

23 June 2025

Finance and Expenditure Committee

via e-mail: RegulatoryStandardsBill@parliament.govt.nz

Submission on Regulatory Standards Bill

Introduction

1. Energy Resources Aotearoa is New Zealand's peak energy sector advocacy organisation. We represent participants from across the energy system, providing a strategic sector perspective on energy issues and their adjacent portfolios, such as sound regulatory frameworks. We enable constructive collaboration to bring coherence across the energy sector through and beyond New Zealand's journey to net-zero carbon emissions by 2050.
2. The energy and resources sector has seen regulatory processes severely let down the industry and New Zealanders, with harmful and long-lasting results. We strongly support steps to improve the quality of new and existing regulations in New Zealand.
3. This document constitutes our submission on the [Regulatory Standards Bill](#) ('the Bill'). We have focused on key areas that affect the energy and resources sector. We have grouped our feedback under four headings that represent how the Bill will achieve its purposes. We make recommendations at the end of each of these sections that we think will improve the Bill.
4. We would welcome the opportunity to present our submission to the Committee.

Key messages

5. We strongly support the Bill, on the whole. It presents a positive step, within a broader suite of actions needed, to address the fundamental issues with our regulatory systems and practices. There is nothing in this Bill that should scare or threaten any New Zealander; rather, it seeks to entrench good regulatory behaviour. The Bill seeks to clarify existing rights and limit state power to take

those rights without consultation and compensation. It mirrors the discipline we have for our fiscal arrangements.¹

6. Our sector has been let down by the current design of regulatory institutions and practices. Too often, legislation has been enacted in haste, without adequate consultation and due regard for its consequences.
7. This has resulted in significant investment uncertainty for our sector. However, hope is on the horizon. Reform is underway for resource management, covering consenting and other barriers to investment, and this Bill will add to the coherence of the regulatory landscape.
8. Our key area of concern is the issue of compensation for regulatory-induced losses or 'takings'. This occurs when the government forces the expropriation of returns by regulatory fiat. Sovereign risk arises from two angles: the retrospective taking of rights, or the damage inflicted on existing rights by the government breaking the promise under which businesses invest – that today's investment will be kept whole tomorrow.
9. The issue of compensation for regulatory takings has not been addressed in this Bill and we recommend that an additional clause be considered by the Committee. Thresholds for any compensation should be considered.
10. The Bill, if passed, will set the foundations, but there is also a scattering of existing public policy guidelines that need to be brought into a coherent body. Those working on regulatory stewardship need clear roles and responsibilities, less blurred lines, and overall coherence is needed for the law-making process. This Bill should clarify those roles.

Submission

11. Energy underpins a thriving economy. The sector needs stable and predictable regulatory settings, regulation that caters to its specific needs, and adjacent sector regulation, such as climate and forestry, that *supports* rather than *undermines* the core energy sector goals to deliver secure and affordable energy.
12. Poor regulation has left New Zealand with an energy shortage. By way of example, the offshore gas ban in 2018 chilled investment. Our energy security has suffered and the massive sovereign risk now faced is a significant barrier to future investment. Energy prices have risen. Industrial gas users have faced difficult decisions, such as closure or a decrease in output as a result. It has understandably proven exceedingly difficult to switch off a ubiquitous fuel like natural gas and use an alternative fuel. The nation's net worth suffers from this ban and so do our regions.

¹ The Public Finance Act 1989 was introduced to bring discipline and clarity to public financial management, ensuring transparency, accountability, and effective use of public resources.

13. The offshore gas exploration ban of 2018 created a specific, intense strain of sovereign risk that has impacted throughout the energy sector. This is exacerbated by pronouncements from the opposition that they will return the ban if they resume government. It is important to outline that restricting access to future exploration inflicted targeted harm on *existing* petroleum investments whose current rights were supposedly protected under the ban. They faced a massive discontinuity in their operating context, fundamentally altering the economics of their investments, and many other investments in the energy sector and our industries who relied on the steady flow of natural gas.
14. On top of this, the government that banned petroleum exploration also introduced further sovereign risk by backing the \$16 billion Lake Onslow project, subsidising chosen decarbonisation projects, and pledging to reach an unattainable '100% renewable electricity target by 2030'. Combined, these policies created significant uncertainty for investors interested in new generation and very little new generation was brought online during that time. New Zealand is now faced with a critical shortage of firmed generation – there are billions being invested in new energy generation, but none of it is firmed.²
15. A well-functioning, high performing regulatory environment would have transparently assessed the pros and cons of taking such a course of action. We support the Bill because it should make some steady improvements to regulatory quality to avoid this sort of situation happening in future.

Purpose one: providing a benchmark for good legislation through a set of principles of responsible regulation

16. We support the idea behind principles guiding the making of regulation. They should provide for a balanced system of law, with each law having a specific purpose and only that purpose. As drafted, the principles in this Bill are largely sound, however there are two areas we think they could be improved.

