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Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington

Tēnā koe,

Submission from the Manawatū District Council on the Regulatory Standards Bill

The Manawatū District Council (MDC) thanks the Finance and Expenditure Committee for the opportunity to provide feedback on the proposed Regulatory Standards Bill. We acknowledge the Bill's aim to improve the quality of regulation and enhance transparency and efficiency in law-making processes. As a local authority, we have a strong interest in regulatory stewardship as we create and administer bylaws and regulations that impact our community daily. MDC endorses the objective of eliminating poor quality regulation and ensuring regulations are fit for purpose. As territorial authorities continually strive for efficient regulation at the local level, we appreciate central government's focus on regulatory reform.

Broadly, MDC considers that the idea of a set of regulatory principles against which new and existing legislation is measured is sound in principle, but this has to be done right - to enable the illumination of whether regulations respect core tenets such as the rule of law and personal rights. Further, increasing transparency about whether legislation meets accepted standards of 'good law making' can bolster public trust. MDC supports the aim of making it clearer when legislation (including delegated legislation does not meet the quality standards, as a prompt for improvement.

MDC, however, raises the following concerns regarding the proposed Bill:

Is the Regulatory Standards Bill a Necessary Reform?

MDC questions the necessity of the Regulatory Standards Bill given the extensive legal and institutional frameworks already in place to ensure high-quality lawmaking in New Zealand. Instruments such as the Cabinet Manual, Legislation Guidelines, Regulatory Impact Assessments, and parliamentary scrutiny processes already embed standards for clarity, transparency, rights protection, and legislative justification. These mechanisms provide both accountability and quality assurance without the need for an additional legislative framework.

The Bill's non-binding nature raises further questions about its utility. If Parliament remains fully sovereign and may legislate inconsistently with the principles, the added legal infrastructure may risk becoming a symbolic overlay with limited practical effect. MDC is also concerned that embedding such principles in statute—especially without clear democratic consensus—could lead to judicial influence or interpretive ambiguity over time.

While promoting regulatory excellence is a commendable goal, MDC submits that this is best achieved through strengthening existing guidance, improving departmental capability, and fostering a culture of quality policymaking—rather than through codifying aspirational

standards in law. We therefore urge the Committee to re-examine whether the Bill's objectives can be met more effectively through incremental reforms and enhanced stewardship.

Legislative Entrenchment, Interpretive Overreach, and Oversight Gaps: Alignment with LDAC Findings

MDC draws the attention of the Committee to the Legislation Design and Advisory Committee's (LDAC) submission on the Regulatory Standards Bill in the November 2024 consultation. Council notes with concern that several of LDAC's key recommendations and cautions were not reflected in the Bill's final text. In particular, LDAC warned of significant constitutional risks posed by the Bill's design – including the entrenchment of certain legislative constraints and the prospect of judicial interpretation creep – and it highlighted the Bill's exclusion of international law values, Treaty of Waitangi considerations as well as the limited utility of the proposed Regulatory Standards Board. None of these issues were addressed in the enacted legislation, leaving the core problems identified by LDAC unresolved. MDC echoes LDAC's concerns about the Bill's potential to unsettle New Zealand's constitutional norms. Embedding a set of "good lawmaking" principles in legislation risks implicitly entrenching those principles beyond the reach of ordinary amendment.

LDAC had cautioned that even without an explicit enforcement role, courts would likely begin to refer to and develop these statutory principles over time as interpretive guideposts – a gradual creep in judicial interpretation that could effectively amplify the Bill's influence in unforeseen ways. MDC is concerned that the final text of the Bill does nothing to mitigate these risks, thereby leaving future Parliaments exposed to constraints and inviting judges to expand their role in ways Parliament never intended. In addition, MDC supports LDAC's critique of the Bill's omission of fundamental legal values and its weak oversight mechanism.

Excluding these constitutional and international considerations undermines the Bill's credibility and legitimacy, a view MDC firmly shares. Likewise, we echo LDAC's scepticism about the proposed Regulatory Standards Board's practical value. The Board would issue only non-binding recommendations, and its added purpose, relative to existing legislative safeguards, is unclear.

LDAC also submitted that regulatory quality is more effectively advanced through institutional mechanisms—such as Cabinet Manual expectations, improved departmental capability, and ongoing stewardship—rather than statutory codification of abstract principles. MDC concurs. We submit that legal transposition of principles risks rigidity and interpretive overreach, whereas fostering a regulatory culture of integrity, evidence-based reasoning, and inter-agency cooperation would achieve better enduring outcomes.

Despite LDAC's recommendations, the final Bill retains this limited Board model and fails to incorporate Treaty or international law values, confirming our concern that the legislation falls short of accepted constitutional standards and prudent legislative design.

