470, #3.1.23, p 1.

the outset.<sup>14</sup>

41. The Crown has an all-important obligation, in the context of a long and painful history of colonisation, to actively pursue equitable outcomes for Māori.<sup>15</sup> This principle could undermine affirmative action policies, making it harder to enact laws that address inequities Māori face.

#### **There is no issue that requires the intervention of this Bill**

42. The Bill does not address a policy problem, there is no societal or government challenge that requires the intervention of this Bill.
43. The stated policy problem the RSB is seeking to address is that the quality of regulation in Aotearoa New Zealand is poor. This contradicts assessments of regulatory quality by the World Bank and the rule of law by the World Justice Project where this country ranked well above the global average.
44. There are already governmental measures in place to promote good law-making and legislative/regulatory design. These measures were informed by decades of government practice and convention. There are other existing quality assurance measures for law-making that include Regulatory Impact Statements and the Legislation and Design and Advisory Committee (LDAC) as an independent advisory body.<sup>16</sup>

#### **Proposed powers of the Regulatory Standards Board**

45. The Regulatory Standards Bill will establish a Regulatory Standards Board (the Board) as an “independent” panel tasked with considering how legislation measures up to the principles defined in the RSB. Like the Waitangi Tribunal, the Board would have the power to make non-binding recommendations on proposed legislation, although lawmakers will be strongly incentivised to keep legislation in line with these principles.
46. Dr Carwyn Jones (as a claimant to the Waitangi Tribunal)<sup>17</sup> argued that the proposed powers of the Board were hugely concerning. Noting that the legislative design principles are ‘fundamentally at odds’ with the te Tiriti principles and noted parallels between the jurisdiction of the Board and the Waitangi Tribunal. The Board would be able to assess all existing regulation and legislation (barring the relevant Treaty Settlement exemptions) with the new principles, issuing non-binding recommendations. He noted that the requirement of the Minister to then respond to the finding of the Board goes further than the Tribunal’s jurisdiction. We are concerned that the RSB would have a chilling effect on the inclusion of Treaty provisions in existing legislation.
47. The Board will have sweeping powers to enquire into new and existing legislation and have the discretion to pick and choose as it goes. Overall, the swathe of legislative reform introduced by this

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<sup>14</sup> Wai 3470, p 9.

<sup>15</sup> Wai 3470, #A10, p 7.

<sup>16</sup> Wai 3470, p 10.

<sup>17</sup> Wai 3470, #A10, p20.



coalition Government, including the RSB, represents a powerful constitutional shift that undermines collective interests, environmental protection and Te Tiriti o Waitangi.

### **Environmental safeguards are removed**

48. Freshwater in this country is already severely degraded and many of our indigenous freshwater fish species are threatened with extinction. There are major risks pending from climate change and the cumulative and legacy effects from intensified land development and resource use. In an effort to address these issues and to progress our statutory purpose and long-term objectives, Te Wai Māori Trust engages across a range of statutory regimes that will be affected by the RSB. This includes the Fisheries Act, Biosecurity Act, Conservation Act and Resource Management Act. Subjecting these statutory regimes to a review against the principles outlined in the RSB will distort both their underlying purpose as well as how we engage in those regimes.
49. The proposed principles of responsible regulation and regulatory stewardship in the Bill undermine critical environmental values, such as ecological integrity and biodiversity. The increased weighting of principles that protect a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property could exacerbate existing environmental issues. This includes degradation of freshwater bodies and threatened ecosystems and adverse impacts on indigenous species and human health.
50. The Regulatory Standards Bill will have a direct impact on the social, cultural and economic wellbeing of iwi and hapū, including the exercise of kaitiakitanga – the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations.

### **Recommendation**

51. Te Wai Māori recommends the Regulatory Standards bill is abandoned.



Nāku noa, nā  
Carly O'Connor

**Wai Puna | General Manager – Te Wai Māori Trust**

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