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By email: RSBconsultation@regulation.govt.nz.

Submission on the Regulatory Standards Bill Proposal

Tēnā koe

Tōpūtanga Tapuhi Kaitiaki o Aotearoa, New Zealand Nurses Organisation (NZNO) is the professional union representing more than 60,000 nurses, midwives, students, kaimahi hauora and health workers. NZNO embraces Te Tiriti o Waitangi and contributes to the improvements of the health status and outcomes for all Aotearoa New Zealand (NZ) through influencing health, employment, and social policy development.

1. Introduction

- 1.1 NZNO acknowledges the need for regulation standards that are bench marked internationally and a process to monitor and audit regulatory quality and performance.
- 1.2 NZNO opposes the proposed the Regulatory Standards Bill on the grounds that it breaches the Treaty of Waitangi/te Tiriti o Waitangi (te Tiriti) because it removes the obligation of Ministers to consider te Tiriti when drafting laws and setting regulation.
- 1.3 The discussion document contends that 'poor productivity can be traced to poor regulations'¹. Poor productivity can equally result from *lack* of regulation.
- 1.4 NZNO is concerned this proposed Bill represents a scaling up of private sector incursion into public sector responsibilities via the proposed Regulatory Standards Board which would be appointed by the Minister.
- 1.5 The current government has shown a consistent willingness to disregard or dismiss as irrelevant the advice of officials and experts in their field when it comes to matters of public policy. Ignoring expert advice and rushing the legislative process results in poor regulation.
- 1.6 We agree that "Any regulator should have the capacity and capability to perform its functions effectively". However, as with other parts of the proposed Bill, this stated intent is completely at odds with the government's recent actions including severe cuts to the public sector undermining the ability of numerous regulators to perform their functions effectively.
- 1.7 The increased compliance burden that the Bill will load onto public agencies will redirect scarce resources away from the delivery of services that New Zealanders actually require. Empowering agencies to review the regulations they are responsible for is essential as long as they are properly resourced to do so.

2. Treaty of Waitangi/te Tiriti o Waitangi (te Tiriti) breaches

- 2.1 The Ministry for Regulation's own [Preliminary Treaty Impact Analysis](#) says te Tiriti is: "recognised as a founding document of government in New Zealand and of vital constitutional importance".

¹ <https://www.regulation.govt.nz/assets/Publication-Documents/Have-your-say-on-the-proposed-Regulatory-Standards-Bill-final.pdf>

- 2.3 The analysis raises concerns that the proposed Bill won't include a reference to a te Tiriti principle. It says it is "effectively silent about how the Crown will meet its duties under the Treaty/te Tiriti" in law-making and "could be perceived as an attempt by the Crown to limit the established role of the Treaty/te Tiriti as part of law-making".
- 2.4 The Ministry's analysis identifies three te Tiriti concepts of particular relevance to the proposed Bill; kāwanatanga, tino rangatiratanga and equity. The concept which is specifically relevant to health and NZNO's members is that of equity. As stated in the analysis:
- "Where disadvantage did occur, the principle of equity, along with those of active protection and redress, required that there be active intervention to restore the balance."***
- 2.5 NZNO is concerned that omitting a requirement for the te Tiriti principle of equity to be considered in law-making will prevent legislation aimed at reducing health inequities faced by Māori and will therefore disadvantage tāngata whenua.
- 2.6 The Ministry of Regulations own analysis references [Cabinet Office Circular CO \(24\)513](#) as finding: "Where there is good evidence there is a disparity in outcomes for Māori populations, services targeted to Māori populations may well be appropriate." The Waitangi Tribunal's WAI 2575 Kaupapa Inquiry report that found substantial and persistent disparities exist between the health of Māori and non-Māori, with Māori life expectancy being seven years lower than non-Māori.
- 2.7 The application of the te Tiriti principle of equity has enabled the development and passing of legislation to address Māori health inequities. The Pae Ora Act 2022 is the Government's legislated intention for the provision of health care services. One of its stated aims is "ensuring Māori and other population groups have access to services in proportion to their health needs" and that the health sector should take measures to "protect and improve Māori health and wellbeing".
- 2.8 The Pae Ora Act also legislated the role of Iwi Māori Partnership Boards (IMPBs) to "[play a crucial role](#) in advancing their tino rangatiratanga aspirations that ensure the health needs and priorities of Māori communities are met". The Coalition Government has recognised the value of Māori and iwi-led health services provision by continuing IMPBs, with Minister of Health Dr Shane Reti saying they are part of his "[long-term vision for Māori health](#)".
- 2.9 Omitting a reference to the te Tiriti principle of equity is contrary to the Pae Ora Act and the Coalition Government's own goals for improving Māori health.