Broadening of Principles to Reflect Public Interest and Constitutional Balance

MDC submits that Clause 8, as presently drafted, gives disproportionate emphasis to individual liberties, minimal state intervention, and private property protections, without balancing these against essential public interest considerations. While the protection of individual rights is a legitimate regulatory objective, the exclusion of countervailing public

values—such as collective wellbeing, environmental sustainability, and obligations under Te Tiriti o Waitangi—produces a framework that is normatively unbalanced and constitutionally incomplete. The result is a set of principles that risks constraining legitimate legislative action in areas where public interest regulation is vital.

Notably absent from this clause are principles acknowledging the legitimate role of regulation in preventing harm, managing long-term environmental and social risks, and upholding collective rights. These omissions are not merely philosophical—they carry potential legal consequences. As currently drafted, regulated parties could invoke the principles to challenge laws or policies that restrict private conduct for public benefit, including land use planning, climate adaptation, or public health controls. This narrow framing is also inconsistent with evolving jurisprudence that recognises the legitimacy of regulatory interventions in the public interest, including under international human rights and environmental law.

Clause 8(c) – The Threat to Public Interest Regulation and Fiscal Sustainability

MDC opposes Clause 8(c) of the Regulatory Standards Bill, which mandates compensation for regulatory actions that "impair" property rights, even when such actions serve demonstrable public good. This provision represents a radical departure from New Zealand's established legal framework and risks entrenching corporate interests over community well-being. Under current law, compensation is required only for the physical acquisition of property under the Public Works Act 1981, with regulatory impacts (e.g., zoning changes, public health protections) balanced against societal benefits under the NZ Bill of Rights Act 1990. Clause 8(c) upends this balance by creating a statutory obligation to compensate private entities for lost profits arising from regulations addressing climate change, environmental preservation, or public health crises.

The clause's broad definition of "impairment" – encompassing any reduction in property "use, enjoyment, or value" – could empower corporations to challenge essential regulations through costly litigation. For example, tobacco companies might demand compensation for smoke-free laws, mining firms for conservation policies, or developers for floodplain restrictions. This aligns with controversial "regulatory takings" clauses in international trade agreements like the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CCPTPP), which New Zealand has historically resisted due to their potential to prioritise private profit over public welfare. Such a framework would impose unsustainable fiscal liabilities on councils and central government, diverting funds from critical services to compensate private interests.

Local government is particularly vulnerable to this provision. Councils already face stringent accountability under the Local Government Act 2002 and Resource Management Act 1991, including judicial review for bylaws deemed disproportionate or procedurally deficient. Clause 8(c) would compound these burdens by exposing councils to compensation claims for everyday regulatory actions, such as district plan changes or emissions reduction strategies. This risks paralysing local democracy, as councils may hesitate to enact necessary protections for fear of litigation or unaffordable payouts.

MDC urges the Committee to delete Clause 8(c) entirely. If retained, the clause must be amended to:

a. Exclude regulations addressing public health, environmental protection, or climate mitigation from compensation requirements.

b. Align with the Public Works Act 1981 by limiting compensation to physical acquisitions, not regulatory impacts.

c. Explicitly exempt local authorities from its scope, recognising their existing accountability frameworks.

MDC considers this amendment to be critical to preserve the ability of both central and local government to act in the interest of the public without fear of corporate retaliation.

Impacts on Collective Welfare and Social Equity

Following from the above MDC raises the concern of the potential for the Bill's principles and consistency assessments to be disproportionately leveraged by entities with the financial means to engage legal counsel, lobby policy makers, or otherwise influence outcomes. Without explicit mechanisms to ensure that under-resourced groups such as community organisations, iwi or grassroots advocates- can access similar channels of influence, there is a risk that regulatory review processes could entrench inequities rather than reduce them.

Application of the Bill to Council Bylaws and the Cost Implication

MDC considers that the proposed Bill as drafted will pose some confusion as to whether section 13 and 14 of the draft Bill applies to bylaws, given that bylaws are considered secondary legislation. The exclusions set out in Clause 14 is not helpful in ascertaining whether bylaws are included when determining whether there is a requirement to review secondary legislation. MDC considers that it should be unambiguous whether and how the Bill applies to local authority bylaws.

We recommend amending Clause 5 (Interpretation section) to clarify the status of bylaws. For example, a definition could be added: "*Bylaw has the same meaning as in the Local Government Act 2002, and for the purposes of this Act, a bylaw is secondary legislation*." This confirms inclusion and avoids interpretive doubt. Conversely, if the Committee sees fit to exclude or phase in bylaws, this should be stated directly. For instance, a new subclause in Clause 5 could read: "*Despite the definition of secondary legislation, this Act's requirements for consistency assessments and review do not apply to bylaws made by local authorities until such date or in such manner as may be prescribed by Order in Council*."

If clauses 13 and 14 indeed are intended to apply to Bylaws, we caution that the principles – while important in theory – may not always align with the practical realities of community governance. For example, a bylaw that restricts certain activities (and therefore "diminishes liberty") may be entirely justified for public health, public safety or environmental protection. Councils must retain flexibility to meet local needs without fear of censure, provided decisions are made transparently and in good faith.