Property rights

17. Property rights are at the core of an economy and are the basis for an exchange between willing buyers and sellers. For centuries, property rights have protected ordinary people against governments taking homes, liberties and titles. These rights ensure that what you have and earn remains yours. By doing so, living standards have increased overall and there has been a growing demand for tradable goods and services.
18. The untold truth of the 2018 ban on offshore gas exploration is that it did not leave existing permits unaffected – in reality, the ban led to investor flight. Only

² 'Firming' refers to the needed thermal or other long-term flexible back-up fuel that covers the intermittency risk of renewables like wind and solar and hydro when the weather does not deliver the required power. Firming is needed for peak demand periods, and most often, in winter.

nine of the 25 investors active in 2018 remain. Permits were handed back, and no investment was possible in new field exploration after that date.

19. Due to the lack of respect for those private property rights New Zealand has faced seven and a half years of being an uncertain place to invest and is now swinging from energy crisis to energy crisis.
20. **We recommend** that the Bill explicitly define property rights under clause 8 (c) to include the future possibility for investment, such as is implied in a contract or permit, or intellectual property. Linkages could be drawn to the way property rights have been described under the latest RMA reforms.

Compensation for regulatory takings by government

21. In our last submission, we raised the concept of compensation. We believe clause 8 (c) does not go far enough:

8 Principles of responsible regulation ...

... Taking of property

- (c) legislation should not take or impair, or authorise the taking or impairment of, property without the consent of the owner unless –
 - (i) there is a good justification for the taking or impairment; and
 - (ii) fair compensation for the taking or impairment is provided to the owner; and
 - (iii) the compensation is provided, to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment.
22. There needs to be an additional subclause in clause 8 (c) to compensate for the government taking property and restricting its use beyond what is reasonable risk that a business can internalise. Regulatory takings unjustifiably undermine the worth of property.
23. **We recommend** that the Bill include a clause 8 (c) (iv) for compensation of regulatory takings by government.

Purpose two: providing for the transparent assessment of the consistency of purpose and existing legislation with the principles

Consistency of existing legislation with the principles

24. We support the approach outlined in the Bill to review and assess consistency and compliance with the principles, especially as this relates to existing legislation.
25. However, a mere statement from the responsible Minister to 'briefly explain the reasons for that inconsistency' is a poor accountability mechanism. This is particularly true when the responsible Minister is likely to have changed several

times, and colours of government, since the making of existing legislation in question.

26. For that reason, we think the Bill could be improved upon by strengthening the compensation clause to clarify that compensation should not be taken away by future governments, such as we have seen in the debate around industrial allocations for energy intensive firms, who were compensated (not subsidised) for the regulatory taking of their internationally competitive advantages with the introduction of New Zealand's Emissions Trading Scheme.
27. **We recommend** the Bill clarify that compensation (also a property right) not be removed through regulatory taking, in such a way that it is consistent with the principles in clause 8.

Purpose three: establishing a Regulatory Standards Board to independently consider the consistency of proposed and existing legislation in response to stakeholder concerns, Minister for Regulation direction, or on its own accord

28. Good regulatory stewardship also addresses blurred lines of accountability and unclear objectives. Every part of the system needs to have clearly defined (and easy to understand) roles and responsibilities.
29. We are very supportive of the complaints mechanism that would be established through this Bill. We have a democratic process for public involvement in the making of laws, through the Select Committee, but it is much more difficult for the public to have their say on law once it has passed. The undoing of past harms is much harder than avoiding harm in the first place.
30. For this reason, we support the establishment of the Regulatory Standards Board with some caveats. Our key cautions are that this board needs to be stood up with least cost to the public, and that appointments are not politically motivated. Any risk that the Board could potentially interfere with the balance of powers between the executive, the legislature, and the judiciary must be managed. There should be consideration for holding the Board to account for its decisions and dissolving it in future.
31. **We support** the establishment of a Regulatory Standards Board on the conditions that:
 - a cross-party process should be used to make the appointments to reduce the real or perceived risk of politically motivated appointments; and
 - consideration is given to how a board might be held to account for its decisions and dissolved in future, if that is decided to be the best outcome.

Purpose four: strengthening regulatory quality by supporting the Ministry of Regulation in its regulatory oversight role

32. Law making, like policy making, is a craft. There is already a large body of public policy and law-making materials that guides us, such as those mentioned in the discussion document and those suggested in our previous submission on this topic. [link]
33. The Ministry for Regulation is well situated within government to carry out a coordination function, bringing together the suite of policy making tools that guide best practice. At present, they are scattered across a range of locations and are not always easy to access or make sense of.
34. The wide variety of policy tools available can be opaque and they can even be conflicting with each other. Some guidance and cohesion would be welcomed by most policy makers.
35. **We recommend** the Ministry for Regulation acts as a conduit and coordination point for collating and communicating existing public policy advice and quality assessment materials, many of which already exist but could be made more coherent and easier to use.

Concluding comments

36. The Bill is a much-needed opportunity to put right the past performance of our regulatory system and make justifiable improvements, both to new, and existing legislation.
37. With sound public policy and economic principles, and with clear roles and responsibilities for those involved, New Zealand will benefit from the changes in this Bill.
38. We would be happy to present our submission to Select Committee.