3. Collective v Individual Rights

- 3.1 In the tension between collective rights and individual rights, the Bill, as proposed through the discussion document, errs firmly on the side of the primacy of individual and property based rights. It intends to ensure that the regulatory power of elected government is to

favour these individual rights in all circumstances. Where the primacy of individual rights is to be overridden, it would appear this is to be accompanied by a 'please explain'.

- 3.2 The careful checks and balances between individual and collective rights necessary in any democratic society are to be tilted in favour of individual rights. Collective rights are to be the subject of exception and explanation. The default is individual rights.
- 3.3 Therefore as societies come to grapple with issues and matters that affect society generally, individual rights and property rights will have primacy unless they fit one of the exceptions being discussed in the proposal.
- 3.4 This is particularly concerning in a number of areas. Health is a good example.
- 3.5 Our health system by and large is a public health system. The reason for this is that previous health systems were essentially private and were failing New Zealanders except for the rich. The Labour Government in the late 1940s, in recognition of this failure introduced what is largely the current system.
- 3.6 In those circumstances, the collective right to an effective public health system in NZ overrode provision by private interests and still does that. Under the provisions of the proposal, private interests would be able to contest the public provision of health based on the '...taking or impairing...' of their property in the provision of health. Our health system would quickly be undermined.
- 3.7 The crisis of our primary and community health system (the 'frontline') which is largely privatised is good evidence of how the primacy of private individual interests as favoured in these proposals, works to the detriment of the overall health of New Zealanders.
- 3.8 Climate change is one of these areas where the proposed Bill would impact negatively. Necessary measures to address climate change are often contentious as they are seen to override individual rights to pollute and consume at will.
- 3.9 Social initiatives will also be at risk. For example the provision of social housing. To a greater or lesser degree, ensuring appropriate, affordable and adequate housing is seen as a societal good. It has a long tradition in this country. There is a consistent market failure to provide this. No doubt however the continued provision of social housing would be opposed by individuals claiming that it interferes with an individual right that their provision of housing should be at prices based on supply and demand. In these circumstances the 'impair' test set out in the proposed principle relating to property would clearly apply.
- 3.10 The tension between collective and individual rights plays out clearly in employment law. The overwhelming swing towards individual rights encompassed within the Employment Contracts Act in the 1990s saw terrible damage to individual workers and their families as wages were slashed and other rights contained in employment contracts were cut back as individual workers were left to face corporation power.

- 3.11 The Employment Relations Act has gone some way to correcting this with the restoration of some better balance between collective and individual rights. The proposed legislation would have the effect of shifting the balance back to individual rights and obligations, particularly in the setting of wages and conditions.

4. Operation of the Proposed Legislation

- 4.1 The proposal explores the concept of a Regulatory Standards Board and sets out a range of possible tasks for the Board. It is proposed that the Board be composed of political appointees. It is difficult to understand why a proposal to simplify regulation and build in transparency and certainty ends up arguing for yet another public sector board, especially when existing mechanisms can either do this work or could be entrusted with this work.
- 4.2 The powers envisioned for the Board are extensive. In some ways it is a quasi judicial authority. It is difficult to imagine, given the tenor of the proposed legislation, (it is to be set up to hear complaints about inconsistency with the principles) that it would have anything other than a deregulatory bias.
- 4.3 It is further proposed that the Minister of Regulation have extensive powers to issue guidelines about the consistency of proposed and existing legislation. This includes ‘.. further information on how the principles should be interpreted and applied.’ This is a dangerous extension of the unchecked powers of the Minister. In effect it is inconsistent with the principles of the proposed legislation.

5. Conclusion

- 5.1 NZNO opposes the proposed the Regulatory Standards Bill on the grounds that it removes the obligation of Ministers to consider the Treaty of Waitangi/te Tiriti o Waitangi when drafting laws and setting regulation and is therefore a breach of te Tiriti itself.
- 5.2 Omitting a reference to the te Tiriti principle of equity is contrary to the Pae Ora Act and the Coalition Government’s own goals for improving Māori health.
- 5.3 If efficiency is the driver for this proposal the existing regulatory oversight mechanisms could be reviewed instead of developing the Regulatory Standards Bill which would give unchecked powers to the Minister of Regulation and undue influence to a Regulatory Standards Board appointed by the Minister.
- 5.4 NZNO recommends that *no* further work on the Regulatory Standards Bill should be undertaken and supports the NZCTU submission of which it is an affiliate.

Nāku noa nā

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Kaiwhakahaere