MDC is also concerned about the cost implications associated with the Bill's new consistency review and reporting obligations, particularly under clauses 11, 13, and related provisions. Preparing a CAS and inconsistency disclosure for each bylaw will require specialist legal and policy input. Unlike larger central agencies or bigger councils, smaller councils often lack

dedicated legislative teams, making this requirement a potential significant unfunded burden on local government.

If bylaws are to remain within the scope of the Bill, MDC strongly recommends that resources and guidance be provided to assist councils. In particular, guidelines issued by the Minister under clause 14 should include tailored advice for local authorities on how to conduct consistency assessments in a proportionate and pragmatic way. These guidelines should be developed in consultation with LGNZ and councils to ensure practical applicability.

Te Tiriti o Waitangi and Legislative Integrity

MDC supports Taituarā's submission that the omission of Te Tiriti o Waitangi from the Regulatory Standards Bill represents a fundamental constitutional oversight. Te Tiriti is a founding document of New Zealand's legal and political system, and its absence from a statute concerned with defining the principles of good lawmaking is constitutionally incoherent. The Bill's exclusion of Treaty obligations introduces uncertainty and diminishes alignment with the Legislation Guidelines (2021), which explicitly require consistency with Treaty principles. This is not mitigated by reference to Cabinet practices or internal government policies, which cannot override primary legislation. As a result, the Bill risks establishing a statutory framework that invites legal interpretation divorced from the Crown's enduring obligations under Te Tiriti.

This omission also has direct implications for local government. Councils often exercise delegated regulatory functions on behalf of the Crown and operate within legislative schemes that require engagement with Treaty principles—such as the Local Government Act 2002, the Resource Management Act, and public health legislation. Excluding Te Tiriti from this Bill signals that Treaty considerations are optional in regulatory design and undermines the obligations councils are statutorily required to observe. Without an express Treaty clause, the Bill fails to provide consistent guidance to Ministers, officials, and the proposed Regulatory Standards Board when assessing legislation for alignment with New Zealand's constitutional framework. We therefore recommend the inclusion of a Treaty-related principle to ensure legislative integrity and uphold the Crown's foundational commitments.

Independence and Expertise Requirements in Board Appointments

MDC supports Taituara's recommendation "*that the Regulatory Standards Bill specify that the Board needs to collectively possess skills in law; economics; regulatory stewardship; implementation and evaluation; Te ao Māori; tikanga Māori and te Tiriti; and the perspectives of regulatory sectors/industries."*

In addition, MDC recommends that the clauses establishing the Regulatory Standards Board require that appointments are not unilateral. For example, the clause could read like this "*The Minister must consult with the leaders of parties in the House of Representatives and with relevant professional bodies (including but not limited to the Law Society and Local Government New Zealand) before appointing members of the Board. In making appointments, the Minister must ensure that the Board has a balance of expertise in law, economics, public administration, Te Tiriti o Waitangi, and local government."* Additionally the clause could include: *"The Board shall comprise no fewer than 5 and no more than 7 members, and the term of appointment and removal processes shall be such as to ensure independence (e.g., removal only for just cause).*

Support for Strengthening Engagement Provisions

MDC supports the key engagement-related recommendations in Taituarā's submission on the proposed Bill. In particular, we endorse replacing the term "consultation" with engagement," recognising consultation as only one point on the engagement spectrum. This shift would signal a broader commitment to active two-way dialogue rather than a narrow one-off process.

We agree that section 82 of the LGA 2002- which requires councils to scale consultation in proportion to a proposal's impact and the parties potentially affected- provides a sound reference point for engagement principles. Aligning the Bill's provisions with these well-established principles would ensure consistency with local government practice and clarify what meaningful engagement entails.

MDC also supports measures to improve transparency process, such as requiring Cabinet papers and Regulatory Impact Statements to clearly document the engagement undertaken. Enhanced transparency would hold policymakers accountable for early and inclusive engagement with affected communities and councils. While supportive of stronger engagement requirements, we caution against overly prescriptive procedures in legislation. Excessive procedural detail could burden councils, particularly smaller councils with limited resources. Instead the focus should retain on outcomes: early, meaningful, and inclusive engagement that genuinely informs policy development.

Importantly, we note that deficiencies in regulatory impact statements (RIS) are often linked to weak or delayed engagement practices. Poor engagement upstream tends to yield underdeveloped evidence bases and blind spots in implementation feasibility. Strengthening engagement expectations in the Bill would therefore enhance the quality of RIS content and ultimately regulatory outcomes.

To conclude, MDC agrees with the intention to improve regulatory quality and transparency. However, the Bill as currently drafted risks constitutional imbalance, confusion for local authorities, and conflict with Treaty principles. We urge the Committee to consider the proposed amendments to ensure the Bill is constitutionally sound, operationally practical, respectful of local democracy, inclusive of Te Tiriti o Waitangi, and oriented toward balanced, principled regulation.

Yours sincerely,

Helen Worboys, JP

Mayor